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September 26, 1996

Briefings on How To Use the Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6921 of September 20, 1996

National Historically Black Colleges and Universities Week, 1996

By the President of the United States of America

A Proclamation

Since the Reconstruction period, when 24 private black colleges were founded within 10 years, our Nation's Historically Black Colleges and Universities (HBCUs) have played a central role in providing access to higher education for many Americans. Growing steadily after this early burst, HBCUs fought a hard struggle for survival over many decades, ultimately proving themselves to be not only factories of learning, but also bastions of the core American ideals of freedom, diversity, and enterprise.

Today, more than 100 HBCUs throughout our country serve a unique role in educating African Americans. Although as a group they make up only 3 percent of American institutions of higher learning, they award one-third of all bachelor's degrees—and a major proportion of the graduate degrees—earned by African Americans each year. Their alumni rolls include scores of leaders in fields ranging from law to the sciences, and from the arts to medicine. Often working with limited resources, these institutions have earned a reputation for achieving ''the most with the least'' public dollars—consistently keeping tuition costs affordable, for example, or accepting higher numbers of students who need special educational or financial assistance.

Our Historically Black Colleges and Universities are an enduring beacon of hope offering thousands of our citizens a critical opportunity to achieve their full potential. HBCUs give these students not only access to a quality education, but also a supportive environment in which to learn and positive role models whose lives they can strive to emulate. In addition, these institutions contribute to the pluralism of American education, giving students a broader choice. Ultimately, they also help instill and preserve the African American cultural heritage, in the process educating all Americans to the richness of the Black experience.

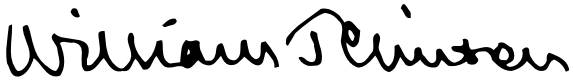
The future of HBCUs is as bright as their past, and they are busy developing ways to meet the challenges of a new century: special outreach initiatives designed to spread their wealth of resources into the communities that have grown up around them; cutting-edge projects in science and technology involving corporate and governmental partnerships; and international educational efforts spanning the entire globe.

They will continue at the creative forefront of American education, offering the tools and skills necessary to prepare students for today's competitive and technological society. In this coming week, let us honor the contributions—past and present—of Historically Black Colleges and Universities, and let us treasure forever the rich resource they provide to our Nation: a proud tradition of well-educated Americans, eager to make this a better world for all of us.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 22 through September 28, 1996, as National Historically Black Colleges and Universities Week. I call upon the people of the United States, including government

officials, educators, and administrators, to observe this week with appropriate programs, ceremonies, and activities honoring America's black colleges and universities, and their graduates.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of September, 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.



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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 33

[Docket No. FV–96–33–1 IFR]

Regulations Issued Under the Export Apple and Pear Act; Relaxation of Grade Requirements for Apples and Pears Shipped to Pacific Ports of Russia

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document relaxes the minimum grade requirements issued under the Export Apple and Pear Act for U.S.-grown apples and pears shipped to Pacific ports of Russia. Container marking provisions also are relaxed for such shipments. These changes are designed to develop Eastern Russia as an export market for apples and pears. This rule was recommended by the Northwest Horticultural Council (Council), an organization representing the Northwest fruit industry.

DATES: Effective September 27, 1996. Comments must be received by October 28, 1996.

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, Room 2525–S, PO Box 96456, Washington, DC 20090–6456, Fax #(202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax #(503) 326–7440; or William R. Addington, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2412, Fax #(202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax #(202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under authority of the Export Apple and Pear Act, as amended, (7 U.S.C. 581–590), hereinafter referred to as the ''Act.'' This rule will amend ''Regulations Issued Under Authority of the Export Apple and Pear Act'' (7 CFR part 33).

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. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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

The Act and regulations effective thereunder apply to exporters and export carriers of apples and pears. In the United States, there are approximately 450 firms which pack and export apples and 300 firms which pack and export pears that are potentially subject to regulations under the authority of the Act. Small agricultural service firms, which include firms that pack and export apples and pears, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000. The majority of apple and pear exporters regulated under the Act may be classified as small entities. This interim final rule invites comments on changes to the regulations currently issued under the Act. This rule relaxes the minimum grade requirements issued under the Act for U.S.-grown apples and pears only shipped to Pacific ports of Russia. Container marking provisions also are relaxed for such shipments. This rule will provide all exporters additional flexibility in marketing apples and pears of different grades and quality in Russian port cities and areas along the Pacific Ocean. These changes are designed to develop export markets for apples and pears in these areas. This rule does not preclude shipments of apples and pears of higher than the minimum quality from being shipped to Russian Pacific ports. This should benefit both large and small exporters of apples and pears. Therefore, the AMS has determined that this action 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.

Section 33.10 of the ''Regulations Issued Under Authority of the Export Apple and Pear Act'' establishes minimum grade and container marking requirements for export shipments of apples and pears. Currently, export shipments of apples must meet a minimum grade of U.S. No. 1 or U.S. No. 1 Early as specified in the United States Standards for Apples (7 CFR part 51, §§ 51.300–51.323). Exports of summer and fall pears must meet a minimum grade of U.S. No. 2 as specified in the United States Standards for Summer and Fall Pears (7 CFR part 51, §§ 51.1260–51.1280). Exports of winter pears also must meet the minimum grade of U.S. No. 2 as specified in the United States Standards for Winter Pears (7 CFR part 51, §§ 51.1300–51.1323). Additional restrictions for apple maggot and San Jose scale apply to both apples and pears.

This rule reduces the minimum grade requirements as follows.

The minimum grade for fresh apples exported to Russian Pacific ports is reduced to U.S. Utility grade (7 CFR part 51, § 51.303) or U.S. No. 1 Hail (7 CFR part 51, § 51.302(b)) for apples damaged by hail.

The minimum requirements for summer and fall pears exported to Russian Pacific ports are listed in the regulatory text of this regulation. The requirements provide that the pears should be of one variety that are mature, hand picked, clean, sound and free from hard-end; and free from serious damage caused by broken skin, insects, disease, hail marks, limbrubs, heavy russet, or other means; and shall not be so excessively elongated or flattened as to preclude the cutting of one good half. The requirements also include necessary definitions and explanations of some provisions and a list of tolerances which are applied to each lot at the time of packing.

Finally, the minimum requirements for winter pears exported to Russian Pacific ports also are listed in the regulatory text of this regulation. The requirements provide that the pears be of one variety which are mature, hand picked, clean, sound, not very seriously misshapen, free from black end, free from damage caused by hard end, broken skins, and free from serious damage caused by cork spot or bruises. ''Very seriously misshapen'' means that the pear is excessively flattened, elongated for the variety, or is constricted or deformed so it will not cut one good half or two fairly uniform quarters. The requirements also include necessary definitions and explanations of some provisions and a list of tolerances which are applied to each lot at the time of packing.

Handlers may ship apples and pears of higher grade quality than the minimum requirements established in this regulation.

Paragraph (d)(3) of § 33.10 Minimum requirements of the implementing regulations provides that each package of apples and pears be marked plainly and conspicuously with the name of the U.S. grade or the name of a State grade applicable to the product being exported. However, the new minimum requirement for pears is not equivalent to a U.S. grade, as required by paragraph (d)(3) and, thus, cannot be marked on containers. Therefore the Department has determined that the marking requirements of paragraph (d)(3) should not apply to shipments of pears shipped to Pacific ports of Russia meeting minimum quality requirements. This regulation adds a proviso to paragraph (d)(3). Apples shipped according to the minimum grade standard in this regulation are not exempt from the grade marking provisions and must be properly marked pursuant to paragraph (d).

The additional restrictions for apple maggot and San Jose scale continue to apply to apples and pears shipped to any foreign destination.

The Council, an organization that represents a substantial portion of the fruit industry in the Northwest States of Oregon, Washington, and Idaho, recommended these changes in the current export regulations.

The Council advises that a change in requirements is needed to develop export markets for apples and pears to Pacific ports of Russia. According to the Council, exporters indicate that there is a demand in this relatively new export market of Eastern Russia for apples and pears of a lower grade than the current requirements allow. This change is expected to increase sales opportunities in a market willing to accept apples and pears that are lower in overall quality and less uniform in appearance than most export markets will accept.

The Council reports that weather and growing conditions are expected to adversely affect the appearance and quality of a significant portion of the 1996 pear crop. The Council believes this change will facilitate market development efforts for apples and pears to Pacific ports of Russia. Apples and pears which are not shipped for fresh consumption in either domestic or foreign markets are usually disposed of in processing outlets, such as juice. Processing outlets are not normally as profitable as fresh market outlets.

The Council and other industry groups conduct periodic meetings and consider recommendations for modification, suspension, or termination of the regulatory requirements under the Act. These meetings are open to the public, and interested persons are given an opportunity to express their views. The Department reviews recommendations and information submitted by these and other industry groups as well as other available information and determines whether such modification, suspension, or termination of the regulatory requirements would tend to effectuate the purposes of the Act.

After consideration of all relevant material presented, including the Council's recommendation, and other available information, it is found that this interim final 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 and that good cause exists for not postponing the effective date of the rule until 30 days after publication in the Federal Register because: (1) This rule relaxes the current grade requirements for apples and pears shipped to Pacific ports of Russia; (2) exporters have indicated that sales opportunities exist in Eastern Russia and that they would like to take advantage of these opportunities as soon as possible; (3) apples and pears are shipped throughout the year, and this rule should be in effect promptly so exporters can make marketing plans; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 33

Administrative practice and procedure, Exports, Apples, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 33 is amended as follows:

PART 33—EXPORT APPLES AND PEARS

1. The authority citation for 7 CFR part 33 continues to read as follows:

Authority: Sec. 7, 48 Stat. 124; 7 U.S.C. 587.

2. In § 33.10, paragraph (a), (b), and (d) are revised to read as follows:

§ 33.10 Minimum requirements.

* * * * *

(a) Apples grade at least U.S. No. 1 or U.S. No. 1 Early: *Provided,* That apples for export to Pacific ports of Russia shall grade at least U.S. Utility or U.S. No. 1 Hail for hail-damaged apples, as specified in the United States Standards for Apples (§§ 51.300–51.323 of this chapter): *Provided further,* That apples for export to any foreign destination do not contain apple maggot, and do not have more than 2 percent, by count, of apples with apple maggot injury, nor more than 2 percent, by count, of apples infested with San Jose scale or scale of similar appearance;

(b) Pears grade at least U.S. No. 2 as specified in the United States Standards for Summer and Fall Pears, such as Bartlett, Hardy, and other similar varieties (§§ 51.1260–51.1280 of this chapter), or in the United States Standards for Winter Pears, such as Anjou, Bosc, Comice, and other similar

varieties (§§ 51.1300–51.1323 of this chapter), do not contain apple maggot, and do not have more than 2 percent, by count, of apples with apple maggot injury, nor more than 2 percent, by count, of apples infested with San Jose scale or scale of similar appearance: *Provided,* That the minimum quality requirements for pears exported to Pacific ports of Russia are as follows:

(1) Summer and fall pears shall be of one variety which are mature, hand picked, clean, sound and free from hard-end; and free from serious damage caused by broken skin, insects, disease, hail marks, limbrubs, heavy russet, or other means; and shall not be so excessively elongated or flattened as to preclude the cutting of one good half. Broken skin must not exceed 1/4 inch in diameter. The following definitions shall apply to all varieties:

Clean means reasonably free from dust, dirt, or honey dew.

Free from serious damage means defects when taken singly or collectively shall not seriously affect the edible or culinary value of the fruit.

Hand picked means that pears do not show evidence of rough handling or of having been on the ground.

Hard-end means pears which show an abnormally yellow or green color at the blossom end or an abnormally smooth rounded base with little or no depression at the calyx, or if the flesh near the calyx is abnormally dry and tough or woody. Pears affected by hard-end shall be considered defects. Rat-tail shaped pears, or second bloom pears that are tough or ridged shall be considered defects. At the time of packing, not more than 10 percent, by count, of any lot may be below the requirements of the grade, and not more than one-tenth of this amount shall be allowed for decay and/or breakdown. Slight imperfections which are not discernible in good commercial sorting practice shall not be considered as defects. Small inconspicuous skin breaks of less than 1/8 inch in diameter or depth shall not be considered as damage, and not more than 15 percent of the pears in any container may have not more than one skin break from 1/8 inch to 3/16 inch, inclusive, in diameter or depth. After pears have been placed in storage, or in transit; scald, breakdown, decay, bitter pit, or physical injury affecting keeping quality, which may have developed or may only have become evident after pears are packed, are defined as applying to condition rather than to grade. Pears also shall not contain apple maggot, and shall not have more than 2 percent, by count, of pears with apple maggot injury, nor more than 2 percent, by count, of pears infested with San Jose scale or scale of similar appearance;

Mature means having reached the stage of maturity which will insure a proper completion of the ripening process. Firmness of the flesh shall be considered only in connection with other factors to determine the degree of maturity. *Sound* means that pears at time of packing are free from visible defects such as decay, breakdown, scald, bitter pit, or physical injury affecting keeping quality. The following conditions shall not be considered serious damage: healed insect depressions or other surface blemishes which do not prevent the cutting of one good half;

(2) Winter pears shall be of one variety which are mature, hand picked, clean, sound, not very seriously misshapen, free from black end, free from damage caused by hard end, broken skins, and from serious damage caused by cork spot or bruises. The following definitions shall apply to all varieties:

Black end is evidenced by an abnormally deep green color around the calyx, or black spots usually occurring on one-third of the surface nearest to the calyx, or by an abnormally shallow calyx cavity.

Clean means free from excessive dirt, dust, spray residue, or other foreign material.

Damage by hard end means any injury or defect which materially affects the appearance, edible or shipping quality. Any pear with one skin break larger than 3⁄16 inch in diameter or depth, or with more than one skin break 1⁄8 inch or larger in diameter or depth, shall be considered damaged, and scored against the grade tolerance.

Handpicked means that the pears do not show evidence of having been on the ground.

Hard end is an abnormal yellow color at the blossom end, or an abnormally smooth, rounded base with little or no depression at the calyx, or if the flesh near the calyx is abnormally dry and tough or woody.

Mature means that the pear has reached the stage of maturity which will insure the proper completion of the ripening process.

Overripe means dead ripe, very mealy or soft, past commercial utility.

Serious damage by *cork spot* is when more than two cork spots are visible externally, or when the visible external injury affects an aggregate area of more than ½ inch in diameter. *Serious damage* by bruising is bruising which seriously affects the appearance, edible or shipping quality. For a tolerance of 10 percent or more, individual packages in any lot may contain not more than one and one-half times the tolerance specified, except that when the package contains 15 specimens or less, individual packages may contain not more than double the tolerance specified. For a tolerance of less than 10 percent, individual packages in any lot may contain not more than double the tolerance specified, provided at least one specimen which does not meet the requirements shall be allowed in any one package. Pears also shall not contain apple maggot, and shall not have more than 2 percent, by count, of pears with apple maggot injury, nor more than 2 percent, by count, of pears infested with San Jose scale or scale of similar appearance;

* * * * *

(d) Each package of apples or pears is marked plainly and conspicuously with:

(1) the name and address of the grower, packer, or domestic distributor: *Provided,* That the name of the foreign distributor may be placed on consumer unit packages shipped in a master container if such master container is marked with the name and address of the grower, packer, or domestic distributor;

(2) the variety of the apples or pears;

(3) the name of the U.S. grade or the name of a state grade if the fruit meets each minimum requirement of a U.S. grade specified in this section; and *Provided further,* That the marking requirements of this paragraph shall not apply to pears meeting minimum quality requirements of this section and shipped to Pacific ports of Russia.

Dated: September 20, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–24663 Filed 9–25–96; 8:45 am]

BILLING CODE 3410–02–P

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AE47

1996 Marketing Quota and Price Support for Burley Tobacco

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1996 crop of burley tobacco. The Secretary determined the

1996 marketing quota for burley tobacco to be 633.8 million pounds, and the 1996 price support level to be 173.7 cents per pound.

EFFECTIVE DATE: February 1, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, FSA, USDA, room 5750, South Building, P.O. Box 2415, STOP 0514, Washington, DC 20013–2415, telephone 202 720–5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and has been reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any information collection requirements that require clearance through the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

Statutory Background

This rule is issued pursuant to the provisions of the Agricultural Adjustment Act of 1938 (the 1938 Act) and the Agricultural Act of 1949 (the 1949 Act.) Section 1108(c) of Public Law 99–272 provides that the determinations made in this rule are not subject to the provisions for public participation in rulemaking contained in 5 U.S.C. 553 or in any directive of the Secretary.

On February 1, 1996, the Secretary announced the national marketing quota and the price support level for the 1996 crop of burley tobacco. A number of related determinations were made at the same time, which this final rule also affirms.

Marketing Quota

Section 319(c)(3)(A)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

Section 319(c)(3)(C) further provides that, with respect to the 1995 and 1996 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. However, if actual loan stocks exceed the prescribed reserve stock level by 50 percent the reduction limit could be waived and the Secretary could then set the quota according to the three-component formula (plus or minus 3 percent). The reserve stock level is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1996 crop of burley tobacco by January 15, 1996. Five such manufacturers were required to submit such a statement for the 1996 crop and the total of their intended purchases for the 1996 crop is 424.0 million pounds. The 3-year average of exports is 155.4 million pounds.

The national marketing quota for the 1995 crop year was 549.0 million pounds (60 FR 27867). Thus, in accordance with section 301 (b)(14)(D), the reserve stock level for use in determining the 1996 marketing quota for burley tobacco is 82.4 million pounds.

As of January 26, 1996, the Burley Tobacco Growers Cooperative Association and Burley Stabilization Corporation had in their inventories 28.0 million pounds of burley tobacco (excluding pre-1994 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment necessary to maintain loan stocks at the reserve supply level is an increase of 54.4 million pounds.

The total of the three marketing quota components for the 1996–97 marketing year is 633.8 million pounds. USDA did not use its discretionary authority to increase or decrease the three-component total by up to 3 percent because the Secretary determined that the 1996/97 supply would be more than ample at the formula level. Accordingly, the national marketing quota for the marketing year beginning October 1, 1996, for burley tobacco is 633.8 million pounds.

In accordance with section 319(c) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national quota in an amount equivalent to not more than 1 percent of the national quota for the purpose of making corrections in farm quotas to adjust for inequities and establish quotas for new farms. The Secretary has determined that a national reserve for the 1996 crop of burley tobacco of 2,429,000 pounds is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1996 crop of burley tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1996 crop of burley tobacco shall be:

(1) The level, in cents per pound, at which the 1995 crop of burley tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as

determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

The difference between the two 5-year averages (i.e., the difference between (A)(I) and (II)) is 1.8 cents per pound. The difference in the cost index from January 1 to December 31, 1995, is 1.8 cents per pound. Applying these components to the price support formula (1.8 cents per pound, two-thirds weight; 1.8 cents per pound, one-third weight) results in a weighted total of 1.8 cents per pound. As indicated, section 106 provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. In order to remain competitive in foreign and domestic markets, the Secretary used his discretion to limit the increase to 65 percent of the maximum allowable increase. Accordingly, the 1996 crop of burley tobacco will be supported at 173.7 cents per pound, 1.2 cents higher than in 1995.

List of Subjects

7 CFR Part 723

Acreage allotments, marketing quotas, penalties, reporting and recordkeeping requirements, tobacco.

7 CFR Part 1464

Loan programs—agriculture, price support programs, tobacco, reporting and recordkeeping requirements, warehouses.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b-1, 1314b-2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.112 is amended by adding paragraph (d) to read as follows:

§ 723.112 Burley (type 31) tobacco.

* * * * *

(d) The 1996 crop national marketing quota is 633.8 million pounds.

PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b and 714c.

4. Section 1464.19 is amended by adding paragraph (d) to read as follows:

§ 1464.19 Burley (type 31) tobacco.

* * * * *

(d) The 1996 crop national price support level is 173.7 cents per pound.

Signed at Washington, DC, on September 17, 1996.

Bruce R. Weber,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–24669 Filed 9–25–96; 8:45 am]

BILLING CODE 3410–05–P

Food Safety and Inspection Service

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–4N]

International Meeting on Implementation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a briefing, ''International Meeting on Implementation,'' to discuss with representatives of foreign countries how the final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,'' will be implemented in the United States.

DATES: The public hearing will be held on October 8, 1996, from 8:30 a.m. until 5:00 p.m. Registration will begin at 8:00 a.m.

ADDRESSES: The conference will be held at the U.S. Department of Agriculture, 1400 Independence Avenue, SW, Back of the South Building Cafeteria (between the 2nd and 3rd Wings).

FOR FURTHER INFORMATION CONTACT: To register for the conference, call (703) 812–6299 for international calls; (800) 485–4429 for domestic calls; FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com. If you require a sign language interpreter or other special accommodations, contact Ms. Shelia Johnson at (202) 501–7138 by October 1, 1996.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (61 FR 38805). This rule introduced sweeping changes to the U.S. meat and poultry inspection system. FSIS is holding a series of meetings to discuss the implementation of the rule.

On October 8, 1996, FSIS officials will brief representatives of foreign countries on how the Agency will implement the ''Pathogen Reduction/HACCP'' final rule domestically. At the briefing, there will be presentations about Sanitation Standard Operating Procedures, *E. coli* verification testing, HACCP requirements, and *Salmonella* testing. After the presentations, FSIS officials will answer questions.

Done at Washington, DC, on September 18, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–24722 Filed 9–23–96; 2:18 pm]

BILLING CODE 3410–DM–P

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9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–5N]

Public Hearing on Criteria for Equivalence of Foreign Inspection Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) will hold a hearing, ''Public Hearing on Criteria for Equivalence of Foreign Inspection Systems,'' to discuss issues related to the equivalence of foreign inspection systems to the United States' system. At the hearing, FSIS will provide material outlining the issues involved in determining the equivalence of foreign inspection systems. Participants will have the opportunity to discuss this material and present their own information and views related to the

equivalence of foreign inspection systems.

DATES: The public hearing will be held on October 9 and 10, 1996, from 8:30 a.m. until 5:00 p.m. Registration and distribution of meeting materials will begin at 8:00 a.m. on October 9, 1996.

ADDRESSES: The hearing will be held at the U.S. Department of Agriculture, 1400 Independence Avenue, SW, Back of the South Building Cafeteria (between the 2nd and 3rd Wings). Send an original and two copies of comments on equivalence issues to: FSIS Docket Clerk, DOCKET #93–016–5N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3806, 1400 Independence Avenue, S.W., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: To register for the hearing and obtain advance copies of reference material, call (703) 812–6299 for international calls; (800) 485–4429 for domestic calls; FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com. If you require a sign language interpreter or other special accommodations, contact Ms. Shelia Johnson at (202) 501–7138 by October 1, 1996.

SUPPLEMENTARY INFORMATION: On December 8, 1994, the President of the United States signed into law the Uruguay Round Agreements Act, PL 103–465 (108 Stat 4966). Among other things, this Act modified U.S. laws to ensure consistency with the new agreements. For example, the Federal Meat Inspection Act and the Poultry Products Inspection Act were modified so that foreign countries wishing to export meat and poultry products to the United States must have inspection system controls ''equivalent to'' those of the United States. To be consistent with the new language in the Acts, FSIS published a direct final rule on July 28, 1995, amending its regulations pertaining to foreign countries inspection systems by replacing the phrase ''at least equal to'' with the words ''equivalent to'' (60 FR 38667).

FSIS has been examining the application of ''equivalence'' as it relates to meat and poultry trade between countries. To gather information from the public relating to issues of equivalence, FSIS will hold a hearing, ''Public Hearing on Criteria for Equivalence of Foreign Inspection Systems,'' on October 9 and 10. The hearing will focus on such issues as: the definition of ''equivalence,'' risk assessment, features of systems used to determine equivalence, sanitary measures, Hazard Analysis and Critical Control Point (HACCP) systems, microbiological standards, and inspection activities carried out by parties other than Government officials. For hearing participants wishing to receive advanced copies of reference material to be made available at the hearing, see **FOR FURTHER INFORMATION CONTACT**.

At the hearing, there will be an opportunity for participants to discuss the equivalence issues addressed in the reference material. Also, written comments may be submitted to the FSIS Docket Room (See **ADDRESSES**).

Done at Washington, DC, on September 20, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–24721 Filed 9–23–96; 2:18 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–17]

Amendment of Class E Airspace; Prescott, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends 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 action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Ernest A. Love Field, Prescott, AZ.

EFFECTIVE DATE: 0901 UTC December 5, 1996.

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:

History

On July 29, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Prescott, AZ (61 FR 39369). This action will provide adequate controlled airspace to accommodate a GPS SIAP to RWYs 12/21L at Ernest A. Love Field, Prescott, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Prescott, AZ. The development of a GPS SIAP to RWYs 12/21L has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWYs 12/21L SIAP at Ernest A. Love Field, Prescott, AZ.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 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 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective

September 16, 1996, 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]

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 2.6 miles each side of Drake VORTAC 318° radial extending from the 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 Earnest 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 northwest of and parallel to 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 003° radial and with a 18.2-mile radius of Drake VORTAC, extending clockwise from a line 4 miles west of and parallel to the Drake VORTAC 003° 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 September 12, 1996.

Leonard A. Mobley,

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

[FR Doc. 96–24642 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28692; Amdt. No. 1753]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 20, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; AND § 97.35 COPTER SIAPs, identified as follows:

** * * Effective October 10, 1996*

Worcester, MA, Worcester Muni, NDB RWY 29, Orig
Worcester, MA, Worcester Muni, NDB OR GPS RWY 29, Amdt 12 CANCELLED
Worcester, MA, Worcester Muni, ILS RWY 29, Amdt 2
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold Chamberlain, NDB or GPS RWY 4, Amdt 19
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold Chamberlain, ILS RWY 4, Amdt 25
Amarillo, TX, Amarillo Intl, LDA/DME RWY 22, Orig

** * * Effective November 7, 1996*

Cornelia, GA, Habersham County, VOR/DME OR GPS RWY 6, Amdt 5
Chicago, IL, Chicago O'Hare Intl, NDB RWY 32L, Amdt 22, CANCELLED
Parsons, KS, Tri-City, VOR–A, Orig
Parsons, KS, Tri-City, VOR OR GPS RWY 13, Amdt 4, CANCELLED
Bar Harbor, ME, Hancock County-Bar Harbor, LOC/DME BC RWY 4, Amdt 1
Kennett, MO, Kennett Memorial, NDB OR GPS RWY 18, Amdt 3
New York, NY, John F. Kennedy Intl, ILS/ DME RWY 22R, Orig-A, CANCELLED
New York, NY, John F. Kennedy Intl, ILS RWY 22R, Orig
Rugby, ND, Rugby Muni, NDB RWY 30, Amdt 5
Rugby, ND, Rugby Muni, NDB or GPS RWY 12, Amdt 4
Oxford, OH, Miami University, NDB or GPS RWY 5, Amdt 10
Wapakoneta, OH, Neil Armstrong, LOC RWY 26, Amdt 3
Austin, TX, Austin-Bergstrom Intl, ILS RWY 17R, Orig
Austin, TX, Austin-Bergstrom Intl, ILS RWY 35L, Orig
Austin, TX, Austin-Bergstrom Intl, GPS RWY 17R, Orig
Austin, TX, Austin-Bergstrom Intl, GPS RWY 35L, Orig
Shell Lake, WI, Shell Lake Muni, VOR/DME RWY 32, Orig, CANCELLED
Shell Lake, WI, Shell Lake Muni, VOR/DME RWY 32, Orig

** * * Effective December 5, 1996*

St Paul Island, AK, St Paul Island, ILS/DME RWY 36, Amdt 1
Hanford, CA, Hanford Muni, GPS RWY 32, Orig
Hayward, CA, Hayward Air Terminal, GPS Rwy 28L, Orig
Washington, DC, Washington Dulles Intl, NBD RWY 1R, Amdt 17
Washington, DC, Washington Dulles Intl, ILS RWY 1r, Amdt 22
Covington, GA, Covington Muni, VOR/DME OR GPS RWY 10, Amdt 3
Covington, GA, Covington Muni, NDB RWY 28, Amdt 1
Covington, GA, Covington Muni, GPS RWY 28, Orig
Moultrie, GA, Moultrie Muni, NDB–A, Orig
Iowa City, IA, Iowa City Muni, RNAV RWY 24, Amdt 1A CANCELLED
New Orleans, LA, Lakefront, VOR OR GPS–A, Amdt 16 CANCELLED
New Orleans, LA, Lakefront, VOR OR GPS–B, Amdt 8 CANCELLED
New Orleans, LA, Lakefront, VOR RWY 18R, Amdt 4
New Orleans, LA, Lakefront, VOR/DME OR GPS RWY 36L, Amdt 7
New Orleans, LA, Lakefront, ILS RWY 18R, Amdt 12
Reserve, LA, St John The Baptist Parish, GPS RWY 17, Orig
Gaylord, MI, Otsego County, VOR or GPS RWY 9, Orig
Kansas City, MO, Richards-Gebaur Memorial, ILS RWY 1, Amdt 4
Kansas City, MO, Richards-Gebaur Memorial, GPS RWY 1, Orig
Kansas City, MO, Richards-Gebaur Memorial, GPS RWY 19, Orig
Sikeston, MO, Sikeston Meml Muni, GPS RWY 20, Orig
Broken Bow, NE, Broken Bow Muni, GPS RWY 14, Orig
Columbus, NE, Columbus Muni, GPS RWY 14, Orig
Newburgh, NY, Stewart Intl, VOR RWY 27, Amdt 4
Mount Airy, NC, Mount Airy/Surry County, GPS RWY 36, Orig
Altus, OK, Altus Muni, GPS RWY 17, Orig
Altus, OK, Altus Muni, VOR/DME RNAV RWY 17, Amdt 1
Antlers, OK, Antlers Muni, GPS RWY 35, Orig
Boise City, OK, Boise City, GPS RWY 4, Orig
Durant, OK, Eaker Field, GPS RWY 35, Orig
Perry, OK, Perry Muni, GPS RWY 17, Orig
Sallisaw, OK, Sallisaw Muni, NDB OR GPS–A, Amdt 1
Sallisaw, OK, Sallisaw Muni, GPS RWY 35, Orig
Tulsa, OK, Richard Lloyd Jones Jr, GPS RWY 1L, Orig
Weatherford, OK, Thomas P Stafford, NDB RWY 17, Amdt 3
Weatherford, OK, Thomas P Stafford, GPS RWY 17, Orig
Weatherford, OK, Thomas P Stafford, GPS RWY 35, Amdt 1
Harrisburg, PA, Capital City, GPS RWY 26, Orig
Philadelphia, PA, Wings Field, GPS RWY 24, Orig
Big Lake, TX, Reagan County, NDG OR GPS RWY 16, Amdt 1, CANCELLED
Big Lake, TX, Reagan County, GPS RWY 16, Orig
Blacksburg, VA, Virginia Tech, LOC RWY 12, Amdt 4
Blacksburg, VA, Virginia Tech, GPS RWY 12, Orig
Winchester, VA, Winchester Regional, LOC RWY 32, Amdt 4
Winchester, VA, Winchester Regional, NDB OR GPS–B, Orig

[FR Doc. 96–24741 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28693; Amdt. No. 1754]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on September 20, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective Upon Publication.

FDC date	State	City	Airport	FDC No.	SIAP
09/06/96	TX	Houston	Ellington Field	6/6948	ILS RWY 22, AMDT 1...
09/10/96	MO	Camdenton	Camdenton Memorial	6/7036	GPS RWY 33, ORIG...

FDC date	State	City	Airport	FDC No.	SIAP
09/10/96	MO	Kaiser/Lake Ozark	Lee C. Fine Memorial	6/7037	GPS RWY 21, ORIG...
09/10/96	MO	Osage Beach	Grand Glaize-Osage Beach	6/7034	VOR OR GPS RWY 32, AMDT 4...
09/11/96	IN	Bloomington	Monroe County	6/7064	VOR/DME RWY 35 AMDT 14...
09/11/96	IN	Bloomington	Monroe County	6/7068	VOR OR GPS RWY 17 AMDT 11...
09/11/96	IN	Bloomington	Monroe County	6/7070	NDB OR GPS RWY 35 AMDT 4...
09/11/96	IN	Bloomington	Monroe County	6/7071	ILS RWY 35 AMDT 4...
09/11/96	IN	Bloomington	Monroe County	6/7072	VOR OR GPS RWY 24 AMDT 10...
09/11/96	MO	Jefferson City	Jefferson City Memorial	6/7056	ILS RWY 30, AMDT 3...
09/11/96	MO	Jefferson City	Jefferson City Memorial	6/7061	NDB OR GPS RWY 30, AMDT 8...
09/11/96	MS	Greenville	Mid Delta Regional	6/7059	LOC BC RWY 36R, AMDT 8...
09/12/96	IN	Bloomington	Monroe County	6/7123	VOR OR GPS RWY 6 AMDT 16...
09/12/96	NC	Louisburg	Louisburg/Franklin County	6/7142	VOR/DME OR GPS–A, ORIG–A...
09/13/96	FL	Key West	Key West Intl	6/7170	NDB OR GPS–A AMDT 14...
09/13/96	WI	Appleton	Outagamie County	6/7038	NDB OR GPS RWY 3 AMDT 14...
09/13/96	WI	Appleton	Outagamie County	6/7039	VOR/DME RWY 3 AMDT 8...
09/13/96	WI	Appleton	Outagamie County	6/7122	ILS RWY 3 AMDT 16...
09/17/96	CA	Fresno	Fresno Air Terminal	6/7243	NDB OR GPS RWY 29R AMDT 23...
09/17/96	CA	Fresno	Fresno Air Terminal	6/7245	ILS RWY 29R AMDT 33...
09/18/96	AZ	Phoenix	Phoenix Sky Harbor Intl	6/7269	ILS RWY 8R AMDT 9...
09/18/96	AZ	Prescott	Ernest A. Love Field	6/7282	VOR OR GPS RWY 11 AMDT 1...

[FR Doc. 96–24742 Filed 9–25–96; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 2 and 3

Publication of Consent Agreements Accepted for Public Comment in the Federal Register

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Federal Trade Commission has revised Rule 2.34 and Rule 3.25(f) of its Rules of Practice, 16 CFR 2.34, 3.25(f) (1996), so that the full text of consent agreements accepted for public comment will no longer be published in the Federal Register. Instead, a summary of each such agreement; the Analysis to Aid Public Comment that accompanies each such agreement; and any Commission or Commissioner statements will be published in the Federal Register after each such agreement is placed on the public record. The Commission is not required by statute to publish the full text of its consent agreements and related documents in the Federal Register. Moreover, complete versions of these materials are publicly available—from the Commission's Office of Public Affairs, on its Internet World Wide Web Home Page (at ''http://www.ftc.gov/os/actions.htm''), and from its Public Reference Room—prior to the time they are published in the Federal Register. The substantial expenditure of public funds required to publish full text versions of consent agreements in the Federal Register therefore is not warranted.

EFFECTIVE DATES: These rule amendments are effective on September 26, 1996. Comments may be filed with the Office of the Secretary until October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Donald S. Clark, Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue N.W., Washington D.C. 20580 (202) 326–2514.

SUPPLEMENTARY INFORMATION: Section 2.34 of the Federal Trade Commission Rules of Practice, 16 CFR 2.34 (1996), currently provides that when the Commission accepts for public comment a consent agreement under Part 2 of its Rules of Practice, it ''will publish the agreement, order, and explanation in the Federal Register.'' Similarly, section 3.25(f) of the Rules, 16 CFR 3.25(f) (1996), provides that when the Commission accepts for public comment a consent agreement under Part 3 of its Rules of Practice, it ''will publish the agreement, order, and explanation in the Federal Register.'' The Commission also places all of the documents associated with each Part 2 or Part 3 consent agreement—including the agreement itself, the complaint, the Analysis to Aid Public Comment, any separate Commission or Commissioner statements, and a news release—on the public record. The Commission makes these documents available to the public in a number of locations, including its Office of Public Affairs (in both paper and electronic form), on its Internet World Wide Web Home Page (at ''http://www.ftc.gov/os/actions/htm'') (in electronic form), and in its Public Reference Room (in paper form).

The Commission estimates that it can save more than $60,000 each year by instead printing only the following documents, for each consent agreement, in the Federal Register: (1) A summary announcing the commencement of the public comment period and indicating that the full text of the consent agreement documents is available from the Commission's Office of Public Affairs, on its Internet Home Page, and from its Public Reference Room; (2) the analysis to aid public comment; and (3) any Commission or Commissioner statements. The Commission believes that this substantial reduction in expenditures can be effected without any adverse effects on the public comment process. At the time a particular consent agreement is placed on the public record—that is, on the date on which the news release

describing it is issued—members of the public are fully informed both of the terms of the agreement and of how they can file comments concerning it. In addition, the news release and all of the consent agreement documents typically are made public—in both paper and electronic form—at least one week before the consent agreement and the analysis appear in the Federal Register. As a result, most individuals and entities first learn about the consent agreement from the news release, or from news coverage of the agreement. Any member of this group who wishes both to comment and to review the full text of the agreement can request a copy from the Public Reference Room—using the address and telephone number in the news release—or pick up a copy in person. Moreover, members of the public can secure an electronic copy of each consent agreement package from the Commission's Internet Home Page (at ''http://www.ftc.gov/os/actions.htm'') or from the electronic bulletin board maintained by the Commission's Office of Public Affairs. Furthermore, the Federal Register notice announcing the agreement will continue to provide—through the analysis to aid public comment—a comprehensive description of both the agreement and the draft complaint. As a result, Federal Register users will continue to be informed of both the contours of the agreement and that they can, if they wish, file comments concerning it. If they need additional detail from the agreement itself, they can secure electronic copies and/or paper copies from the above sources.

These rule revisions relate solely to agency practice and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), nor to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). The Paperwork Reduction Act, 44 U.S.C. 3501, does not apply because these revisions do not contain requirements for information collection subject to approval of the Office of Management and Budget. Although the rule revisions are effective immediately, the Commission welcomes comment on them and will consider further revision, as appropriate. Such comments may be filed with the Office of the Secretary until October 28, 1996.

List of Subjects in 16 CFR Parts 2 and 3

Administrative practice and procedure.

In consideration of the foregoing, the Commission hereby amends Title 16, Chapter I, Subchapter A, Parts 2 and 3 of the Code of Federal Regulations, as follows:

1. The authority for Parts 2 and 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721, 15 U.S.C. 46.

2. Section 2.34 is amended so that the third sentence after the introductory text beginning with ''The Commission * * *'' and ending with ''* * * Federal Register.'' is revised to read as follows:

§ 2.34 Disposition.

* * * * *

* * * The Commission will publish the explanation in the Federal Register. * * *

3. Section 3.25(f) is amended so that the second sentence in the concluding text beginning with ''The Commission * * *'' and ending with ''* * * Federal Register.'' is revised to read as follows:

§ 3.25 Consent agreement settlements.

* * * * *

(f) * * * The Commission will publish the explanation in the Federal Register. * * *

* * * * *

By direction of the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga Concerning Commission Decision To Stop Publishing in the Federal Register the Full Text of Consent Agreements Accepted for Public Comment

Today the Commission revokes its long held policy of publishing in the Federal Register the full text of consent agreements accepted for public comment. Instead, the Commission will publish a summary, an analysis and any Commission or commissioner statements. In announcing this decision, the Commission also advises that complete versions of the consent agreement, including complaints and orders, will continue to be available from the Commission's Office of Public Affairs (the press office), the Commission's home page on the World Wide Web and the Commission's Public Reference Room (the office that serves the general public). In an ideal world, the attainment of which is surely very near, these alternative sources should be sufficient. Unless we can be confident, however, that the other sources are adequately serving the wide audience that follows the Commission's actions in the Federal Register, the abandonment of that means of disseminating information seems premature.

The Commission has a long and admirable tradition of genuine attentiveness to public comment and of seeking it out even when it is not required by law to do so. Out of deference to the members of the public whose interests we serve, many of whom have a keen interest in and need to know about Commission decisions, I would have preferred, before dispensing with our current practice, to have greater reason for confidence in the adequacy of the alternative sources of the information.

[FR Doc. 96–24598 Filed 9–25–96; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Correction of Trading Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule clarification.

SUMMARY: On June 6, 1996, the Commodity Futures Trading Commission (''Commission'' or ''CFTS'') published a proposed rule amendment to its regulation to clarify a procedure specified for the correction of erroneous information on trading cards and to make that procedure applicable to other trading records.[1] After consideration of comments received, the Commission published a final rule amendment on August 20, 1996.[2] One comment letter inadvertently was not mentioned in that release.

EFFECTIVE DATE: The final rule will become effective October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission amended Commission Regulation 1.35(d)(7), which addresses the preparation, submission and correction of trading cards, to make its provisions applicable to all trading records. The Commission also amended the error correction procedures in paragraph (d)(7)(ii) to state that a member may correct any errors by crossing out erroneous information without obliterating or otherwise making illegible any of the originally recorded information. The Commission further amended paragraph (d)(7)(ii) to require that when errors on a trading card are corrected by rewriting the trading card, the member must submit a ply of the trading card, or in the absence of plies the original trading card, that is subsequently rewritten in accordance with contract market rules

[1] 61 FR 28806 (June 6, 1996).

[2] 61 FR 42999 (August 20, 1996).

which set forth the required collection schedule for trading cards.

II. Comment Received

The comment letter not previously addressed was received from the Chicago Board of Trade (''CBT''). Many of the CBT's concerns were mentioned by other commenters and were considered prior to publication of the final rule amendment. Those concerns that were not specifically addressed are discussed below.

A. Applicability

In its comment letter, the CBT stated that it is unclear what the Commission means by ''trading records prepared for 'flashed' orders'' and, further, that the amendment should not be applicable to broker cards, which resemble trading cards and are used on a temporary basis until a broker or his broker assistant has an opportunity to formally endorse a written order ticket. The CBT stated that such cards are not required to be used and not relied upon as an original source document for clearing purposes. The CBT also stated that the amendment should not be applicable to desk clerks recording customers' order instructions.

The provisions of the amendment are applicable to trading records prepared by a member of a contract market pursuant to contract market rules. Thus, the provisions would be applicable to such trading records as broker cards prepared for ''flashed'' orders if the broker cards were prepared pursuant to contract market rules.[3]

With regard to desk clerks recording customers' order instructions, the provisions of the amendment are specifically applicable to order tickets prepared under Regulation 1.35(a–1) (2), (3) or (4) or received on the floor through electronic order routing systems. Desk clerks correcting order instructions on the original order would be required to correct the erroneous information, or reflect changed instructions received from the customer, without obliterating or otherwise making illegible any of the originally recorded information.

B. Trading Card Provision

The Commission specifically requested comment regarding the trading card provision that permits correction of erroneous information by rewriting the trading card. The CBT stated that the provision should be retained, since members remain accountable for trading cards which are subsequently rewritten.

The Commission determined to retain the provision that permits the correction of erroneous information on trading cards by rewriting the trading card. However, the Commission amended paragraph (d)(7)(ii) to add the requirement that the member must submit a ply of the trading card, or in the absence of plies the original trading card, that subsequently is rewritten in accordance with contract market rules which set forth the required collection schedule for trading cards.

III. Conclusion

The Commission has carefully reviewed and considered this comment and believes that the commenter's concerns have been addressed.

Issued in Washington, DC, on September 20, 1996 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–24726 Filed 9–25–96; 8:45 am]

BILLING CODE 6351–01–M

[3] For example, the amendment's provisions would be applicable to broker cards prepared pursuant to the CBT's Notice: Documentation Required to Comply with CFTC's Order Regarding Immediately Executable Flashed Orders, submitted for Commission review by letter dated August 5, 1996.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219–AA97

Safety Standards for First Aid at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises existing standards at metal and nonmetal mines, requiring first aid capability to be available in the event a miner is injured. The final rule provides operators more flexibility and clarifies requirements for persons trained in first aid.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances, MSHA; 703–235–1910 (voice), 703–235–5551 (facsimile), psilvey@msha.gov (Internet e-mail).

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

Sections 56/57.18010, requiring first aid training, were originally promulgated as advisory standards on July 31, 1969, and made mandatory on August 29, 1973. MSHA issued Program Policy Letter (PPL) No. P94–IV–2 on October 3, 1994, to underscore the first aid requirements. MSHA withdrew the PPL by notice in the Federal Register (60 FR 9986) on February 22, 1995, and began a new procedure for formulating certain policies with increased participation by the mining community. MSHA asked the mining community to comment on the issues and to help with development of a policy for the first aid standard.

By letter of August 25, 1995, the National Mining Association (NMA) petitioned the Secretary of Labor requesting that MSHA institute rulemaking, rather than develop policy on the first aid issue, and suggested language for a new standard. The NMA recommended that MSHA develop a new rule to require that an individual capable of providing first aid be available on all shifts and that first aid training be made available to all interested miners. The recommendation from NMA addressed mutual concerns of MSHA and the mining industry.

In lieu of finalizing a first aid policy, MSHA used NMA's recommendation as the basis for a proposed first aid rule published in the Federal Register (60 FR 55150) on October 27, 1995. MSHA received comments from organized labor, industry associations, mining contractors, and medical personnel first aid trainers, all of which were considered in developing the final rule. MSHA also reviewed and considered written comments previously submitted to the Agency on its draft policy letter. One request for a public hearing was received, but it was subsequently withdrawn.

II. Discussion and Summary of the Final Rule

A. General Discussion

Mining has historically experienced one of the highest rates of severe injuries among its employees of any major industry group in America. Despite significant long-term improvements in safety and health, in the three-year period from 1993 through 1995, mine operators and independent contractors reported 226 amputations among the approximately 225,000 miners in the metal and nonmetal industry. During the same period, over 500 burns; 1500 fractures; and 1200 cuts, lacerations, or punctures resulted in time lost from work. The frequency and severity of injuries in the mining industry and the remoteness of many operations and working places require a skilled first aid response, the first level of care for many injured miners.

First aid is basic emergency treatment rendered on-site as soon as possible

after an injury occurs and is intended to help a victim until medical care arrives. In severe instances, first aid typically precedes two subsequent care levels: a secondary level often performed by paraprofessionals, such as emergency medical technicians (EMT's), and full medical care performed by professionals, such as physicians and nurses.

Existing MSHA standards at §§ 56/57.18010 provide that: ''Selected supervisors shall be trained in first aid. First aid training shall be made available to all interested employees.'' The primary purpose of these standards is to assure that a responsible person, trained to provide first aid, is available to render assistance in the event a miner is injured. An additional purpose is to encourage first aid education among miners so that they are able to help an injured co-worker or even provide self-treatment.

The existing standards identify supervisors as the persons required to receive first aid training. Supervisors are typically more mobile than other workers. Companies often provide transportation to supervisors so they can quickly access areas of the mine in the performance of their duties. Traditionally, supervisors are present where work is performed and injuries are most likely to occur.

Since the existing standards were first promulgated, however, there has been significant progress in emergency response care and conditions in the mining industry. At a number of mines, medical paraprofessionals or professionals are members of mine workforces and able to render skilled help at mine properties. This rulemaking takes into account these developments.

B. Discussion of Final Rule

Final §§ 56/57.18010 require that an individual capable of providing first aid be available on all shifts. This individual must be currently trained and have the skills to perform patient assessment and artificial respiration; control bleeding; and treat shock, wounds, burns, and musculoskeletal injuries. Operators must make first aid training available to all interested miners.

The final rule adopts the proposal with two changes: it expressly requires that the individual be currently trained and it deletes the requirement for transportation and handling skills. MSHA received comments that addressed many aspects of the proposal as discussed below.

Individual With First Aid Skills

The final rule requires that operators have an individual capable of providing first aid. Some commenters suggested that operators should be allowed to use any medical personnel and paraprofessionals, such as nurses or EMT's, to satisfy the first aid standard whether or not that person is a supervisor. Another commenter said that the term ''individual'' should be interpreted to refer to any miner, even if the miner is not a professional medical service provider. One commenter asked whether a security guard could fulfill the requirements of the proposal.

A primary reason for this rulemaking is to broaden the scope of the rule to permit any person, regardless of title, to provide first aid. Under the final rule, operators will have the flexibility to use anyone who meets the requirements.

One commenter raised a concern that a miner could become an agent of the company when the miner is available to provide first aid. The final rule requires that operators have a capable individual available who can perform first aid. The operator has the responsibility to arrange for this first aid coverage. An individual's assignment for purposes of this coverage does not make that person an ''agent'' in the sense of being empowered to act as a representative of the operator.

Capability

One commenter was concerned that the proposed requirement for an individual ''capable'' of performing first aid would be open to subjective interpretation. This commenter asked how MSHA would interpret such a requirement. Commenters generally pointed to training as the means to establish capability and raised the issue of what type of training was contemplated. While the existing rule requires that supervisors ''be trained,'' the proposal contained no expressed training requirement other than that first aid training be made available to interested miners.

The final rule expressly provides that the individual must be ''currently trained'' and have certain specified first aid skills. The individual who is so trained and skilled is ''capable.'' To be ''currently trained'' means that the individual must have received in-depth first aid training which covers the specific skills in the final regulation and that such training be up-to-date. Persons, such as EMT's, nurses, and physicians, with current licenses or certifications to practice, are considered ''currently trained'' under the final rule.

One commenter suggested that first aid training be provided annually. Organizations with histories of successfully training individuals in first aid skills differ in the frequency, breadth, and depth of the retraining required to maintain competence. Some, such as the American Red Cross, use a different interval from annual retraining to maintain certification of competence. The American Red Cross's current standard course is initially an 8-hour program to receive certification. It requires retraining every three years to maintain a current certification. Training offered by similar organizations, such as local fire departments, also has varying retraining components.

Rather than exclude or constrain programs that have effectively prepared individuals for rendering first aid, the final rule does not incorporate an annual retraining requirement. MSHA will accept the retraining requirements prescribed by the organization providing the initial training.

One commenter said that first aid training taken to meet the existing requirements of 30 CFR part 48 should qualify individuals as ''capable''. The commenter stated that part 48 training allows ample time for adequate first aid training.

Part 48 training, however, may not automatically qualify an individual as capable since part 48 is a different type of training provision from the final rule. Part 48 requires basic first aid training for all miners. The final rule for §§ 56/57.18010 requires that certain persons, trained and skilled in first aid, be available and that the more in-depth first aid training to acquire those skills be made available to interested miners.

Part 48 was promulgated in 1978. It implements Section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) 30 U.S.C. 825 which was intended by Congress to prevent miners from being put to work before having received some safety and health training, including basic first aid.

Part 48 requires training in many health and safety subjects. The 24-hour training required of new surface miners must cover at least eleven other subjects besides first aid. The 8-hour annual refresher training must cover at least ten other subjects. Operators have sought flexibility to adjust the time spent on any one subject, particularly during annual refresher training, according to the accident experience and safety and health needs of the mine and the miners. An operator with a high number of back injuries, for example, may determine that miners need more training on proper lifting. To allocate

more time to lifting, first aid training might be curtailed. Under these circumstances, a brief review of first aid would not adequately train persons to maintain skills as required by §§ 56/57.18010.

MSHA will accept part 48 training for compliance with the final rule if it is sufficiently in-depth to develop the capability to perform the necessary first aid skills. In all instances, training that complies with this rule would satisfy the new miner training requirements for first aid under part 48 and annual refresher training requirements for the year in which it was received.

Availability

Commenters asked that MSHA clarify the meaning of the terms ''available'' and ''on all shifts.'' The concept of availability is critical to the purpose of the final rule and is intended to have its ordinary meaning—present and ready for use or at hand.

The final rule requires that, if an injury occurs, a person skilled in first aid must be present at the site and must be able to be at the scene quickly. Individuals on-site are able to respond sooner because they are closer to the scene of an accident and know the mine. The likelihood of survival for a seriously injured miner would be greatly diminished if first aid treatment were not administered before off-site medical personnel could provide it. Operators also will have to plan to assure that this on-site coverage is provided during absences and vacations.

One commenter questioned whether the person capable of providing first aid would be required underground and, if so, must the person be trained to go underground. The final rule revises current § 57.18010 and expressly applies to underground mines where first aid availability is a critical element of injury response planning. To be available, the first aid person must be prepared to provide first aid to injured miners promptly. An individual capable of first aid and located on the surface at an underground mine would not be available for miners underground in many cases because the time required to reach the injured person would be too long. For example, reaching some areas of an old underground mine may require traveling through a mile or more of old workings and could take an hour or more, depending on the availability of transportation. In those few cases where a first aid person on the surface is available to miners injured underground, such as some small adit mines, that person would have to be trained to go underground to the extent required by other MSHA standards.

Similarly, to ensure availability under conditions of difficult access and remote work areas, an underground mine operator may be required to have more than one first aid person underground. This concept of availability also applies to surface mines where miners may be working in remote areas.

One commenter suggested that the term ''readily'' be inserted in the standard before ''available'' to ensure a prompt response. ''Available'' is commonly defined to mean present and ready for use or at hand. Adding the term ''readily'' would not increase miner protection and, therefore, this suggestion is not adopted in the final rule.

Another commenter suggested that availability be established either by having the person present on-shift or reachable through radio contact. While such factors as communication, transportation, and presence on-shift help determine availability, they do not make a person available to provide first aid. For example, radio communication without the ability to reach an accident scene quickly would not meet the requirements of the final rule.

The final rule provides that an individual skilled in first aid be available ''on all shifts.'' Commenters questioned which shifts need to be covered. One commenter said that only ''production'' shifts should be covered. Another commenter stated that the standard should apply ''to all shifts where two or more miners are engaged in production, extraction, or maintenance activities.''

Under the Mine Act, mining includes activities beyond those suggested by the comments. Production (excavation, extraction, and milling), development, stripping, construction, dismantling, maintenance, and abandonment comprise mining activities according to the Mine Act. All of these activities involve exposure to hazards that may require the application of first aid skills. The final rule retains the ''on all shifts'' wording to convey the breadth of these activities while keeping the language as simple as possible. The final rule does not apply, however, in the few instances when no mining activities occur, for example, when only security, sales, or office work is performed.

Independent Contractors

One commenter suggested that independent contractors should be solely responsible for compliance with the rule for their own employees. Another commenter said that the rule's requirements should not apply when independent contractors are performing explosives-related work, such as shot service, which can involve a single employee.

Under the final rule, independent contractors will be treated the same as under other MSHA safety and health standards. Independent contractors working on mine property are responsible for compliance with MSHA regulations. In some instances, the mine operator and independent contractor are isolated from one another and a single individual capable of first aid could not be available for both. In those situations, each would be responsible for their own coverage. In other instances, the mine operator and independent contractor work in such close proximity that one can choose to provide first aid coverage for the other. In those situations, it is the mine operator's and independent contractor's responsibility to agree on the coverage and to coordinate and communicate its implementation. Consistent with MSHA's enforcement of the existing standard, mine operators and independent contractors have the flexibility to use anyone at the mine with the necessary skills and availability, regardless of employer.

Mining activity can present hazards to an employee whether the employee is working alone or with another person. If an employee is alone and becomes injured, the ability to provide self-treatment could be critical to survival. The final rule, therefore, does not include an exception for miners or contractor employees working alone.

First Aid Skills

Several commenters addressed the proposed first aid skills needed to establish capability. One commenter suggested that the required skills for those other than EMT's be limited to ''basic first aid such as for breathing, bleeding, and shock.'' This recommendation would exclude patient assessment and treatment of wounds, burns, breaks, sprains, and strains. MSHA's experience is that the injuries that occur in mines require assessment and treatment skills; the final rule, therefore, retains the proposed skill requirements, except as discussed below.

This commenter also said that a good procedure for obtaining ''outside medical assistance'' should be emphasized. Separate existing standards, however, already require operators to have suitable emergency communications and arrangements for obtaining medical assistance (§§ 56/57.18012, 18014).

One commenter suggested that cardiopulmonary resuscitation (CPR) be

added to the list of required skills. The commenter suggested that firefighting, extrication, and evacuation also be included. The ability to perform CPR competently can require additional patient assessment skills, physical dexterity, and endurance. Traditionally, CPR training has been a supplement to first aid training and is not always offered with first aid.

The final rule does not require that first aid skills include CPR. Mine operators are encouraged, however, to add skills which are considered appropriate to their workforce and environment. Likewise, the final rule does not include the suggestion that persons be specially trained in firefighting, extrication, or evacuation. This suggestion exceeds the scope of first aid. In addition, existing standards require operators to train miners in these areas.

One commenter recommended that the individuals capable of providing first aid be able to treat injuries from hazardous liquids and gases. The final rule requires skills for treatment of injuries from any source or cause. Skills in patient assessment and artificial respiration and treatment of shock and burns would have direct application to injuries from hazardous liquids and gases.

The proposed rule would have required an individual to have the skills to handle and transport injured persons. One commenter stated that transportation is no longer taught in the American Red Cross's basic first aid course. The commenter pointed out that when transporting an injured person, particularly one with a neck or spinal injury, there is the potential to cause greater harm and possible paralysis. The commenter suggested that the handling and transportation of injured persons be deleted from the required skills under the final rule.

MSHA agrees that mishandling and improper transportation of a victim with a serious neck or spinal injury presents a high potential to exacerbate the injury. The American Red Cross does not currently include separate instruction on transportation and handling of the injured in its standard first aid course, although it furnishes guidance about these subjects in an informational section of its textbook. The American Red Cross teaches that one of the most dangerous threats to any seriously injured victim is unnecessary movement. Further, the National Safety Council's course emphasizes that injured persons should be moved only if they are in immediate danger from their environment.

Special training, experience, dexterity, and strength are often required to successfully handle or transport a victim with an injured spine. Emergency medical personnel have the skills to successfully handle and transport victims in these cases. Improvements in transportation and communications, and the widespread availability of emergency service present an alternative that MSHA believes is more protective of miner safety. Under current regulations at §§ 56/57.18014, operators must make advance arrangements for obtaining transportation for injured persons and emergency medical assistance beyond first aid. The final rule, therefore, does not include the skill requirements for transportation and handling of injured persons contained in the proposal.

Interested Miners

The second sentence of the existing standard is revised in the final rule to require that training be available to all interested ''miners'' rather than all interested ''employees.'' This is not a substantive change and merely conforms the rule's terminology with other MSHA standards. To comply with the rule, operators must inform miners of the training in advance, so the miners can plan to attend.

One commenter questioned whether the operator must pay for first aid training. Consistent with the existing standard, the final rule requires the operator to make the training available to all interested miners. Therefore, to encourage the miners' attendance at the course, the operator must pay ordinary course expenses. The final rule, like the existing rule, does not address the issue of compensation for the miner's time.

III. Executive Order 12866 and the Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has determined that this rulemaking is not a significant regulatory action representing additional costs in excess of $100 million to a segment of the economy and, therefore, has not prepared a separate analysis of costs and benefits. The Regulatory Flexibility Act requires regulatory agencies to consider a rule's impact on small entities. For the purpose of the Regulatory Flexibility Act, MSHA policy defines a small entity as an operation employing fewer than 20 employees. This final rule would not have a significant economic impact on a substantial number of small entities. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

A few commenters were concerned that the rule would expand training and personnel requirements beyond part 48 and existing §§ 56/57.18010. One commenter stated that MSHA should prepare a regulatory analysis before proceeding further with the rulemaking.

Operators are currently required to provide supervisors trained in first aid who, by virtue of their position, work with and are available to the workforce. There may be some operators, however, who have not provided this first aid coverage for the miners on all shifts under the existing rule. These operators may incur some additional costs to comply with the final rule. These costs, however, would be minimal and offset by the flexibility provided in the final rule.

The final rule incorporates the National Mining Association's petition for rulemaking and broadens the scope of persons who can provide the first aid capability required by the standard. A mine operator can rely on existing, non-supervisory personnel who possess these special skills. Accordingly, MSHA has determined that this rule will not result in any significant costs to the mining industry.

IV. Paperwork Reduction Act

This final rule contains no information collection or paperwork requirements subject to the Paperwork Reduction Act of 1995. The compiling and maintaining of records or other documentation of a miner's first aid training is incurred by mine operators in the normal course of their business activities. The burden associated with such usual and customary business records are excluded from the information collection burden under 5 CFR 1320.3(b)(2) (60 FR 44985).

One commenter maintained that the rule would represent a significant burden by virtue of increased paperwork. It was suggested that MSHA accept a certification by the mine operator as sufficient evidence of the training. Currently, MSHA determines compliance with the existing requirements by reviewing documentation already kept by the mine operator, particularly course records. MSHA accepts available documentation, such as course completion certificates, diplomas, letters from a qualified instructor, or similar evidence. Under the final rule, MSHA would continue this practice.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4,

requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments and the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute, and to determine if the rule might significantly or uniquely affect small governments. MSHA has concluded that small governmental entities are not significantly or uniquely impacted by this regulation. The final rule will impact about 10,800 metal and nonmetal mining operations of which about 400 sand and gravel or crushed stone operations are run by state, local, or tribal governments for the construction and repair of highways and roads. These entities may incur some additional costs to comply with the final rule. These costs, however, would be minimal and offset by the flexibility provided in the final rule. Notwithstanding this conclusion, MSHA will mail a copy of the final rule to these 400 entities.

List of Subjects in 30 CFR Parts 56 and 57

Emergency medical services, Metal and nonmetal mines, Mine safety and health.

Dated: September 18, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Parts 56 and 57, subchapter N, chapter I, title 30 of the Code of Federal Regulations are amended as follows:

PART 56—[AMENDED]

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 56.18010 is revised to read as follows:

§ 56.18010 First aid.

An individual capable of providing first aid shall be available on all shifts. The individual shall be currently trained and have the skills to perform patient assessment and artificial respiration; control bleeding; and treat shock, wounds, burns, and musculoskeletal injuries. First aid training shall be made available to all interested miners.

PART 57—[AMENDED]

3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 57.18010 is revised to read as follows:

§ 57.18010 First aid.

An individual capable of providing first aid shall be available on all shifts. The individual shall be currently trained and have the skills to perform patient assessment and artificial respiration; control bleeding; and treat shock, wounds, burns, and musculoskeletal injuries. First aid training shall be made available to all interested miners.

[FR Doc. 96–24720 Filed 9–25–96; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–96–042]

RIN 2115–AA97

Special Local Regulations for Marine Events; 18th Annual Wilmington Family YMCA–PHP Triathlon, Wrightsville Channel, Wrightsville Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the regulations for the swim portion of the 18th Annual Wilmington YMCA-Physicians Health Plan Triathlon, to be held in Wrightsville Channel between daybeacon 18 (LLNR 28050) and daybeacon 23 (LLNR 28065). These Special Local Regulations are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway. The effect will be to restrict vessel traffic within the regulated area for the safety of the participants in the event.

EFFECTIVE DATES: 33 CFR 100.513 is effective from 6 a.m. to 9:45 a.m., September 29, 1996.

FOR FURTHER INFORMATION CONTACT: QMC C. Bush, marine events coordinator, Commander, Coast Guard Group Fort Macon, PO Box 237, Atlantic Beach, NC 28512–0237, (919) 247–4554.

DISCUSSION OF REGULATIONS: The Wilmington Family YMCA will hold the swim portion of the 18th Annual Wilmington Family YMCA-Physicians Health Plan Triathlon at Wrightsville Beach, North Carolina. The event will consist of approximately 700 swimmers racing in a section of Wrightsville Channel between Wrightsville Channel daybeacon 18 (LLNR 28050) and Wrightsville Channel daybeacon 23 (LLNR 28065). Therefore, to ensure the safety of the swimmers, 33 CFR 100.513 will be in effect for the duration of the event. Under provisions of 33 CFR 100.513, a vessel may not enter the area between daybeacons 14 and 25 without permission from the Coast Guard patrol commander. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted.

Dated: June 24, 1996.

Kent H. Williams,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 96–24641 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Charleston 96–052]

RIN 2115–AA97

Safety Zone Regulations; Back River and Foster Creek; Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the U.S. Border Patrol Training Academy Small Arms Range at the Charleston Naval Weapons Station. The safety zone will become effective at 6 a.m. Eastern Daylight Time (EDT) on September 1, 1996 and will terminate at 12 a.m. Eastern Standard Time (EST) on December 1, 1996. This safety zone is needed to protect vessels and personnel from safety hazards associated with small arms fire.

EFFECTIVE DATES: The regulation is effective at 6 a.m. EDT on September 1, 1996 and will terminate at 12 a.m. EST on December 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeffrey T. Carter, Coast Guard Marine Safety Office Charleston, at (803) 720–7701, between the hours of 7:30 a.m. and 4 p.m. EDT, Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 533, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The information to commence firing at the small arms range was not received with sufficient time to publish proposed rules prior to the event or to provide for a delayed effective date.

Discussion of Regulations

The temporary safety zone is being established for the U.S. Border Patrol

Training Academy Small Arms Range at the Charleston Naval Weapons Station. This safety zone will become effective at 6 a.m. EDT on September 1, 1996 and will terminate at 12 a.m. EST on December 1, 1996. The safety zone is needed to protect persons, vehicles and vessels from safety hazards associated with small arms fire.

The safety zone will consist of those portions of unnamed tributaries of the Back River and Foster Creek that are generally described as lying south of the main shoreline and extending southward to the northern shoreline of Big Island (U.S. Naval Reservation). Specifically, the area beginning at a point on the main shoreline, which is the northern shore of an unnamed tributary of Back River at position 32°59′19″N, 79°56′52″W, southwesterly to a point on or near the northern shoreline of Big Island at position 32°59′11″N, 79°56′59″W; thence northwesterly to a point on the main shoreline, which is the northern shore of an unnamed tributary of Foster Creek, at position 32°59′16″N, 79°57′11″W; thence easterly along the main shoreline, which is the northern shore of the unnamed tributaries of Foster Creek and Back River, back to the point of beginning at position 32°59′19″N, 79°56′52″W. All coordinates referenced use datum: NAD 1983. The Captain of the Port has restricted vessel operations in this safety zone. No persons, vehicles or vessels will be allowed to enter or operate within this zone, except as may be authorized by the Captain of the Port, Charleston, South Carolina. This regulation is issued pursuant to 33 U.S.C. 1231, as set out in the authority citation of Part 165.

Regulatory Evaluation

The regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Maritime traffic will not be significantly impacted because of the small number of vessels expected to need the safety zone, and the limited area affected by the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) Small businesses and not-for-profit organizations that are independency owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Small entities will not be affected significantly because of the limited duration of the zone and the limited area affected by the zone. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et eq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and concluded that, under paragraph 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. Pursuant to COMDTINST M16475.1B, paragraph 2.B.2. section 34(g), an environmental determination has been made that this rule will not significantly affect the environment. A ''Categorical Exclusion Determination'' and ''Categorical Exclusion Checklist'' are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

Regulations

In consideration of the foregoing, the Coast Guard amends Subpart C of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary section 165.T07–052 is added to read as follows:

§ 165.T07–052 Safety Zone; Back River and Foster Creek, Charleston, SC.

(a) *Regulated area.* Naval Weapons Station/U.S. Border Patrol Training Academy Small Arms Range. The following area is a safety zone: those portions of unnamed tributaries of the Back River and Foster Creek lying south of the main shoreline and extending southward to the northern shoreline of Big Island (U.S. Naval Reservation) beginning at a point on the main shoreline at 32°59′19″N, 79°56′52″W, then to 32°59′11″N, 79°56′59″W; then to 32°56′16″N, 79°57′11″W; then back to the point of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Effective dates.* This regulation is effective at 6 a.m. (EDT) on September 1, 1996 and will terminate at 12 a.m. (EST) on December 1, 1996.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into the zone is subject to the following requirements:

(1) This safety zone is closed to all persons, vehicles and vessels, except as any be permitted by the Captain of the Port, Charleston, SC.

(2) Persons desiring to enter or operate vehicles or vessels within the safety zone shall contact the Captain of the Port to obtain permission to do so. Persons given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port.

(3) The Captain of the Port may be contacted via the Coast Guard Group Charleston operations center at (803) 724–7619 or VHF–FM channel 16.

Dated: August 30, 1996.

M.J. Pontiff,

Commander, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. 96–24743 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WA51–7124a; FRL–5613–3]

Approval and Promulgation of Implementation Plans and Redesignation of Puget Sound, Washington for Air Quality Planning Purposes: Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is announcing its determination that the Puget Sound (parts of King, Pierce, and Snohomish Counties) Ozone Nonattainment area has attained the public health-based National Ambient Air Quality Standard (NAAQS) for ozone (O_3). This determination is based upon three years of complete, quality-assured, ambient air monitoring data for the 1991 to 1993 ozone seasons that demonstrate that the ozone NAAQS has been attained. The EPA is also approving the redesignation to attainment of the Puget Sound Area and the associated maintenance plan.

DATES: This action will be effective November 25, 1996 unless adverse or critical comments are received by October 28, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Office of Air Quality, EPA Region 10, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.) Under section 107(d)(1) of the CAA, in conjunction with the Governor of Washington, EPA designated the Puget Sound Area as nonattainment because the area violated the ozone standard during the period from 1989–1991. The Puget Sound Area, which includes lands within the Puyallup, Tulalip, Muckleshoot, Stillaguamish, and Nisqually Reservations, was classified as ''marginal'' under section 181(a)(1) of the CAA.

The Puget Sound Area has ambient monitoring data that show no violations of the ozone NAAQS during the period from 1991 to the present. On January 28, 1993 the State of Washington submitted a State Implementation Plan (SIP) for compliance with the ozone NAAQS. Public hearings were held respectively in Vancouver, SeaTac, and Spokane on November 9, 10, and 12, 1992. Also, the State submitted an Ozone Maintenance Plan and Redesignation Request on March 4, 1996. A public hearing was held in Seattle on October 26, 1995.

II. Review of the State Submittal

The Puget Sound redesignation request for the nonattainment areas meets the five requirements of section 107(d)(3)(E) of the CAA for redesignation to attainment. EPA also finds that information and requirements provided in the WDOE redesignation request and maintenance plan for the Puget Sound nonattainment area demonstrate that the 107(d)(3)(E) of the CAA requirements have been met for the affected tribal lands which include portions of the Stillaguamish Reservation, Nisqually Reservation, Tulalip Reservation, Puyallup Reservation and Muckleshoot Reservation. The Agency has not determined whether it is bound to follow the formal requirements of section 107(d)(3)(E) of the CAA when taking such redesignation actions for tribal lands. The action to redesignate tribal lands to attainment is being taken today without answering that question because information submitted by WDOE satisfies each required element for redesignation.

The following is a brief description of how each of the requirements of section 107(d)(3)(E) of the CAA is met. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

A. The Area Must Have Attained the O_3 NAAQS

The State of Washington's redesignation request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. The most recent ambient air quality monitoring data for calendar year 1991 through calendar year 1995 show an expected exceedance rate of less than 1.0 per year of the ozone NAAQS in the Puget Sound area. Because the Puget Sound area has complete quality-assured data showing no violations of the standard over the most recent consecutive three-calendar-year period, the area has met the first statutory criterion of attainment of the ozone NAAQS. There are four ambient O_3 monitoring stations in the Puget Sound nonattainment area, and the State of Washington has committed to continue monitoring this area in accordance with 40 CFR part 58.

B. The Area Has Met All Applicable Requirements Under Section 110, and Part D of the Act

1. Section 110 Requirements

Although section 110 was amended in 1990 (CAAA or the Act), the Washington SIP approved by EPA for the ozone marginal nonattainment areas meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements.

2. Part D Requirements

Before the nonattainment areas may be redesignated to attainment, they must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as non-classifiable. Subpart 2 of part D establishes additional requirements for O_3 nonattainment areas classified under table 1 of section 181(a).

(a). Subpart 1 of Part D. The State of Washington currently has a fully approved New Source Review (NSR) program which was last revised and approved June 2, 1995 (60 FR 28726). Upon redesignation of the Puget Sound area to attainment, the Prevention of Significant Deterioration (PSD) provisions contained in part C of title I are applicable. EPA's PSD regulations in 40 CFR 52.21 will apply to the Puget Sound area.

Under section 176(c) of the CAA, States were 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. of 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 the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to 40 CFR § 51.396 of the transportation conformity rule, the WDOE 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 40 CFR 51.851 of the general conformity rule, the WDOE 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. The WDOE submitted its transportation conformity SIP revision to EPA on December 1, 1995. This SIP has not been fully approved by EPA. The WDOE 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, the State 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, the 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, EPA has modified its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing an ozone redesignation request. (See 61 FR 2918, January 30, 1996). Under this policy, for the reasons just discussed, EPA believes that the ozone redesignation request for the Puget Sound area may be approved notwithstanding the lack of submitted and approved state transportation and general conformity rules.

(b). Subpart 2 of Part D. The CAA was amended on November 15, 1990, Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. EPA was required to classify O_3 nonattainment areas according to the severity of their problem. The Puget Sound area (parts of King, Pierce, and Snohomish Counties) was designated as marginal O_3 nonattainment. Because this area is marginal, the area must meet the requirements of section 182(a) of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 182. Below is a summary of how the area has met the requirements of these sections.

(i) Emissions Inventory. The CAA required an inventory of all actual emissions from all sources, as described in section 172(c)(3) by November 15, 1992. As part of the redesignation request submitted on March 4, 1996, WDOE submitted a base year 1993 emission inventory for the Puget Sound area. With this notice, EPA is approving the base year inventory for the Puget Sound area.

(ii) Reasonably Available Control Technology (RACT). The CAA also amended section 182(a)(2)(A), in which Congress statutorily adopted the requirement that O_3 nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) rules for O_3. Areas designated nonattainment before amendment of the CAA and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. The Puget Sound area was designated nonattainment after 1990, and therefore, this area is not subject to the RACT fix-up requirement.

(iii) Emissions Statements. The CAA required that the SIP be revised by November 15, 1992, to require stationary sources of oxides of nitrogen (NO_X) and VOCs to provide the state with a statement showing actual emissions each year. The WDOE submitted an Emission Statement program as part of its O_3 SIP on January 28, 1993, and EPA approved the program on November 14, 1994.

C. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that Washington has a fully approvable O_3 SIP under section 110(k) for the ozone marginal nonattainment areas, which also meets the applicable requirements of section 110 and part D as discussed above.

D. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have been put into place since the nonattainment area violated the O_3 NAAQS. One control measure is the improvement in tailpipe emissions associated with the Federal Motor Vehicle Control Program (FMVCP). This program reduces VOC and NOx emissions as newer, cleaner vehicles replace older, high emitting vehicles. Additionally, in 1993 the state expanded and intensified its vehicle inspection and maintenance (I/M) program. Implementation of this control measure has led to additional reductions in emissions. This I/M program meets EPA's low enhanced performance standard.

In association with the emission inventory discussed below, the State of Washington has demonstrated that actual enforceable emission reductions are responsible for the recent air quality improvement.

E. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

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 approving Washington's maintenance plan for the Puget Sound marginal nonattainment area because EPA finds that the submittal meets the requirements of section 175A.

1. Emissions Inventory—Base Year Inventory

Along with the submittal of the redesignation request and maintenance plan, Washington submitted comprehensive O_3 emission inventories for the base year and subsequent years for the Puget Sound area on March 4, 1996. The inventories included biogenic, area, stationary, and mobile sources using 1993 as the base year for calculations to demonstrate maintenance. The 1993 inventory is considered representative of attainment conditions because the NAAQS was not violated during that year.

The State of Washington submittal contains the detailed inventory data and summaries by county and source category. This inventory was compiled in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories are shown for VOCs and NO_X in the following tables.

2. Demonstration of Maintenance—Projected Inventories

On March 4, 1996, the State of Washington submitted the Central Puget Sound Ozone Nonattainment Area 1993–2010 Emission Inventory Projections. Total VOC, NO_X, and CO emissions were projected from the 1993 base year out to 2010. These projected inventories were prepared in accordance with EPA guidance. Refer to EPA's Technical Support Document (TSD) (located in docket WA51–7124) prepared for this notice for more details regarding the projected inventory for the Puget Sound area.

PUGET SOUND VOC EMISSION INVENTORY SUMMARY

[Tons per summer day]

	1993 base year	1995	1998	2001	2005	2007	2010
On-road	248.20	222.22	191.42	174.05	165.31	164.00	159.83
Non-road	136.00	136.00	143.80	142.10	133.10	131.10	131.60
Stationary Area	148.63	118.68	121.47	124.18	128.46	131.20	134.32
Point	31.49	20.24	20.24	20.24	20.24	20.24	20.24
Biogenic	291.25	291.25	291.25	291.25	291.25	291.25	291.25
Totals	855.57	788.39	768.18	751.82	738.36	737.79	737.24

PUGET SOUND NO_X EMISSION INVENTORY SUMMARY

[Tons per summer day]

	1993 base year	1995	1998	2001	2005	2007	2010
On-road	279.30	266.03	245.24	235.91	228.26	223.13	217.67
Non-road	79.90	80.80	87.50	88.90	91.00	93.10	97.60
Stationary Area	19.26	19.55	18.41	17.61	17.62	17.75	17.85
Point	24.31	24.31	24.31	24.31	24.31	24.31	24.31
Totals	402.77	390.69	375.46	366.73	361.19	358.29	357.43

As indicated in the following table, an emissions decrease in VOCs and NO_X in the Puget Sound nonattainment area is projected throughout the maintenance period. EPA believes that these emissions projections demonstrate that the Puget Sound nonattainment area will continue to maintain the O_3 NAAQS.

VOC AND NO_X PROJECTED EMISSIONS CHANGES (1993–2010)

[In percent]

	VOCs	NO_X
Puget Sound	−13.80	−11.25

3. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the marginal nonattainment areas depends, in part, on the State of Washington's efforts toward tracking indicators of continued attainment during the maintenance period. On an annual basis the Department of Ecology will analyze the most recent three consecutive years of ambient ozone data to verify continued attainment of the NAAQS for ozone. Additionally, a First Implementation Phase Report will be published in 1998 to chronicle the results of in-use vehicle emissions projects and research activities related to the Maintenance Plan.

4. Contingency Plan

The level of VOC and NO_X emissions in the nonattainment area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the State of Washington's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, the State of Washington has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. The plan contains two tiers of contingency measures. The first tier involves improving the existing motor vehicle inspection and maintenance (I/M) program (within the current statutory authority of the Department of Ecology) to reduce VOC vehicle emissions. The I/M improvements will be triggered if the ozone standard is exceeded three times at any one permanent monitoring site over two consecutive calendar years, or in the event of a quality assured ozone standard violation. The measure will be implemented no later than June 15th of the year following the three exceedances or the violation.

The second tier contingency measure is a mandatory reduction in gasoline

volatility, which will decrease the emission of volatile organic compounds. The measure would be triggered pending a measured ozone violation. If triggered, the measure would require all gasoline made available for sale in King, Pierce, and Snohomish Counties between June 15 and September 15 to have a Reid Vapor Pressure (RVP) of 7.8 psi. If both triggers and hence both contingency measures are activated, the Ozone Maintenance Plan will be amended to include one or more new contingency measures.

EPA finds that the contingency measures provided in the State of Washington's submittal meet the requirements of section 175A(d) of the CAA.

5. Subsequent Maintenance Plans Revisions

In accordance with section 175A(b) of the CAA, the State of Washington is required to submit a revised maintenance SIP eight years after the marginal nonattainment areas redesignate to attainment. Such a revised SIP will provide for an additional ten years maintenance.

III. Final Action

EPA is approving the Puget Sound nonattainment area's O_3 maintenance plan because it meets the requirements of section 175A of the CAA. The EPA is redesignating the Puget Sound O_3 nonattainment area to attainment for O_3 because the State of Washington has demonstrated compliance with the requirements of section 107(d)(3)(E) of the CAA for redesignation. In addition, EPA, after consultation with the affected tribal governments, is redesignating to attainment those areas in the Puget Sound ozone nonattainment area that are located within the Tulalip Reservation, the Stilliguamish Reservation, the Puyallup Reservation, the Nisqually Reservation, and the Muckleshoot Reservation. The Agency believes that the redesignation requirements are effectively satisfied here because of information provided by WDOE and requirements contained in the WDOE SIP and Maintenance Plan. Additionally, EPA is approving the 1993 base year emission inventory for the Puget Sound nonattainment area.

The O_3 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be interpreted as authorizing the State of Washington to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP VOC 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(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 25, 1996 unless, by October 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 notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 25, 1996.

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

IV. Administrative Requirements

A. 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 (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

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

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. I certify that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. 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 approval action promulgated 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 to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added 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 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 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), 42 U.S.C. 7607(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: September 16, 1996.

Chuck Clarke,

Regional Administrator.

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 WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(66) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(66) On March 4, 1996 the Director of WDOE submitted to the Regional Administrator of EPA a revision to the Ozone State Implementation Plan for the Puget Sound area requesting the Puget Sound Nonattainment Area be reclassified to attainment and containing a maintenance plan that demonstrates continued attainment of the NAAQS for ozone. The emission inventory projections are included in the maintenance plan.

(i) Incorporation by reference.

(A) Letter submitted on March 4, 1996 from the Washington State Department of Ecology requesting the redesignation and submitting the maintenance plan; Central Puget Sound Region Redesignation Request and Maintenance Plan for the National Ambient Ozone Standard adopted on Febuary 6, 1996.

(ii) Additional material.

(A) Appendices to the Central Puget Sound Region Redesignation Request and Maintenance Plan for the National Ambient Ozone Standard, November 1995: Appendix A, Technical Analysis Protocol; Appendix B, Ozone Air Quality Monitoring Site Network; Appendix C, Ambient Ozone Monitoring Data; Appendix D, Historical and Projected Puget Sound Region VMT and Employment; Appendix E, 1993–2010 Emission Inventory Projection; Appendix F, Transportation Conformity Process; Appendix G, Outline of Puget Sound Tropospheric Ozone Research Plan; and Appendix H, Prospective Vehicle Inspection and Maintenance (Vehicle I/M) Program Evaluation Outline.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.348, the table for ''Washington-Ozone'' is amended by revising the entry for Seattle-Tacoma Area to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Seattle-Tacoma Area:				

WASHINGTON—OZONE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
The following boundary includes all of Pierce County, and all of King County except a small portion on the north-east corner and the western portion of Snohomish County: Starting at the mouth of the Nisqually river extend northwesterly along the Pierce County line to the southernmost point of the west couty line of King County; thence northerly along the county line to the southermost point of the west county ling of Snohomish County; thence northerly along the county line to the intersection with SR 532; thence easterly along the north line of SR 532 to the intersection of I–5, continuing east along the same road now identified as Henning Rd., to the intersection with SR 9 at Bryant; thence continuing easterly on Bryant East Rd. and Rock Creek Rd., also identified as Grandview Rd., approximately 3 miles to the point at which it is crossed by the existing BPA electrical transmission line; thence southeasterly along the BPA transmission line approximately 8 miles to point of the crossing of the south fork of the Stillaguamish River; thence continuing in a southeasterly direction in a meander line following the bed of the River to Jordan Road; southerly along Jordan Road to the north city limits of Granite Falls; thence following the north and east city limits to 92nd St. N.E. and Menzel Lake Rd.; thence south-southeasterly along the Menzel Lake Rd. and the Lake Roesiger Rd. a distance of approximately 6 miles to the northernmost point of Lake Roesiger; thence southerly along a meander line following the middle of the Lake and Roesiger Creek to Woods Creek; thence southerly along a meader line following the bed of the Creek approximately 6 miles to the point the Creek is crossed by the existing BPA electrical transmission line; thence easterly along the BPA transmission line approximately 0.2 miles; thence southerly along the BPA Chief Joseph-Covington electrical transmission line approximately 3 miles to the north line of SR 2; thence southeasterly along SR 2 to the intersection with the east county line of King County; thence south along the county line to the northernmost point of the east county line of Pierce County; thence along the county line to the point of beginning at the mouth of the Nisqually River.	[Insert date 60 days from date of publication]	Attainment		
* * * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 96–24529 Filed 9–25–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5614–7]

National Oil and Hazardous Substance Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the McChord AFB (Wash Rack/Treatment) site located in Pierce County, Tacoma, Washington, from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the McChord AFB (Wash Rack/Treatment) site, located in Pierce County, Tacoma, Washington, from the National Priorities List. 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 as amended (CERCLA). EPA and the State of Washington have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of public health, welfare and the environment.

EFFECTIVE DATE: September 26, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Stryker, Site Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, ECL–115, Seattle, WA 98101, (206) 553–1171.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: McChord AFB (Wash Rack/Treatment), Pierce County, Tacoma, Washington.

A Notice of Intent to Delete for the site was published July 22, 1996 (61 FR 37877). The closing date for comments was August 21, 1996. McChord Air Force base received three inquiries regarding the delisting. Responses to these inquiries are documented in a responsiveness summary which is available in the public information repositories.

EPA identifies sites which appear to present a significant risk to public health, welfare and the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control. Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 16, 1996.

Chuck Clarke,

Regional Administrator, Region 10.

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

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

2. Table 2 of Appendix B to part 300 is amended by removing the site for McChord Air Force Base (Wash Rack/Treat) Tacoma, Washington.

[FR Doc. 96–24482 Filed 9–25–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 505

[Docket No. 96–15]

Administrative Offset

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the existing regulations on administrative offset promulgated by the Department of the Treasury as mandated by the Debt Collection Improvement Act of 1996. The rule allows the Commission to collect by administrative offset any delinquent debt owed it and sets forth the minimum due process rights that must be provided to the debtor when the Commission seeks to collect a debt by administrative offset.

EFFECTIVE DATE: October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Debt Collection Improvement Act of 1996, Pub. L. 104–134, Chapter 10, section 31001, 101 Stat. 1321–358 (''Act''), requires that before collecting a claim by administrative offset, a federal agency must either adopt, without change, regulations on collecting by administrative offset promulgated by the Departments of Justice or Treasury or the General Accounting Office, or prescribe regulations on collecting by administrative offset consistent with the aforementioned regulations. Administrative offset means the withholding of funds otherwise payable by the United States to a person, or held by the U.S. for a person, to satisfy a claim or debt.

In compliance with the Act, the Federal Maritime Commission adopts as a final rule the existing regulations of the Department of the Treasury set forth at 31 CFR 5.30 (1995), which incorporate the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3. The purpose of the regulations is to protect the minimum due process rights that must be afforded to the debtor when an agency seeks to collect a debt by administrative offset, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

Notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it is interpretive in nature and implements a definitive statutory scheme mandated by the Act. In addition, notice and an opportunity for public comment are unnecessary inasmuch as both were provided previously when the Federal Claims Collection Standards were enacted, 49 FR 8897, March 9, 1984, and when the Treasury regulations were implemented, 52 FR 52, January 2, 1987.

The Commission certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions because it merely facilitates collection of already incurred debts.

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

List of Subjects in 46 CFR Part 505

Administrative offset, Administrative practice and procedure, Claims, Debt collections.

Part 505 of Title 46 of the Code of Federal Regulations is added to read as follows:

PART 505—ADMINISTRATIVE OFFSET

505.1 Scope of regulations.
505.2 Definitions.
505.3 General.
505.4 Notification procedures.
505.5 Agency review.
505.6 Written agreement for repayment.
505.7 Administrative offset.
505.8 Jeopardy procedure.

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716.

§ 505.1 Scope of regulations.

These regulations apply to the collection of debts owed to the United States arising from transactions with the Commission, or where a request for an offset is received by the Commission from another agency. These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

§ 505.2 Definitions.

(a) *Administrative offset,* as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government shall be excluded.

§ 505.3 General.

(a) The Chairman or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as assembled (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interests of the United States to collect the debt by administrative offset because of the decreased costs of collection and the acceleration in the payment of the debt.

(b) The Chairman, or his or her designee, may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Chairman, or his or her designee, may request another agency that holds funds payable to a Commission debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) If the six-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting such debt.

(f) These regulations do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute; or

(2) Debts owed by other agencies of the United States or by any State or local government.

§ 505.4 Notification procedures.

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is available to the Commission. The notice shall provide:

(a) A description of the nature and amount of the debt and the intention of the Commission to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of the Commission with respect to the debt;

(c) An opportunity for review within the Commission of the determination of the Commission with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

§ 505.5 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Commission official who provided notification within 30 calendar days of the receipt of the written notice described in § 505.4.

(b) If the debtor requests an opportunity to inspect or copy the Commission's records concerning the disputed claim, 10 business days will be granted for the review. The time period will be measured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's account(s) maintained in the Commission may be temporarily suspended. Depending on the type of transaction the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1996, as amended, will continue to accrue.

§ 505.6 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installments may be considered. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of the Commission's request for the statement. At the Commission's option, a confess-judgment note or bond of indemnity with surety may be required for installment agreements. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103.

§ 505.7 Administrative offset.

(a) If the debtor does not exercise the right to request a review within the time specified in § 505.5 or if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with these regulations without further notice.

(b) Requests for offset to other Federal agencies. The Chairman or his or her designee may request that funds due and payable to a debtor by another Federal agency be administratively offset in order to collect a debt owed to the Commission by that debtor. In requesting administrative offset, the Commission, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That the agency has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(c) Requests for offset from other Federal agencies. Any Federal agency may request that funds due and payable to its debtor by the Commission be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Commission shall initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency:

(i) That the debtor owes the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.

(2) A determination by the Commission that collection by offset against funds payable by the Commission would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

§ 505.8 Jeopardy procedure.

The Commission may effect an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by §§ 505.4 and 505.5 of this part if failure to take the offset would substantially jeopardize the Commission's ability to collect the debt, and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Commission shall be promptly refunded.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–24717 Filed 9–25–96; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, 204, 206, 207, 209, 212, 214, 215, 219, 223, 225, 227, 228, 231, 232, 235, 239, 242, 244, 249, 250, 252, 253, and Appendices B, C, G, and I

[Defense Acquisition Circular (DAC) 91–11]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 91–11 amends the Defense Federal Acquisition Regulation Supplement (DFARS) to revise, finalize, or add language on competition requirements, acquisition planning, contractor qualifications, contracting by negotiation, ozone-depleting substances, drug-free work force, foreign acquisition, bonds and insurance, contract cost principles and procedures, contract financing, research and development contracting, acquisition of information resources, contract administration, and subcontracting policies and procedures.

DATES: Effective date: September 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Buckmaster, PDUSD(A&T)DP(DAR),IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This Defense Acquisition Circular (DAC) 91–11 includes 30 rules and miscellaneous editorial amendments. Ten of the rules (Items, III, VI, VII, VIII, XI, XII, XX, XXII, XXIII, and XXVI) were published previously in the Federal Register and thus are not included as part of this notice of amendments to the Code of Federal Regulations. These ten rules are being published in the DAC incorporate the previously published amendments into the loose-leaf edition of the DFARS.

B. Regulatory Flexibility Act

DAC 91–11, Items I, II, X, XIV, XVIII, XIX, XXIV, XXV, and XXVII

These final rules do not constitute significant revisions within the meaning of Federal Acquisition Regulation 1.501 and Public Law 98–577, and publication of public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). Please cite the applicable DFARS case number in correspondence.

DAC 91–11, Items V, XV, XVII, XXI, XXVIII, XXIX, and XXX

DoD certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because:

Item V, Leasing of Commercial Vehicles and Equipment—Leasing of commercial vehicles and equipment is already permitted by the Federal Acquisition Regulation (FAR). This rule merely amends the Defense FAR Supplement (DFARS) to reflect DoD statutory authority and internal Government considerations pertaining to such leasing.

Item XV, Naval Vessel Components—The foreign source restrictions contained in this rule do not differ significantly from existing foreign source restrictions.

Item XVII, Pricing for Sales of Defense Articles—The DFARS already requires pricing of foreign military sales contracts using the same general principles that are used in pricing other defense contracts. The only significant change in this rule relates to the allowability of independent research and development and bid and proposal costs in accordance with the cost principle at FAR 31.205–18, under contracts for foreign military sales wholly paid for from nonrepayable funds. Most contracts awarded to small entities are awarded using simplified acquisition procedures, or on a competitive fixed-price basis, and do not require application of the FAR or DFARS cost principles.

Item XXI, Allowability of Costs—The cost principle in this rule applies only to costs for bonuses or other payments in excess of the normal salary paid by a contractor to an employee, when such payments are part of restructuring costs associated with a business combination. Most contracts awarded to small entities are awarded using simplified acquisition procedures, or on a competitive fixed-price basis, and do not require application of the FAR or DFARS cost principles.

Item XXVIII, Material Management and Accounting System Changes—Material management and accounting system (MMAS) requirements only apply to contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and are not awarded under the set-aside or Section 8(a) procedures of FAR Part 19. Additionally, MMAS disclosure, demonstration, and maintenance requirements only apply to large business concerns.

Item XXIX, Contractor Purchasing System Reviews—Contractor purchasing system reviews generally are conducted only for contractors that are expected to have annual sales to the Government exceeding $25 million.

Item XXX, Ground and Flight Risk—The amendments in this rule only apply to contracts for aircraft development, production, modification, maintenance, repair, or overhaul, or otherwise involving the furnishing of aircraft to the contractor by the Government. Historically, most contractors engaged in this type of contract have been large business concerns.

DAC 91–11, Items IV, IX, XIII, and XVI

A final regulatory flexibility analysis has been performed for each of these rules. A copy of the analysis is available by writing the Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062. Please cite the applicable DFARS case number in correspondence. The analyses are summarized as follows:

Item IV, Precontractual Contract Administration (DFARS Case 95–D015)—This final rule amends the DFARS to provide the contract administration component access to acquisition planning information, set forth the fact that costs or savings related to contract administration may be considered when evaluating an offeror's past performance, and establish as a contract administration function the providing of support to program offices and buying activities in precontractual efforts leading to a solicitation or award. No public comments were received in response to the initial regulatory flexibility analysis prepared for the proposed rule published in the Federal Register at 60 FR 53573 on October 16, 1995. The rule applies to all entities, large and small, that compete for DoD contracts awarded using past performance as an evaluation factor. The rule imposes no new reporting, recordkeeping, or other compliance requirements. The alternative of not making the revisions to DFARS Parts 207 and 242 was considered, since the Federal Acquisition Regulation (FAR) already permits involvement of contract administration components in precontractual efforts. However, it was determined that these revisions are needed to ensure that the contract administration component has access to early acquisition planning information and is involved in precontractual planning in order to allow for efficient

and effective contract administration support throughout the acquisition. The alternative of not making the revisions to DFARS Parts 209 and 215 was also considered, since the FAR already permits the use of contract and audit data in evaluating performance risk or past performance. It was determined that specifically citing costs and savings related to contract administration and audit as a factor in evaluating performance risk or past performance will encourage use of this factor and will be beneficial in refining the process for determining the best value to the Government.

Item IX, Drug Free Work Force (DFARS Case 88–083)—This rule is necessary to implement DoD policy to ensure that its contractors maintain programs for achieving a drug-free work force. No public comments were received in response to the initial regulatory flexibility analysis prepared for the interim rule published in the Federal Register at 57 FR32736 on July 23, 1992. The rule applies to large and small entities with DoD contracts that involve access to classified information, or that include the prescribed clause for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract. The rule requires that certain DoD contractors maintain a drug-free work force program, including recordkeeping necessary to ensure that any instances of illegal drug use be dealt with in accordance with the contractor's program. The recordkeeping required by DFARS clause 252.223–7004 has been approved by the Office of Management and Budget under OMB Control Number 0704–0336. Consideration was given to elimination of the rule in light of Federal Acquisition Regulation (FAR) Subpart 23.5, which implements the Drug-Free Work Force Act of 1988. However, the FAR addresses illegal drugs only in the workplace. The DoD policy is that any drug use by a contractor employee working in a sensitive position under a DoD contract may adversely affect national security, health, or safety of those using or affected by the product of, or performance of, the contract.

Item XIII, Ball and Roller Bearings (DFARS Case 95–D308)—This final rule implements Section 8099 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104–61) and 10 U.S.C. 2534 as amended by Sections 806(b) and (d) of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106), which extend the statutory restriction on the acquisition of nondomestic ball and roller bearings through the year 2000, but reduce the exceptions to the restriction and limit waiver authority when Fiscal Year 1996 funds are used. There were no issues raised by public comments in response to the initial regulatory flexibility analysis prepared for the interim rule published in the Federal Register at 61 FR 10899 on March 18, 1996. The final rule incorporates the restriction on miniature and instrument ball bearings that is presently included in DFARS Subpart 225.71, and specifically identifies the commercial item exception to the requirements of Section 8099 of the Fiscal Year 1996 Defense Appropriations Act. The rule applies to all small and large entities that are interested in furnishing to the Government ball or roller bearings or items incorporating ball or roller bearings. The rule lessens foreign competition for domestic sources, particularly in acquisitions that do not exceed the simplified acquisition threshold, and is expected to have a positive impact on both small and large entities. The rule imposes no new recordkeeping or reporting requirements. The existing recordkeeping and reporting required by DFARS clause 252.225–7025 has been approved by the Office of Management and Budget under OMB Control Number 0704–0229.

Item XVI, Foreign Product Restrictions (DFARS Case 95–D033)—This final rule eliminates all foreign product restrictions in DFARS Subpart 225.71, with the exception of ship propulsion shafts (excluding service and landing craft shafts), periscope tubes, and ring forgings for bull gears (greater than 120 inches in diameter). The restriction on miniature and instrument ball bearings is being incorporated in DFARS 225.7019 with the other statutory restrictions on ball and roller bearings, because 10 U.S.C. 2534(a)(5) provides for restrictions on ball and roller bearings in accordance with DFARS Subpart 225.71, as in effect on October 23, 1992. The elimination of the other restrictions in DFARS Subpart 225.71 is based on an assessment by DoD that these restrictions are no longer needed. The objective of this rule is to maximize full and open competition to the extent consistent with maintenance of a viable domestic industrial base. No comments were received in response to the initial regulatory flexibility analysis prepared for the proposed rule published in the Federal Register at 60 FR 67115 on December 28, 1995. However, a number of respondents expressed concern that the rule's elimination of foreign product restrictions would weaken the domestic forging industry and the national security. Therefore, retention of the foreign product restrictions on forgings was considered, but rejected for the following reasons: The restrictions were originally imposed to preserve a domestic mobilization base for specific classes of items, including various ferrous forgings, needed to meet Cold War era operational scenarios. DoD no longer has such a requirement for the classes of forgings under consideration. Therefore, the mobilization base for these forgings is no longer required. Additionally, both productivity and exports have increased for the domestic forging industry.

The rule will affect the preference for domestic manufacturers of the items no longer restricted. It is estimated that approximately 90 contractors, some of which are small businesses, supply such items to DoD either as prime contractors or subcontractors under defense contracts. The information collection required by DFARS clause 252.225–7025 has been approved by the Office of Management and Budget under OMB Control Number 0704–0229. The rule will reduce this information collection requirement, as recordkeeping and reporting will no longer be required for those items which are no longer restricted to domestic sources. There are no practical alternatives which would affect the impact on small entities and still accomplish the objectives of the rule.

C. Paperwork Reduction Act

DAC 91–11, Items I, II, IV, V, X, XIV, XV, XVII, XVIII, XIX, XXI, XXIV, XXV, XXVII, XXIX, and XXX

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

DAC 91–11, Items IX, XIII, XVI, and XXVIII

The Paperwork Reduction Act applies. OMB has approved the information collection requirements as follows:

Item	OMB control number
IX	0704–0336
XIII	0704–0229
XVI	0704–0229
XXVIII	0704–0250

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Defense Acquisition Circular (DAC) 91–11 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1991 edition. The amendments are summarized as follows:

Item I—Revisions to FAR/DFARS (DFARS Case 96–D009)

This final rule amends DFARS 201.201–1 to specify that requests for changes to the FAR or DFARS must identify any potential impact of the change on automated systems (e.g., automated financial and procurement systems).

Item II—Overseas Contracts With NATO/Allied Governments or the United Nations (DFARS Case 96–D004)

This final rule amends DFARS 201.402 and adds a new section at 225.970 to authorize contracting officers outside the United States to deviate from prescribed non-statutory FAR and DFARS clauses when contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations. This authority may be exercised only if such governments or organizations will not agree to the standard FAR/DFARS clauses.

Item III—Justification and Approval Thresholds (DFARS Case 96–D307)

This final rule was issued by Departmental Letter 96–003, effective April 12, 1996 (61 FR 10285, March 13, 1996). The rule amends DFARS 206.304 to implement Section 4102 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106). Section 4102 amends 10 U.S.C. 2304(f)(1)(B) and 41 U.S.C. 253(F)(1)(B) to increase the dollar thresholds at which approval for use of other than full and open competition must be obtained from the competition advocate, the head of the procuring activity, or the senior procurement executive.

Item IV—Precontractual Contract Administration (DFARS Case 95–D015)

This final rule amends DFARS Subparts 207.1, 209.1, 215.6, and 242.3 to (1) provide for involvement of the contract administration office early in the acquisition process, and (2) specify that costs or savings related to contract administration and audit may be considered in proposal evaluation when an offeror's past performance or performance risk is likely to result in significant costs or savings.

Item V—Leasing of Commercial Vehicles and Equipment (DFARS Case 96–D302)

The interim rule issued by Departmental Letter 96–007, on April 18, 1996, is revised and finalized. The rule amends DFARS 207.470 to implement Section 807 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106). Section 807 amends 10 U.S.C. 2401a to permit the use of leasing in the acquisition of commercial vehicles and equipment. The final rule differs from the interim rule in that it clarifies that the requirements of 207.470(b) apply to the leasing of commercial vehicles and the equipment that is associated with those vehicles.

Item VI—Institutions of Higher Education (DFARS Case 96–D305)

This interim rule was issued by Departmental Letter 96–012, effective May 21, 1996 (61 FR 25408, May 21, 1996). The rule amends DFARS 209.470 and 243.105 to implement Section 541 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106). Section 541 provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has an anti-ROTC policy.

Item VII—Small Disadvantaged Business Concerns (DFARS Case 95–D039)

This final rule was issued by Departmental Letter 96–009, effective April 29, 1996 (61 FR 18686, April 29, 1996). The rule amends DFARS Parts 215, 219, 236, 242, 252, and 253 to (1) expand use of the evaluation preference for small disadvantaged businesses (SDBs) to include competitive awards based on other than price or price-related factors; (2) consider small, small disadvantaged, and women-owned small business subcontracting as a factor in the evaluation of past performance; (3) clarify that the contracting officer will weigh enforceable commitments to use small businesses, SDBs, women-owned small businesses, historically black colleges and universities, and minority institutions more heavily than non-enforceable ones, if the commitment to use such firms is included in the solicitation as a source selection criterion; (4) require prime contractors to notify the contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan; and (5) establish a test program of an SDB evaluation preference that would remove the bond cost differentials between SDBs and other businesses as a factor in most source selections for construction acquisitions.

Item VII—Test Program for Negotiation of Comprehensive Subcontracting Plans (DFARS Case 96–D304)

This interim rule was issued by Departmental Letter 96–016, effective July 31, 1996 (61 FR 39900, July 31, 1996). The rule amends DFARS Subpart 219.7 and the clause at 252.219–7004 to reflect changes to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, as required by Section 811 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106). The rule also makes editorial changes to DFARS Part 219 to reflect revisions to FAR Part 19 published in Federal Acquisition Circular 90–32.

Item IX—DRUG-Free Work Force (DFARS Case 88–083)

The interim rule published as Item VII of DAC 91–3, and amended by Item XXXV of DAC 91–9, is converted to a final rule without change. The rule implements DoD policy regarding contractor maintenance of a drug-free work force. The applicable DFARS guidance is at Subpart 223.5 and 252.223–7004.

Item X—Ozone-Depleting Substances (DFARS Case 95–D037)

This final rule adds DFARS Section 223.803 to provide a cross-reference to the restrictions in DFARS 211.271 regarding award or modification of contracts requiring the use of class I ozone-depleting substances.

Item XI—Petroleum Products from Caribbean Basin Countries (DFARS Case 96–D312)

This interim rule was issued by Departmental Letter 96–015, effective July 22, 1996 (61 FR 37841, July 22, 1996). The rule amends DFARS 225.403 to fully implement Section 8094 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139). Section 8094 requires DoD to consider all qualified bids from eligible countries under the Caribbean Basin Economic Recovery Act as if they were offers from designated countries under the Trade Agreements Act. The rule also amends DFARS 225.403–70 and 252.225–7007 to clarify that the definition of Caribbean Basin country end products includes petroleum and any end product derived from petroleum.

Item XII—Designation of Singapore (DFARS Case 96–D308)

This final rule was issued by Departmental Letter 96–008, effective April 18, 1996 (61 FR 16880, April 18, 1996). The rule amends DFARS 225.408 and 252.225–7007 to add Singapore as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative on March 19, 1996.

Item XIII—Ball and Roller Bearings (DFARS Case 95–D308)

The interim rule issued by Departmental Letter 96–004 on March 18, 1996, is revised and finalized. The rule implements Section 8099 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104–61) and Sections 806(b) and (d) of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106), which extend the statutory restrictions on the acquisition of nondomestic ball and roller bearings through the year 2000, but reduce the exceptions to the restrictions and limit waiver authority when fiscal year 1996 funds are used to acquire other than commercial items. The final rule differs from the interim rule in that it amends DFARS 225.7001, 225.7019, and 252.225–7016 to include restrictions pertaining to the acquisition of miniature and instrument ball bearings which previously were included in Subpart 225.71 and 252.225–7025.

Item XIV—Domestic Wool Preference (DFARS Case 96–D311)

This final rule amends DFARS 225.7002 and deletes the provision at 252.225–7013 to eliminate special procedures for evaluation of offers for wool. In December 1995, the U.S. Department of Agriculture discontinued the practice of establishing incentive prices for domestic wool, which was the practice upon which the special evaluation procedures were based. Corresponding amendments are made at 212.301.

Item XV—Naval Vessel Components (DFARS Case 96–D300)

The interim rule issued by Departmental Letter 96–005, on March 26, 1996, is converted to a final rule without change. The rule amends DFARS 225.7012 and 225.7022 to implement Section 806(a) of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106). Section 806(a) imposes additional statutory restrictions on the acquisition of anchor and mooring chain and totally enclosed lifeboats, when used as components of naval vessels. The rule further amends 225.7012, and deletes the clauses at 252.225–7020 and 252.225–7021, to remove obsolete language pertaining to fiscal year 1988–90 restrictions on the acquisition of anchor and mooring chain.

Item XVI—Foreign Product Restrictions (DFARS Case 95–D033)

This final rule amends DFARS Subpart 225.71 and the clause at 252.225–7025 to eliminate non-statutory foreign product restrictions except those for certain forging items (ship propulsion shafts, periscope tubes, and ring forgings for bull gears). Restrictions pertaining to miniature and instrument ball bearings have been moved to Subpart 225.70 and 252.225–7016.

Item XVII—Pricing for Sales of Defense Articles (DFARS Case 96–D309)

The interim rule issued by Departmental Letter 96–010, on April 30, 1996, is converted to a final rule without change. The rule amends DFARS 225.7303 to implement Section 531A of the Fiscal Year 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–107). Section 531A provides that foreign military sales of defense articles and services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis as is applicable to like items purchased by DoD for its own use.

Item XVIII—Alternatives to Miller Act Bonds (DFARS Case 95–D305)

This final rule removes DFARS 228.171 and 252.228–7007. These sections were published as Item XXIII of DAC 91–9, and amended by Item X of DAC 91–10, to provide alternative payment protections for construction contracts between $25,000 and $100,000, pending implementation of Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) in the FAR. The implementing FAR guidance was published as Item XVII of FAC 90–39; therefore, the DFARS guidance is removed.

Item XIX—Insurance—Liability to Third Parties (DFARS Case 92–D015)

This final rule amends DFARS 228.311 to remove guidance pertaining to use of the clause at FAR 52.228–6, Insurance—Immunity from Tort Liability, as this clause was removed from the FAR by item XII of FAC 90–37.

Item XX—Individual Compensation (DFARS Case 96–D314)

This interim rule was issued by Departmental Letter 96–014, effective July 10, 1996 (61 FR 36305, July 10, 1996). The rule amends DFARS Part 231 to implement Section 8086 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104–61). Section 8086 limits allowable costs for individual compensation to $200,000 per year. This limitation applies to payments using funds appropriated in fiscal year 1996 under contracts awarded after July 1, 1996.

Item XXI—Allowability of Costs (DFARS Case 95–D309)

The interim rule published as Item XVII of DAC 91–10 is converted to a final rule with minor clarifying revisions at DFARS 231.205–6. The rule implements Section 8122 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104–61). Section 8122 prohibits DoD from using fiscal year 1996 funds to reimburse a contractor for costs paid to an employee for a bonus or other payment in excess of the normal salary paid to the employee, when such payment is part of restructuring costs associated with a business combination.

Item XXII—Restructuring Costs Under Defense Contracts (DFARS Case 94–D316)

This final rule was issued by Departmental Letter 96–006, effective April 18, 1996 (61 FR 16881, April 18, 1996). The rule amends DFARS 231.205–70 and 242.1204 to finalize the interim rule which was published as Item XXIII of DAC 91–7 and which implements Section 818 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337). Section 818 restricts DoD from reimbursing external restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met.

Item XXIII—Cost Reimbursement Rules for Indirect Costs (DFARS Case 96–D303)

This interim rule was issued by Departmental Letter 96–011, effective May 13, 1996 (61 FR 21973, May 13, 1996). The rule adds a new section at DFARS 231.205–71 to implement Section 808 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106). Section 808 permits DoD to enter into a defense capability preservation agreement with a defense contractor where it would facilitate the achievement of the policy objectives relating to defense reinvestment, diversification, and conversion set forth

in 10 U.S.C. 2501(b), Such an agreement would permit the contractor to claim certain indirect costs, attributable to its private sector work, on its defense contracts.

Item XXIV—Determination of Need (DFARS Case 96–D012)

This final rule revises DFARS 232.803(d) to reflect (1) the amendments made to FAR Subpart 32.8 in Item III of FAC 90–38; and (2) the May 10, 1996, determination by the Director of Defense Procurement that a need exists for DoD to agree not to reduce or set off any money due or to become due under a contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract.

Item XXV—Manufacturing Technology Program (DFARS Case 96–D313)

This final rule amends DFARS 235.006 to implement a portion of Section 276 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106). Section 276 changes the name of the Manufacturing Science and Technology Program to the ''Manufacturing Technology Program,'' and permits contracts under the program to be on other than a cost-sharing basis if the contract is for a program to be carried out by an institution of higher education.

Item XXVI—Direct Submission of Vouchers to Disbursing Office (DFARS Case 96–D007)

This final rule was issued by Departmental Letter 96–013, effective May 21, 1996 (61 FR 25409, May 21, 1996). The rule amends DFARS 242.803 to permit contract auditors to authorize direct submission of interim vouchers for provisional payment to the disbursing office, for contractors with approved billing systems.

Item XXVII—Requirements for Cost/Schedule Status Report (DFARS Case 95–D042)

This final rule amends DFARS Subpart 242.11 to update references and guidance pertaining to contractor reporting requirements. DoDI 7000.10, Contract Cost Performance, Funds Status and Cost/Schedule Status Reports, has been canceled and replaced by DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, dated March 15, 1996.

Item XXVIII—Material Management and Accounting System Changes (DFARS Case 95–D029)

This final rule amends DFARS Subpart 242.72 and 252.242–7004 to (1) increase the dollar thresholds at which large business contractors are subject to material management and accounting system (MMAS) disclosure, demonstration, and maintenance requirements; (2) clarify the circumstances under which MMAS disclosure and demonstration are required; and (3) clarify requirements for contractor use of a ''loan/pay-back'' technique for accomplishing material transactions.

Item XXIX—Contractor Purchasing System Reviews (DFARS Case 95–D026)

This final rule removes the procedures for contractor purchasing system reviews at DFARS 244.303 and Appendix C, to provide agencies maximum flexibility in conducting such reviews.

Item XXX—Ground and Flight Risk (DFARS Case 95–D028)

This final rule amends DFARS 252.228–7001 and 252.228–7002 to (1) specify that the Government's assumption of risk of aircraft does not extend to damage, loss, or destruction sustained during flight, if the flight crew members have not been approved by an authorized Government flight representative; (2) increase; from $1,000 to $25,000, the contractor's liability for aircraft loss or damage not sustained during flight; and (3) clarify language pertaining to aircraft which is damaged, lost, or destroy prior to delivery and acceptance by the Government.

Editorial Revisions

(1) DFARS 201.201–1(d)(i) is amended to update the DAR Council datafax number.

(2) DFARS 202.101 is amended under the heading ''Army'' to revise the name ''Strategic Defense Command'' to read ''Space and Strategic Defense Command.''

(3) DFARS 202.101 is amended under the heading ''Navy'' to revise the title ''Deputy, Acquisition Policy, Integrity and Accountability'' to read ''Deputy, Acquisition and Business Management.''

(4) DFARS is amended to reflect the change in name of the ''Advanced Research Projects Agency'' to the ''Defense Advanced Research Projects Agency'' and the change in name of the ''Defense Nuclear Agency'' to the ''Defense Special Weapons Agency.''

(5) DFARS 207.105 is amended to update references and to conform to the current numbering of FAR 7.105.

(6) DFARS 215.605 is amended to conform to the current numbering of FAR 15.605.

(7) DFARS 227.7009–1 is amended to update FAR references.

(8) DFARS 231.205–71 is amended to remove the title ''Assistant Secretary of Defense for Economic Security'' and insert in its place the title ''Deputy Under Secretary of Defense for Industrial Affairs and Installations.''

(9) DFARS 239.7501–2 is amended to update statutory references.

(10) DFARS 253.204–70(c)(4)(ix)(B)(9) is amended to revise the FAR reference.

(11) DFARS Part 253 is amended to update DD Forms 882 and 2139. (This amendment is being made only in the loose-leaf edition of the DFARS.)

(12) DFARS Appendix G is amended to update activity names and addresses.

(13) DFARS Appendix I is amended in I–102(a) and (b) and I–103(a) by revising the date ''September 30, 1995'' to read ''September 30, 1996.''

Interim Rules Adopted as Final Without Change

PARTS 223 AND 252—[AMENDED]

The interim rule that was published at 57 FR 32736 on July 23, 1992, and amended at 60 FR 61597 on November 30, 1995, is adopted as final without change.

PART 225—[AMENDED]

The interim rule that was published at 61 FR 18987 on April 30, 1996, is adopted as final without change.

PARTS 225 AND 252—[AMENDED]

The interim rule that was published at 61 FR 13106 on March 26, 1996, is adopted as final without change.

Interim Rules Adopted as Final With Changes

PART 207—[AMENDED]

The interim rule that was published at 61 FR 16879 on April 18, 1996, is adopted as final with an amendment at section 207.470.

PARTS 225 AND 252—[AMENDED]

The interim rule that was published at 61 FR 10899 on March 18, 1996, is adopted as final with revisions at sections 225.7001, 225.7019–2, 225.7019–3, and 252.225–7016.

PART 231—[AMENDED]

The interim rule that was published at 61 FR 7077 on February 26, 1996, is

adopted as final with amendments at section 231.205–6.

List of Subjects in 48 CFR Parts 201, 202, 204, 206, 207, 209, 212, 214, 215, 219, 223, 225, 227, 228, 231, 232, 235, 239, 242, 244, 249, 250, 252, 253

Government procurement.

Amendments to 48 CFR Chapter 2 (Defense Federal Acquisition Regulation Supplement)

48 CFR Chapter 2 (the Defense Federal Acquisition Regulation Supplement) is amended as set forth below.

1. The authority citation for 48 CFR Parts 201, 202, 204, 206, 207, 209, 212, 214, 215, 219, 223, 225, 227, 228, 231, 232, 235, 239, 242, 244, 249, 250, 252, 253, and Appendices B, C, B, and I to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.201–1 is amended by revising the introductory text of paragraph (d)(i), and paragraph (d)(i)(III) to read as follows:

201.201–1 The two councils.

* * * * *

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council, OUSD(A&T), 3062 Defense Pentagon, Washington, DC 20301–3062; datafax (703) 602–0350:

* * * * *

III. Discussion: Include a complete, convincing explanation of why the change is necessary and how the recommended revision will solve the problem. Address advantages and disadvantages of the proposed revision, as well as any cost or administrative impact on Government activities and contractors. Identify any potential impact of the change on automated systems, e.g., automated financial and procurement systems. Provide any other background information that would be helpful in explaining the issue.

* * * * *

3. Section 201.402 is amended by revising paragraph (2) to read as follows:

201.402 Policy.

* * * * *

(2) Individual deviations.

(i) Except as provided in paragraph (2)(ii) of this section, individual deviations, other than those in paragraph (1)(i) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304(4).

(ii) Contracting officers outside the United States are authorized to deviate from prescribed non-statutory FAR and DFARS clauses when contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations. This authority shall be exercised only if such governments or organizations will not agree to the standard clauses.

* * * * *

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

4. Section 202.101 is amended by revising under the heading ''ARMY'' the phrase ''Strategic Defense Command'' to read ''Space and Strategic Defense Command''; by revising under the heading ''NAVY'' the phrase ''Deputy, Acquisition Policy, Integrity and Accountability,'' to read ''Deputy, Acquisition and Business Management,''; by revising the heading ''ADVANCED RESEARCH PROJECTS AGENCY'' to read ''DEFENSE ADVANCED RESEARCH PROJECTS AGENCY''; by revising the heading ''DEFENSE NUCLEAR AGENCY'' to read ''DEFENSE SPECIAL WEAPONS AGENCY''; by revising under the newly revised heading ''DEFENSE SPECIAL WEAPONS AGENCY'' the phrase ''Headquarters, Defense Nuclear Agency'' to read ''Headquarters, Defense Special Weapons Agency''; and by revising in the definition of *Departments and agencies* the phrases ''Advanced Research Projects Agency'' and ''Defense Nuclear Agency'' to read ''Defense Advanced Research Projects Agency'' and ''Defense Special Weapons Agency'', respectively.

PART 204—ADMINISTRATIVE MATTERS

204.7003 [Amended]

5. Section 204.7003 is amended in paragraph (a)(1)(i)(F) by revising the phrase ''Defense Nuclear Agency—DNA'' to read ''Defense Special Weapons Agency—DSWA''.

PART 206—COMPETITION REQUIREMENTS

6. Section 206.304 is amended by revising paragraph (a)(4)(B)(*2*) to read as follows:

206.304 Approval of the justification.

(a)(4) * * *

(B) * * *

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

PART 207—ACQUISITION PLANNING

207.103 [Amended]

7. Section 207.103 is amended in paragraph (h)(i)(B) by revising the phrase ''to the extent prescribed DoDD 5000.1'' to read ''to the extent prescribed by DoDD 5000.1''.

8. Section 207.104 is added to read as follows:

207.104 General procedures.

(b) The planner should forward the requirements information to the contract administration organization when assistance in identification of potential sources of supply is necessary, when an existing contract is being modified or resolicited, or when contract administration resource requirements will be affected.

9. Section 207.105 is amended by revising the introductory text; in paragraph (a)(8) by removing the reference ''DoDI 5000.2, Defense Acquisition Management Policies and Procedures'' and inserting in its place ''DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs''; by redesignating paragraphs (b) (12), (15), and (17) as paragraphs (b) (13), (16), and (18), respectively; in newly designated paragraph (b)(13)(iv) by removing the reference ''DoDI 5000.2, Defense Acquisition Management Policies and Procedures'' and inserting in its place ''DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs''; in newly designated paragraph (b)(16) by revising the title to read ''*Environmental and energy conservation objectives.*''; in newly designated paragraph (b)(18)(A)(*1*)(*ii*) by removing the reference ''(b)(17)(A)(*1*)(*i*)'' and inserting ''(b)(18)(A)(*1*)(*i*)'' in its place; and by adding paragraph (b)(18)(D). The revised and added text reads as follows:

207.105 Contents of written acquisition plans.

For acquisitions covered by 207.103(c)(i) (A) and (B), correlate the plan to the DoD Future Years Defense Program, applicable budget submissions, and the decision coordinating paper/program

memorandum, as appropriate. It is incumbent upon the planner to coordinate the plan with all those who have a responsibility for the development, management, or administration of the acquisition. The acquisition plan should be provided to the contract administration organization to facilitate resource allocation and planning for the evaluation, identification, and management of contractor performance risk.

* * * * *

(b) * * *

(18) * * *

(D) *Contract administration.* Discuss the level of Government administration anticipated or currently performed and any change proposed by the contract administration office.

10. Section 207.470 is amended by revising paragraph (b) to read as follows:

207.470 Statutory requirements.

* * * * *

(b) *Leasing of commercial vehicles and associated equipment.* Except as provided in paragraph (a) of this section, the contracting officer may use leasing in the acquisition of commercial vehicles and associated equipment whenever the contracting officer determines that leasing of such vehicles is practicable and efficient (10 US.C. 2401a).

PART 209—CONTRACTOR QUALIFICATIONS

11. Section 209.103 is amended by adding paragraph (c) to read as follows:

209.103 Policy.

* * * * *

(c) The additional cost of contract administration and audit due to a contractor's performance risk may be considered in evaluating the contractor's price.

209.103–70 [Amended]

11a. Section 209.103–70 is amended by removing the phrase ''in FAR part 13''.

209.403 [Amended]

12. Section 209.403 is amended in paragraph (1) by revising the phrase ''Advanced Research Projects Agency—The Director'' to read ''Defense Advanced Research Projects Agency—The Director''; and by revising the phrase ''Defense Nuclear Agency—The Director'' to read ''Defense Special Weapons Agency—The Director''.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

13. Section 212.301 amended by removing paragraph (f)(i) and redesignating paragraphs (f)(ii) through (f)(iv) as paragraphs (f)(i) through (f)(iii), respectively. Newly designated paragraph (f)(ii) is amended in the first sentence by removing the phrase ''in FAR part 13''.

PART 214—SEALED BIDDING

214.406–3 [Amended]

14. Section 214.406–3 is amended in paragraph (e)(i) by revising the phrase ''Advanced Research Projects Agency:'' to read ''Defense Advanced Research Projects Agency:'', and by revising the abbreviation ''ARPA'' to read ''DARPA''; and in paragraph (e)(vi) by revising the phrase ''Defense Nuclear Agency:'' to read ''Defense Special Weapons Agency:'' and by revising the abbreviation ''DNA'' to read ''DSWA''.

PART 215—CONTRACTING BY NEGOTIATION

15. Section 215.605 is amended by revising paragraph (b) to read as follows:

215.605 Evaluation factors and subfactors.

(b)(2)(A) In acquisitions which require use of the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the extent of participation of small and small disadvantaged business in performance of the contact shall be addressed in source selection.

(*1*) For acquisitions other than those based only on cost or price competition, the contracting officer shall evaluate the extent to which offerors identify and commit to small business and to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(*2*) Criteria for evaluation may include—

(*i*) The extent which such firms are specifically identified in proposals;

(*ii*) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(*iii*) The complexity and variety of the work small firms are to perform;

(*iv*) The realism of the proposal;

(*v*) When not otherwise required by 215.608(a)(2), past performance of the offerors in complying with requirements of the clauses at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

(*vi*) The extent of participation of such firms in terms of the value of the total acquisition.

(*3*) Proposals addressing the extent of small and small disadvantaged business performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219–9 and should be structured to allow for consideration of offers from small businesses.

(*4*) When an evaluation includes the criterion in paragraph (b)(2)(A)(*2*)(*i*) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9 to facilitate compliance with 252.219–7003(g).

(B) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk is likely to result in significant costs or savings.

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

16. Subpart 219.7 is amended by revising the title to read as follows:

Subpart 219.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

17. Section 219.7201 is amended by revising the second sentence to read as follows:

219.7201 Administration of the test program.

* * * The focal point for the test program is the Director, Small and Disadvantaged Business Utilization (SADBU), Office of the Deputy Under Secretary of Defense (International and Commercial Programs). * * *

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

18. Subpart 223.8 is added to read as follows:

Subpart 223.8—Ozone-Depleting Substances

223.803 Policy.

Section 211.271, Elimination of use of class I ozone-depleting substances,

places restrictions on award or modification of DoD contracts requiring the use of class I ozone-depleting substances. These restrictions are in addition to any imposed by the Clean Air Act and apply after June 1, 1993, to all DoD contracts, regardless of place of performance.

PART 225—FOREIGN ACQUISITION

225.403 [Amended]

19. Section 225.403 is amended in paragraph (d)(1)(B) (*3*) by inserting the work ''Subpart'' immediately before the reference ''225.71''.

20. Subpart 225.9 is added to read as follows:

Subpart 225.9—Additional Foreign Acquisition Clauses

225.970 Clause deviations in overseas contracts.

See 201.402(2) for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or with United Nations or NATO organizations.

21. Section 225.7001 is amended by revising paragraph (a) to read as follows:

225.7001 Definitions.

* * * * *

(a) *Bearing components* and *miniature and instrument ball bearings* are defined in the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings.

* * * * *

22. Section 225.7002–2 is amended by revising paragraphs (e) and (f) to read as follows:

225.7002–2 Exceptions.

* * * * *

(e) Acquisitions using simplified acquisition procedures.

(f) Acquisitions of end items incidentally incorporating cotton or wool, for which the estimated value of the cotton or wool is not more than 10 percent of the total price of the end item; provided the estimated value of the cotton or wool does not exceed the simplified acquisition threshold.

* * * * *

23. Section 225.7002–3 is revised to read as follows:

225.7002–3 Contract clauses.

Unless an exception is known to apply—

(a) Use the clause at 252.225–7012, Preference for Certain Domestic Commodities, in all solicitations and contracts which meet or exceed the simplified acquisition threshold.

(b) Use the clause at 252.225–7014, Preference for Domestic Specialty Metals, in all solicitations and contracts over the simplified acquisition threshold that require delivery of an article containing specialty metals. Use the clause with its Alternate I in all solicitations and contracts over the simplified acquisition threshold requiring delivery, for one of the following major programs, of an article containing specialty metals—

(1) Aircraft;

(2) Missile and space systems;

(3) Ships;

(4) Tank-automotive;

(5) Weapons; or

(6) Ammunition.

(c) Use the clause at 252.225–7015, Preference for Domestic Hand or Measuring Tools, in all solicitations and contracts over the simplified acquisition threshold calling for delivery of hand or measuring tools.

225.7002–4 [Removed]

24. Section 225.7002–4 is removed.

225.7011–4 [Amended]

25. Section 225.7011–4 is amended in the introductory text of paragraph (b) by removing the phrase ''The Pentagon'' and inserting in its place the phrase ''7100 Defense Pentagon''

225.7012–3 [Amended]

26. Section 225.7012–3 is amended by revising the section title to read ''Contract clause.'' and by redesignating paragraphs (1) and (2) as paragraphs (a) and (b), respectively.

27. Section 225.7019–2 is revised to read as follows:

225.7019–2 Exceptions.

(a) The restriction in 225.7019–1(a) does not apply to—

(1) Acquisitions using simplified acquisition procedures, unless ball or roller bearings or bearing components are the end items being purchased;

(2) Purchases of commercial items incorporating ball or roller bearings;

(3) Miniature and instrument ball bearings when necessary to meet urgent military requirements;

(4) Items acquired overseas for use overseas; or

(5) Ball and roller bearings or bearing components or items containing bearings for use in a cooperative or co-production project under an international agreement. This exception does not apply to miniature and instrument ball bearings.

(b) The restriction in 225.7019–1(b) does not apply to contracts for acquisition of commercial items or subcontracts for acquisition of commercial items or subcontracts for acquisition of commercial items or commercial components (see 212.503(a)(xi) and 212.504(a)(xxxvi)).

28. Section 225.7019–3 is amended by revising the introductory text of paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

225.7019–3 Waiver.

(a) * * *

(2) For multiyear contracts or contracts exceeding 12 months, except those for miniature and instrument ball bearings, only if—

* * * * *

(3) For miniature and instrument ball bearings, only if the contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

* * * * *

29. Sections 225.7102, 225.7103, and 225.7104 are revised to read as follows:

225.7102 Policy.

DoD requirements for the following forging items, whether as end items or components, shall be acquired from domestic sources (as described in the clause at 252.225–7025) to the maximum extent practicable—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

225.7103 Exceptions.

The policy in 225.7102 does not apply to acquisitions—

(a) Using simplified acquisition procedures, unless the restricted item is the end item being purchased;

(b) Overseas for overseas use; or

(c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity). The restriction to domestic sources does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

225.7104 Waiver.

Upon request from a prime contractor, the contracting officer may waive the requirement for domestic manufacture of the items covered by the policy in 225.7102.

225.7303 [Amended]

30. Section 225.7303 is amended in the title by removing the abbreviation

''(FMS)''; in the first sentence by revising the phrase ''foreign military sale'' to read ''FMS''; and in the second sentence by revising the phrase ''a foreign military sale'' to read ''an FMS''.

PART 227—PANTENTS, DATA, AND COPYRIGHTS

227.7004 [Amended]

31. Section 227.7004 is amended in paragraph (c)(6) by revising the phrase ''Defense Nuclear Agency'' to read ''Defense Special Weapons Agency''.

227.7009–1 [Amended]

32. Section 227.7009–1 is amended by removing paragraph (a); by redesignating paragraphs (b) through (f) as paragraphs (a) through (e), respectively; and in newly designated paragraph (d) by revising the reference ''FAR 33.014'' to read ''FAR subpart 33.2''.

PART 228—BONDS AND INSURANCE

228.171, 228.171–1, 228.171–2, and 228.171–3 [Removed]

33. Sections 228.171, 228.171–1, 228.171–2, and 228.171–3 are removed.

228.311–1 [Removed]

34. Section 228.311–1 is removed.

228.311–2 [Redesignated]

35. Section 228.311–2 is redesignated as 228.311–1.

36. Section 228.370 is amended by revising the title to read as follows:

228.370 Additional clauses.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

37. Section 231.205–6 is amended in paragraph (a)(2) by revising the parenthetical phrase to read ''(Section 8117 of Pub. L. 103–335)'' and in paragraph (f)(1) by revising the first sentence to read as follows:

231.205–6 Compensation for personal services.

* * * * *

(f)(1) Costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts funded by fiscal year 1996 appropriations (Section 8122 of Pub. L. 104–61). * * *

231.205–70 [Amended]

38. Section 231.205–70 is amended in paragraph (d)(2) by removing the phrase ''paragraph (c)(1)(iv) of this subsection'' and inserting ''231.205–70(c)(1)(iv)'' in its place.

231.205–71 [Amended]

39. Section 231.205–71 is amended in paragraph (b) by removing the phrase ''Assistant Secretary of Defense for Economic Security'' and inserting in its place the phrase ''Deputy Under Secretary of Defense for Industrial Affairs and Installations''.

PART 232—CONTRACT FINANCING

40. Section 232.803 is amended by revising paragraph (d) to read as follows:

232.803 Policies.

* * * * *

(d) Pursuant to Section 3737(e) of the Revised Statutes (41 U.S.C. 15), and in accordance with Presidential delegation dated October 3, 1995, Secretary of Defense delegation dated February 5, 1996, and Under Secretary of Defense for Acquisition and Technology delegation dated February 23, 1996, the Director of Defense Procurement determined on May 10, 1996, that a need exists for DoD to agree not to reduce or set off any money due or to become due under the contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract. This determination was published in the Federal Register on June 11, 1996, as required by law. Nevertheless, if departments/agencies decide it is in the Government's interests, or if the contracting officer makes a determination in accordance with FAR 32.803(d) concerning a significantly indebted offeror, they may exclude the no-setoff commitment.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

41. Section 235.006 is amended by revising paragraphs (a) and (b)(iv) to read as follows:

235.006 Contracting methods and contract type.

(a) All contracts under the Manufacturing Technology Program (see DoDI 4200.15, Manufacturing Technology Program) shall be awarded using competitive procedures (10 U.S.C. 2525).

(b) * * *

(iv) A cost-sharing arrangement (see FAR 16.303) must be used for contracts awarded in support of the Manufacturing Technology Program, unless an alternative is approved by the Secretary of Defense (10 U.S.C. 2525). Approval by the Secretary of Defense to use other than a cost-sharing arrangement for the Manufacturing Technology Program must be based on a determination that the contract is for a program that—

(A) Is not likely to have any immediate and direct commercial application;

(B) Is of sufficiently high risk to discourage cost sharing by non-Federal Government sources; or

(C) Will be carried out by an institution of higher education.

235.7002 [Amended]

42. Section 235.7002 is amended in paragraph (a)(4) by revising the phrase ''Defense Nuclear Agency'' to read ''Defense Special Weapons Agency''.

235.7003 [Amended]

43. Section 235.7003 is amended in paragraph (b)(4)(ii) by revising the phrase ''Defense Nuclear Agency:'' to read ''Defense Special Weapons Agency:''; and by revising the phrase ''Acquisition Management Office'' to read ''Acquisition Management Directorate''.

PART 239—ACQUISITION OF INFORMATION RESOURCES

44. Section 239.7501–2 is revised to read as follows:

239.7501–2 Restriction.

Section 8028 of the FY 1992 Defense Appropriations Act (Pub. L. 102–172) and similar sections of the FY 1993, FY 1994, and FY 1995 Defense appropriations acts prohibit use of DoD appropriations for acquisition of major automated information systems, unless the systems have successfully completed oversight reviews required by DoD regulations.

PART 242—CONTRACT ADMINISTRATION

45. Section 242.302 is amended in paragraph (a)(19) by revising the reference ''252.225–7008'' to read ''252.225–7009'' and by adding paragraph (a)(67) to read as follows:

242.302 Contract administration functions.

(a) * * *

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

* * * * *

242.803 [Amended]

46. Section 242.803 is amended at the end of paragraph (b)(i)(C) by changing the period to a semicolon.

47. Section 242.1106 is amended by revising paragraph (a)(i) to read as follows:

242.1106 Reporting requirements.

(a) * * *

(i) DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs; and

* * * * *

48. Section 242.1107–70 is revised to read as follows:

242.1107–70 Additional clauses.

When cost/schedule status reporting (C/SSR) is required on acquisitions for other than major systems (i.e., the Contract Data Requirements List includes DI–MGMT–81467), use in solicitations and resulting contracts the clause at 252.242–7005, Cost/Schedule Status Report.

49. Section 242.7202 is amended by revising paragraph (d) to read as follows:

242.7202 Policy.

* * * * *

(d) Conforms to the standards at 252.242–7004(f) when the contractor has cost-reimbursement or fixed-price contracts exceeding the simplified acquisition threshold, with progress or other contract financing provisions, except when all of the contracts and subcontracts are awarded under the set-aside or Section 8(a) procedures of FAR part 19.

50. Section 242.7203 is revised to read as follows:

242.7203 MMAS disclosure, demonstration, and maintenance requirements.

(a) A large business contractor is subject to MMAS disclosure, demonstration, and maintenance if in its preceding fiscal year the contractor received DoD prime contracts or subcontracts (including modifications) totaling—

(1) $70 million or more; or

(2) $30 million or more (but less than $70 million), and the contracting officer determines it to be in the best interests of the Government (e.g., contractor disclosure, demonstration, or other activities indicate significant MMAS problems exist).

(b) After the administrative contracting officer determines the contractor's MMAS is adequate (see 242.7204(b)), written disclosure will not be required for the next MMAS review unless the contractor's policies, procedures, or practices have changed in the interim period(s). Similarly, once the contractor demonstrates that its MMAS contains no significant deficiencies, demonstration requirements for subsequent reviews may be satisfied if internal audits are reasonably current and contain sufficient transaction tests to demonstrate MMAS compliance with each standard.

242.7204 [Amended]

51. Section 242.7204 is amended in paragraph (a)(1) by revising the reference ''242.7203'' to read ''242.7203(a)''; and in paragraph (a)(2) by revising the reference ''242.7203(b)'' to read ''242.7203(a)(2)''.

242.7206 [Amended]

52. Section 242.7206 is amended in the introductory text by removing the phrase ''in FAR part 13''.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

244.303 [Removed]

53. Section 244.303 is removed.

244.304 [Amended]

54. Section 244.304 is amended in the introductory text of paragraph (b) by removing the abbreviation ''PSA'' and inserting in its place the phrase ''purchasing system analyst (PSA)''.

PART 249—TERMINATION OF CONTRACTS

249.7001 [Amended]

55. Section 249.7001 is amended in paragraph (b)(4) by revising the phrase ''Advanced Research Projects Agency—CMO'' to read ''Defense Advanced Research Projects Agency—CMO''; and in paragraph (b)(9) by revising the phrase ''Defense Nuclear Agency—Chief, Office of Procurement, OATR'' to read ''Defense Special Weapons Agency—Acquisition Management Directorate (AM)''.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

250.303 [Amended]

56. Section 250.303 is amended in paragraph (5) by revising the phrase ''Advanced Research Projects Agency—'' to read ''Defense Advanced Research Projects Agency—''; and in paragraph (10) by revising the phrase ''Defense Nuclear Agency—'' to read ''Defense Special Weapons Agency—'', by revising the abbreviation ''DNA'' to read ''DSWA'', and by revising the abbreviation ''OAPR'' to read ''AM''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7000 [Amended]

57. Section 252.212–7000 is amended in the introductory text by revising the reference ''212.301(f)(iii)'' to read ''212.301(f)(ii)''.

252.212–7001 [Amended]

58. Section 252.212–7001 is amended in the introductory text by revising the reference ''212.301(f)(iv)'' to read ''212.301(f)(iii)''.

252.225–7012 [Amended]

59. Section 252.225–7012 is amended in the introductory text by revising the reference ''225.7002–4(a)'' to read ''225.7002–3(a)''.

252.225–7013 [Removed and Reserved]

60. Section 252.225–7013 is removed and reserved.

252.225–7014 [Amended]

61. Section 252.225–7014 is amended in the introductory text by revising the reference ''225.7002–4(c)'' to read ''225.7002–3(b)''; and in the introductory text of ALTERNATE I by revising the reference ''225.7002–4(c)'' to read ''225.7002–3(b)''.

252.225–7015 [Amended]

62. Section 252.225–7015 is amended in the introductory text by revising the reference ''225.7002–4(d)'' to read ''225.7002–3(c)''.

63. Section 252.225–7016 is revised to read as follows:

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7019–4, use the following clause:

Restriction on Acquisition of Ball and Roller Bearings (Sep 1996)

(a) *Definitions.*

As used in this clause—

(1) ''Bearing components'' means the bearing element, retainer, inner race, or outer race.

(2) ''Miniature and instrument ball bearings'' means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, regardless of material, tolerance, performance, or quality characteristics.

(b) The Contractor agrees that all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

(c) The restriction in paragraph (b) of this clause does not apply to the extent that the end items or components containing ball or roller bearings are commercial items. The commercial item exception does not include items designed or developed under a Government contract or contracts where the end item is bearings and bearing components.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the

Contractor in accordance with subsection 225.7019–3 of the Defense Federal Acquisition Regulation Supplement. If the restriction is waived for miniature and instrument ball bearings, the Contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(e) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Office.

(f) The Contractor agrees to insert this clause, including this paragraph (f), in every subcontract and purchase order issued in performance of this contract, unless items acquired are—

(1) Commercial items other than ball or roller bearings; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

64. Section 252.225–7025 is revised to read as follows:

252.225–7025 Foreign Source Restrictions.

As prescribed in 225.7105, use the following clause:

Foreign Source Restrictions (Sep 1996)

(a) *Definitions.*

As used in this clause—

(1) *Domestic manufacture* means manufactured in the United States or Canada if the Canadian firm—

(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

(ii) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(2) *Forging items* means—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

(b) The Contractor agrees that end items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with section 225.7104 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Officer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in subcontracts and purchase orders issued in performance of this contract, when products purchased contain restricted forging items.

(End of clause)

65. Section 252.228–7001 is amended by revising the clause date to read ''(SEP 1996)''; by revising paragraph (d)(2); in paragraph (e) by removing ''$1,000'' both places it appears and inserting ''$25,000'' in its places; in the introductory text of paragraph (h) by removing the phrase ''In the event the'' and inserting in its place the phrase ''In the event of''; and by revising paragraph (i)(1), the introductory text of paragraph (i)(2), and paragraph (k). The revised text reads as follows:

252.228–7001 Ground and flight risk.

* * * * *

(d) * * *

(2) Is sustained during flight if the flight crew members have not been approved in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled ''Contractor's Flight and Ground Operations'' (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1C, and Defense Logistics Agency Manual 8210.1);

* * * * *

(i) * * *

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(2) Terminate this contract with respect to the aircraft, in which event the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

* * * * *

(k) The Contractor agrees to be bound by the operating procedures contained in the combined regulation entitled ''Contractor's Flight and Ground Operations'' in effect on the date of contract award.

(End of clause)

66. Section 252.228–7002 is amended by revising the clause date to read ''(SEP 1996)''; and by revising section title, the introductory text of paragraph (c), and paragraph (e) to read as follows:

252.228–7002 Aircraft flight risk.

* * * * *

(c) Unless the flight crew members previously have been approved in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled ''Contractor's Flight and Ground Operations'' (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1C, and Defense Logistics Agency Manual 8210.1), the Contractor shall not be—

* * * * *

(e) The Contractor agrees to be bound by the operating procedures contained in the combined regulation entitled ''Contractor's Flight and Found Operations'' in effect on the date of contract award.

(End of clause)

252.228–7006 and 252.228–7007 [Removed]

67. Sections 252.228–7006 and 252.228–7007 are removed.

68. Section 252.242–7004 is amended by revising the clause date to read ''(SEP 1996)''; by adding paragraph (a)(3); and by revising paragraphs (c)(2)(i), (c)(2)(ii), (f)(7)(i), and (f)(7)(ii), and paragraph (f)(7)(iii) introductory text to read as follows:

252.242–7004 Material management and accounting system.

* * * * *

(a) * * *

(3) ''Contractor'' means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

* * * * *

(c) * * *

(2) * * *

(i) $70 million or more; or

(ii) $30 million or more (but less than $70 million), and is notified in writing by the Contracting Officer that paragraphs (d) and (e) apply.

(f) * * *

(7) * * *

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411–50(b). Consistency shall be maintained across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The ''loan/pay-back technique'' means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the Administrative Contracting Officer. When the technique is used, the Contractor shall have controls to ensure—

* * * * *

PART 253—FORMS

253.204–70 [Amended]

69. Section 253.204–70 is amended in paragraph (c)(4)(ix)(B)(*9*) by revising the reference ''FAR 6.302–3(a)(2)(i)'' to read ''FAR 6.302–3(a)(2)''.

Appendix B to Chapter 2—[Amended]

70. Appendix B to Chapter 2 is amended in Part 5 by revising in the title the phrase ''DEFENSE NUCLEAR

AGENCY'' to read ''DEFENSE SPECIAL WEAPONS AGENCY''; and by revising the abbreviation ''DNA'' to read ''DSWA'' both places it appears.

Appendix C to Chapter 2—[Removed and Reserved]

71. Appendix C to Chapter 2 is removed and reserved.

Appendix G to Chapter 2—[Amended]

72. Appendix G to Chapter 2 is amended in Part 1, Section G–101, paragraph (c), by removing the address ''**Defense Nuclear Agency, Chief, Contract Division, Defense Nuclear Agency, Washington, DC 20305–1000'' and inserting in its place the address ''**Defense Special Weapons Agency, Director, Acquisition Management Directorate, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398''.

73. Appendix G to Chapter 2 is amended in Part 2 by revising entry DASG60–CB to read as follows:

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

* * * * *

DASG60–CB
USA Space and Strategic Defense Command, Deputy Commander, ATTN: CSSD–CM, P.O. Box 1500, Huntsville, AL 35807–3801

* * * * *

74. Appendix G to Chapter 2 is amended in Part 3 by removing entry N66032—LK and the address that follows; by revising the entries for activity address numbers N00022, N31149, N52855, N61463, N62472, N66022, N66972, N67596, and N68409; and by adding entries for activity address numbers N00038, N0610A, N39088, N43636, N48984, N53863, N55105, N55271, N57092, N66101, N68317, N68326, N68389, N68482, N68573, and N68939. The revised and added text reads as follows:

PART 3—NAVY ACTIVITY ADDRESS NUMBERS

* * * * *

N00022—ML*, MQ*, NV*, MLZ
Chief of Naval Personnel, Washington, DC 20370–2000

* * * * *

N00038 (MAJ00011)—LB–5
U.S. Commander-in-Chief, Pacific, HQ Support Division, Box 64017, Code J145, Camp H.N. Smith, HI 96861–4017

* * * * *

N0610A (MAJ00062)—L98
Commanding Officer, Naval Diving and Salvage Training Center, 350 South Crag Road, Panama City, FL 32407–7016

* * * * *

N31149 (MAJ00024)—EHA–B
Naval Sea Logistics Center Detachment, Philadelphia Naval Base, Philadelphia, PA 19112–5061

* * * * *

N39088 (MAJ00022)—NVF
Navy Recruiting Orientation Unit, 206 South Avenue, Suite C, Pensacola, FL 32508–5102

* * * * *

N43646 (MAJ00023)—4JB
Defense Printing Service, Detachment Branch Office, 5403 Southside Drive, Louisville, KY 40214

* * * * *

N48984 (MAJ00023)—L5E
Defense Printing Service, Detachment Office, 901 South Drive, Scott Air Force Base, IL 62225–5106

* * * * *

N52855—LZ
Special Boat Unit 11, FPO AP 96601–4517

* * * * *

N53863 (MAJ00060)—LHH
Commander, Surface Warfare Development Group, 2200 Amphibious Drive, Norfolk, VA 23521–2850

* * * * *

N55105 (MAJ00060)—NMC
Amphibious Construction Batallion Two, 1815 Seabee Drive, Norfolk, VA 23701

* * * * *

N55271 (MAJ00070)—LP8
Commander, Combat Logistics Group One (N716), Building 221–2W, NSC, Oakland, CA 94625–5309

* * * * *

N57092 (MAJ00070)—V5U
Naval Inshore Undersea Warfare Group One, Building 184, Box 357140NOLF, Imperial Beach, CA 92135–7140

* * * * *

N61463 (MAJ00060)—LHB–D, LH2–4
Supply Officer, COMNAVBASE Supply, 1530 Gilbert Street, Suite 8, Norfolk, VA 23511–2793

* * * * *

N62472—JP
Naval Facilities Engineering Command, Northern Division, 10 Industrial Highway, Mail Stop #82k Lester, PA 19113

* * * * *

N66022 (MAJ00018)—MDW
Naval Dental Center, San Diego, CA 92136–5147

* * * * *

N66101 (MAJ00018)—J5B–D
U.S. Naval Hospital ROTA, PSC 819, Box 18, FPO AE 09645–2500

* * * * *

N66972 (MAJ00022)—MQ2
Commanding Officer, Navy Recruiting District, 8525 N.W. 53red Terrace, Suite 201, Miami, FL 33166

N67596 (MAJ00022)—NVD
Commanding Officer, Navy Recruiting District, 10500 N. U.S. Highway 281, Suite 108, San Antonio, TX 78216–3630

* * * * *

N68317 (MAJ00062)—R03
Naval Administrative Unit, 1 Amsterdam Road, Scotia NY 12302–9460

* * * * *

N68326 (MAJ00018)—MDA
Naval Dental Center, 2707 Sheridan Road, Bldg 73, Great Lakes, IL 60088–5258

* * * * *

N68389 (MAJ00011)—LB4
Commander, Joint Intelligence Center, Pacific/DSL, P.O. Box 500, Bldg 352, Makalapa Drive, Pearl Harbor, HI 96860–7450

* * * * *

N68409 (MAJ00018)—QAU
Naval Dental Center, San Francisco, CA 94130–5030

* * * * *

N68482 (MAJ00022)
Department of the Navy, BUPERS Det DAPMAL, Bldg 11, Naval Training Center, 32110 Perry Road, Suite 110, San Diego, CA 92133–1521

* * * * *

N68573 (MAJ00023)—4JM
Navy Exchange Service Center, NAVABASE, Norfolk, Bldg CD–1, 9222 Hamption Blvd, Norfolk, VA 23511–6390

* * * * *

N68939 (MAJ00012)—V8R
Naval Information Systems Management Center, Washington Navy Yard, Bldg 176-4, Washington, DC 20374–5070

* * * * *

75. Appendix G to Chapter 2 is amended by revising Part 9 to read as follows:

PART 9—DEFENSE SPECIAL WEAPONS AGENCY ACTIVITY ADDRESS NUMBERS

DSWA01—8Z
Defense Special Weapons Agency, Headquarters, ATTN; Acquisition Management Directorate (AM), 6801 Telegraph Road, Alexandria, VA 22310–3398 (ZD30)

DSWA02—0N
Defense Special Weapons Agency, Field Command, ATTN: Acquisition Management Office (FCA), 1680 Texas Street, S.E., Kirtland AFB, NM 87115–5669

(ZD31)

76. Appendix G to Chapter 2 is amended in Part 10 by revising under entry ''MDA972—WS'' the abbreviation ''ARPA'' to ''DARPA''.

Appendix I to Chapter 2 [Amended]

77. Appendix I to Chapter 2 is amended in section I–102, paragraphs (a) and (b), and in section I–103, paragraph (a), by revising the date ''September 30, 1995'' to read ''September 30, 1996''.

[FR Doc. 96–24064 Filed 9–25–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 091996B]

Fisheries of the Exclusive Economic Zone off Alaska; Northern Rockfish in the Western Regulatory Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of northern rockfish in that area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), October 1, 1996, until 2400 hrs, A.l.t., December 31, 1996.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the annual TAC for northern rockfish in the Western Regulatory Area of the GOA was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 640 metric tons (mt). The directed fishery for northern rockfish in the Western Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (61 FR 37226, July 17, 1996). NMFS has determined that, as of September 7, 1996, 527 mt remain in the directed fishing allowance.

The Administrator, Alaska Region, NMFS, has determined that the 1996 directed fishing allowance of northern rockfish in the Western Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

All other closures remain in full force and effect.

Classification

This action is taken under § 679.20 and is exempt from review under E.O. 12866.

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

Dated: September 20, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–24670 Filed 9–25–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 188
Thursday, September 26, 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 THE TREASURY

Customs Service

19 CFR Part 162

RIN 1515–AB98

Prior Disclosure

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the Customs Regulations governing ''prior disclosure'' as well as implementing a provision of the Customs Modernization portion of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence. Pursuant to ''prior disclosure'' under 19 U.S.C. 1592(c)(4), as amended by the Mod Act, if a person who commits such a violation discloses the circumstances of the violation before, or without knowledge of, the commencement of a formal investigation of such violation, merchandise shall not be seized and any monetary penalty to be assessed under 19 U.S.C. 1592 shall be limited. The amendment to the Customs Regulations proposed in this document would spell out when there is ''commencement of a formal investigation'' for purposes of 19 U.S.C. 1592. The document also amends the regulations to give Fines, Penalties and Forfeitures Officers discretion to defer referral for full investigation of a disclosure of an unintentional violation of law until the disclosing party has an opportunity to explain all the circumstances underlying the disclosed violation.

DATE: Comments must be received on or before November 25, 1996.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW, Washington, DC 20229, and may be inspected at Franklin Court, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch (202) 482–6946.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Pub. L. 103–182). The Customs Modernization portion of this Act (Title VI), popularly known as the Customs Modernization Act, or ''the Mod Act'' became effective when it was signed. Section 621 of Title VI amended section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) (hereinafter referred to as section 592). This document involves the amendments to section 592(c)(4) effected by section 621(4) of Title VI.

Section 592 provides that no person, by fraud, gross negligence, or negligence may enter, introduce or attempt to enter or introduce any merchandise into the commerce of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material. Further, no person may aid or abet any other person in violating the above-stated prohibition. The statute provides maximum penalties for violations of its provisions.

Section 592(c)(4), the prior disclosure provision, affords a party who discloses a violation of section 592 with benefits of significantly reduced penalties (or in certain cases, no penalties) where the party fully discloses the circumstances of the violation, and does so before, or without knowledge of, ''the commencement of a formal investigation'' of the disclosed violation.

The Mod Act amendments to section 592(c)(4) involved the adoption of a statutory definition of the term ''commencement of a formal investigation.'' Section 592(c)(4) now provides that a formal investigation is deemed commenced on the date recorded in writing by Customs as the date on which facts and circumstances were discovered or information was received which caused Customs to believe that the possibility of a section 592 violation existed.

Presently, § 162.74 (d) and (e) of the Customs Regulations (19 CFR 162.74 (d) and (e)) set forth the agency definition of ''commencement of a formal investigation'' and this definition does not require, in all cases, that the ''commencement'' be evidenced by a writing or electronic transmission.

This document proposes to amend the Customs Regulations to set forth in § 162.74(g) a definition of ''commencement of a formal investigation'' consistent with the definition set forth in section 592. The language in § 162.74 (d) and (e), Customs Regulations that is inconsistent with the statutory definition is removed.

The document also attempts to simplify the regulations by bringing all material relating to the prior disclosure of section 592 violations into one section. Accordingly, the definition of the phrase ''discloses the circumstances of the violation'', which applies only to prior disclosure provisions, is proposed to be moved from § 162.71, Customs Regulations to paragraph (b) of § 162.74.

This document also proposes to amend the regulations to provide for the possibility of a delay of the verification of the violation by the Office of Investigations. Section 162.74(c), Customs Regulations, currently contains a requirement that all claimed prior disclosures immediately be referred for investigation. In the past, such referrals often have led to a rapid Customs deployment of investigative resources to the disclosing party's premises, or the rapid issuance of subpoenas or civil summonses for records—even in instances where the disclosing party is in the process of collecting the necessary information to ''perfect'' the claimed prior disclosure. In such cases, not only does strict adherence to the current immediate referral requirement sometimes result in delaying disposition of the disclosed violation, but also may serve to deter parties from making prior disclosures at all. Customs now proposes a new paragraph (f) which provides that the disclosing party may request the additional time to gather information in order to fully disclose the circumstances of the violation as defined in paragraph (b) of the proposed amendment. Customs believes that the disclosing party should be able to ask Customs to defer the Office of

Investigations verification proceedings until the party has completed its disclosure of the circumstances within the time permitted under the proposed paragraph (b).

Comments

Before adopting the proposed amendment, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C.

Regulatory Flexibility Act

Insofar as the proposed regulations closely follow legislative direction, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), it is certified that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Paperwork Reduction Act

The collection of information contained in this rulemaking has been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995. (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

The collection of information in this regulation is in § 162. This information is to enable the Customs Service able to effectively administer the laws it is charged with enforcing while, at the same time, imposing a minimum burden on the public it is serving. Respondents are those parties who wish to voluntarily disclose the circumstances of a violation of 19 U.S.C. 1592 in order to obtain reduced penalty benefits which are available pursuant to 19 U.S.C. 1592(c)(4). The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 3,500 hours.

Estimated average annual burden per respondent: 1 hour for each Customs entry involved in the prior disclosure.

Estimated number of respondents: 3,500.

Estimated annual frequency of responses: Because a prior disclosure of a Customs law violation is made voluntarily, it is impossible to predict with any accuracy the frequency at which such disclosures may be made.

Comments concerning the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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.

List of Subjects in 19 CFR Part 162

Customs duties and inspection, Law enforcement, Seizures and forfeitures.

Proposed Amendment

It is proposed to amend Part 162, Customs Regulations (19 CFR Part 162) as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for Part 162 will continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

§ 162.71 [Amended]

2. Section 162.71 is amended by removing paragraph (e).

3. Section 162.74 is revised to read as follows:

§ 162.74 Prior disclosure.

(a) *In General.* (1) A prior disclosure of a violation is made if the person concerned discloses the circumstances of a violation (as defined in paragraph (b) of this section) of 19 U.S.C. 1592 or 19 U.S.C. 1593a, either orally or in writing to a Customs Officer before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties in accordance with paragraph (c) of this section. A Customs officer who receives such a tender in connection with a prior disclosure shall ensure that the tender is deposited with the concerned local Customs entry officer.

(2) A person shall be accorded the full benefits of prior disclosure treatment if that person provides information orally or in writing to Customs with respect to a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a if the concerned Fines, Penalties & Forfeitures Officer is satisfied that the information was provided before, or without knowledge of, the commencement of a formal investigation, and that the information provided includes substantially the information specified in paragraph (b) of this section.

(b) *Disclosure of the Circumstances of a Violation.* The term ''discloses the circumstances of a violation'' means the act of providing to Customs a statement orally or in writing which:

(1) Identifies the class or kind of merchandise involved in the violation;

(2) Identifies the importation or drawback claim included in the disclosure by entry number, drawback claim number, or by indicating each concerned Customs port of entry and the approximate dates of entry or dates of drawback claims;

(3) Specifies the material false statements, omissions or acts; and

(4) Sets forth to the best of the violator's knowledge, the true and accurate information or data which should have been provided in the entry or drawback claim documents, and states that the person will provide any information or data which is unknown at the time of disclosure within 30 days of the initial disclosure date. Extensions of the 30 day period may be requested by the disclosing party from the concerned Fines, Penalties & Forfeitures Officer to enable the party to obtain the information or data.

(c) *Tender of Actual Loss of Revenue.* A person who discloses the circumstances of the violation shall tender any actual loss of revenue either at the time of disclosure or within 30 days after a Customs officer notifies the person in writing of the calculation of the actual loss of revenue. The Fines, Penalties & Forfeitures Officer may extend the 30 day period if it is determined there is good cause to do so. Failure to tender the actual loss of revenue finally calculated by Customs shall result in denial of the prior disclosure benefits.

(d) *Effective Time and Date of Prior Disclosure.*

(1) If the documents which provide the disclosing information are sent by registered or certified mail, return-receipt requested, and are ultimately received by Customs, the disclosure shall be deemed to have been made at the time of mailing.

(2) If the documents are sent by other methods, including in-person delivery, the disclosure shall be deemed to have been made at the time of receipt by Customs. If the documents are delivered in person, the person delivering the documents is to request a receipt from Customs which will indicate the time and date of receipt.

(3) The provision of information which is not in writing but which qualifies for prior disclosure treatment pursuant to paragraph (a)(2) of this section shall be deemed to have occurred at the time when Customs was provided with information which substantially complies with the requirements set forth in paragraph (b) of this section.

(e) *Addressing and Filing Prior Disclosure.*

(1) A written prior disclosure should be addressed to the Commissioner of Customs and presented to a Customs officer at the Customs port of entry of the disclosed violation.

(2) In the case of a prior disclosure involving violations at multiple ports of entry, the disclosing party shall orally disclose or provide copies of the disclosure to all concerned Fines, Penalties & Forfeitures Officers. In accordance with internal Customs procedures, the officers will then seek consolidation of the disposition and handling of the disclosure.

(f) *Verification of Disclosure.* Upon receipt of a prior disclosure, the concerned Customs officer shall notify the Customs Office of Investigations of the disclosure. The violator may request, in the oral or written prior disclosure, that the Office of Investigations withhold the initiation of disclosure verification proceedings until after the party has provided the information or data within the time limits specified in paragraph (b)(4) of this section. It is within the concerned Fines, Penalties & Forfeitures Officer's discretion to grant or deny such a request.

(g) *Commencement of a Formal Investigation.* A formal investigation of a violation is considered to be commenced on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation existed. In the event that a party is denied prior disclosure treatment on the basis that Customs had commenced a formal investigation of the disclosed violation, and Customs initiates a penalty action against the disclosing party involving the disclosed violation, a copy of a writing evidencing the commencement of a formal investigation of the disclosed violation shall be attached to any required notice issued to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a.

(h) *Scope of the Disclosure and Expansion of a Formal Investigation.* A formal investigation is deemed to have commenced regarding additional violations not included or specified by the disclosing party in the party's original prior disclosure on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of such additional violations existed. Additional violations not disclosed or covered within the scope of the party's prior disclosure which are discovered by Customs as a result of an investigation and/or verification of the prior disclosure shall not be entitled to treatment under the prior disclosure provisions.

(i) *Knowledge of the Commencement of a Formal Investigation.* (1) A disclosing party who claims lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation a formal investigation has been commenced and:

(i) A Customs officer, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a, so informed the person concerning the type of or circumstances of the disclosed violation; or

(ii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(iii) A Customs Special Agent having properly identified himself or herself and the nature of his or her inquiry, requested specific books and/or records of the person relating to the disclosed violation; or

(iv) The disclosing party receives a prepenalty or penalty notice issued pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a relating to the type of or circumstances of the disclosed violation; or

(v) The merchandise which is the subject of the disclosure was seized by Customs because of the type of or circumstances of the disclosed violation; or

(vi) In the case of violations involving merchandise accompanying persons entering the United States or commercial merchandise inspected in connection with entry, the person has received oral notification of the Customs officer's finding of a violation.

(2) The presumption of knowledge may be rebutted by evidence that, notwithstanding the foregoing notice, inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

Dated: August 27, 1996.

William F. Riley,

Acting Commissioner of Customs.

Approved: August 27, 1996

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–24657 Filed 9–25–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

31 CFR Part 1

Privacy Act of 1974; Proposed Rule Exempting A System of Records from Certain Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed Rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment of 31 CFR 1.36 to exempt the system of records entitled the Automated Information

Analysis System—Treasury/IRS 46.050 from certain provisions of the Privacy Act. The exemption is intended to comply with legal prohibitions against the disclosure of certain kinds of information and to protect certain information on individuals maintained in this system of records.

DATES: Comments must be received no later than October 28, 1996.

ADDRESSES: Please submit comments to the Director, Office of Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

FOR FURTHER INFORMATION CONTACT: Carman L. Gannotti, Director, Office of Disclosure, Internal Revenue Service at (202) 622–6200.

SUPPLEMENTARY INFORMATION: The Automated Information Analysis System is a computerized system that will automatically identify potential leads to money laundering and income tax violations which might not otherwise surface through traditional intelligence gathering efforts or auditing techniques. Access to this system would enable individuals to attempt to elude detection or otherwise frustrate any investigatory actions. The returns and return information contained within this system constitute investigatory material compiled for law enforcement purposes under Title 26 of the United States Code.

Pursuant to the Privacy Act of 1974, the Department of the Treasury is publishing separately the Notice of a New System of Records, to be maintained by the IRS.

Under 5 U.S.C. 552a(j)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. Certain components of the Internal Revenue Service have as their principal function activities pertaining to the enforcement of criminal laws.

Under 5 U.S.C. 552a (k)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes. To the extent that information contained in the above-named systems has as its principal purpose the enforcement of criminal laws, exemption for such information under 5 U.S.C. 552a (j)(2) is hereby claimed.

The Department of the Treasury is hereby giving notice of a proposed rule to exempt this system of records described above from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and the authority of 31 CFR 1.23(c).

The reasons for exempting this system of records from certain provisions of 5 U.S.C. 552a are set forth below:

(1) 5 U.S.C. 552a(c)(3). This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at his request. The reasons for exempting this system of records from the foregoing provision are as follows: (i) The release of disclosure accounting would put the subject of an investigation on notice of the existence of an investigation and that such person is subject of that investigation; (ii) Such release of disclosure accounting would provide the subject of an investigation with an accurate accounting of the date, nature, name and address of the person or agency to whom the disclosure is made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the altering or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy; (iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating this person and the scope of the investigation, and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(c)(4),(d)(1),(2),(3), and (4), (e)(4)(G) and (H), (f) and (g). These provisions of the Privacy Act relate to an individual's right to notification of the existence of records pertaining to such individual; requirements for identifying an individual who request access to records; the agency procedures relating to access to records and the contest of the information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. The reasons for exempting this system of records from the foregoing provisions are as follows: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others, disclose the identity of confidential sources and reveal confidential information supplied by such sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. In cases where an exemption from this provision has been claimed, the reasons are as follows: (i) Revealing categories of sources of information could disclose investigative techniques and procedures; (ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

(4) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting this system of records from the foregoing provision are as follows: (i) The Internal Revenue Service will limit its inquiries to information which is necessary for the enforcement and administration of tax laws. However, an exemption from the foregoing provision is needed because, particularly in the early stages of a tax audit or other investigation, it is not possible to determine the relevance or necessity of specific information. (ii) Relevance and necessity are questions of judgement and timing. What appear relevant and necessary when collected may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance or necessity of such information can be established with certainty. (iii) When information is received by the Internal Revenue Service relating to violations of law within the jurisdiction of other agencies, the Service processes this information through Service systems in order to forward the material to the appropriate agencies.

(5) 5 U.S.C. 552a(e)(2). This provision of the Privacy Act requires an agency to

collect information to the greatest extent practicable directly from the subject individual when the information may result in an adverse determination about the individual's rights, benefits, and privileges under Federal programs. The reasons for exempting this system of records from the foregoing provision are as follows: (i) In certain instances the subject of a criminal investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's criminal activities must be obtained from other sources; (ii) In a criminal investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to accumulate and verify the evidence necessary for the successful prosecution of person(s) suspected of violating criminal laws.

(6) 5 U.S.C. 552a(e)(3). This provision of the Privacy Act requires that an agency must inform the subject of an investigation who is asked to supply information of (A) the authority under which the information is sought and whether disclosure of the information is mandatory or voluntary, (B) the purposes for which the information is intended to be used, (C) the routine uses which may be made of the information, and (D) the effects on the subject, if any , of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows: (i) The disclosure to the subject of an investigation of the purposes for which the requested information is intended to be used would provide the subject with significant information concerning the nature of the investigation and could result in impeding or compromising the investigation. (ii) Informing the subject of an investigation of the matters required by this provision could seriously undermine the actions of undercover officers, requiring them to disclose their identity and impairing their safety, as well as impairing the successful conclusion of the investigation. (iii) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigation.

(7) 5 U.S.C. 552a(e)(5). This provision of the Privacy Act requires an agency to maintain all records which are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. The reasons for exempting this system of records from the foregoing provisions are as follows: Since the law defines ''maintain'' to include the collection of information, compliance with the foregoing provision would prohibit the initial collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of a criminal investigation, it is not feasible or possible to determine completeness, accuracy, timeliness, or relevancy prior to collection of the information. Facts are first gathered and then placed into a cohesive order which objectively proves or disproves criminal behavior on the part of a suspect. Seemingly nonrelevant, untimely, or incomplete information when gathered may acquire new significance as an investigation progresses. The restrictions of the foregoing provision could impede investigators in the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8). This provision of the Privacy Act requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The reason for exempting this system of records from the foregoing provision is as follows: The notice requirement of the foregoing provision could prematurely reveal the existence of criminal investigations to individuals who are the subject of such investigations.

As required by Executive Order 12291, it has been determined that this proposed rule is not a ''major'' rule and, therefore, does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

Lists of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of subpart C is amended by adding the following text to the table in paragraphs (a)(1) and (b)(1) under the heading THE INTERNAL REVENUE SERVICE

* * * * *

(a) * * *

(1) * * *

Name of System	No.
* * * * *	
Automated Information Analysis System	46.050
* * * * *	

* * * * *

(b) * * *

(1) * * *

Name of System	No.
* * * * *	
Automated Information Analysis System	46.050
* * * * *	

* * * * *

Dated: August 21, 1996.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 96–24668 Filed 9–25–96: 8:45 am]

BILLING CODE 4830–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–048]

RIN 2115–AE46

Special Local Regulations: Charleston Christmas Parade of Boats, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for the Charleston Christmas Parade of Boats. This one-day event will be held on December 7, 1996, December 13, 1997, December 12, 1998, December 4, 1999 and December 9, 2000, on the

Ashley, Wando and Cooper Rivers in Charleston, South Carolina, between 5 p.m. and 8 p.m. Eastern Standard Time (EST). The customary presence of commercial and recreational traffic, and the nature of the event creates an extra or unusual hazard on the navigable waters during the event. These proposed regulations are necessary to provide for the safety of life on the navigable waters during the event.

DATE: Comments must be received on or before October 28, 1996.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to operations office at the same address between 7:30 a.m. and 3:30 p.m. (EST), Monday through Friday, except federal holidays. The telephone number is (803) 724–7621.

Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: ENS M. J. DaPonte, Project Officer, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify the notice (CGD07–96–048) and the specific section of this proposal to which their comments apply, and give reasons for each comment. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Discussion of Proposed Regulations

The proposed regulations are needed to provide for the safety of life during the Charleston Christmas Parade of Boats. These regulations are intended to promote safe navigation on the waters of the Ashley, Wando and Cooper Rivers in Charleston Harbor during the boat parade by controlling the traffic entering, exiting, and traveling within the boat parade formation. The anticipated concentration of non-participating and participating vessels within the area poses a safety concern, which is addressed in the proposed special local regulations.

These proposed regulations would not permit the entry or movement of spectator vessels and other non-participating vessel traffic within an area 500 yards ahead of the lead vessel, 100 yards astern of the last vessel, and 50 yards to either side of all vessels participating in the parade of boats between Wando River Terminal buoy 4 (LLNR 2720) at approximate position 32°49.20′N, 079°54.3′W, and City Marina on the Ashley River, from 4:30 to 8:30 p.m. EST, on December 7, 1996, December 13, 1997, December 12, 1998, December 4, 1999 and December 9, 2000. All coordinates referenced use datum: NAD 1983. However, the proposed regulations would permit the movement of non-participating vessels after the termination of the boat parade.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The proposed regulated area encompasses less than six miles of the Ashley, Wando and Cooper Rivers and would be in effect for only 4 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities, because the proposed regulated area encompasses a limited area of less than six miles and would be in effect for only 4 hours on the day of the event.

Collection of Information

The proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994). In accordance with that instruction section 2.B.2.b., this proposed rule has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.721 is added to read as follows:

§ 100.721 Charleston Christmas Parade of Boats, Charleston Harbor, SC

(a) *Regulated Area.* A regulated area includes the area 500 yards ahead of the lead parade vessel, 100 yards astern of the last parade vessel, and 50 yards to either side of all parade vessels along the parade route.

(b) *Parade Route.* The parade route begins from that portion of Charleston

Harbor commencing at Wando River Terminal buoy 4 (Light List Number 2720) at approximate position 32°49.2′N, 079°54.3′W. thence to the upper end of Hog Island Reach at approximate position 32°48.7′N, 079°54.85′W, thence to approximate position 32°48.15′N, 079°54.95′W, below the Cooper River Bridges, thence southeast to approximately two-tenths of a nautical mile north of USS Yorktown at position 32°47.7′N, 079°54.7′W, thence south past the USS Yorktown to approximate position 32°47.2′N, 079°54.7′W, thence west to Custom House Reach at approximate position 32°47.2′N, 079°55.3′W, thence south to 32°45.7′N, 079°55.3′W (approximately one half nautical mile southeast of Battery Point), thence up the Ashley River, and continuing to the finishing point at City Marina (32°46.6′N, 079°57.2′W). All coordinates referenced use datum: NAD 1983.

(c) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, South Carolina.

(d) *Special local regulations.*

(1) Entry into the regulated area by other than authorized parade event participants or official patrol vessels is prohibited, unless otherwise authorized by the Patrol Commander.

(2) After termination of the Charleston Christmas Parade of Boats and departure of parade event participants from the regulated area, all vessels may resume normal operations.

(e) *Effective Dates.* These regulations are effective from 4:30 p.m. to 8:30 p.m. (EST), on December 7, 1996, December 13, 1997, December 12, 1998, December 4, 1999 and December 9, 2000.

Dated: September 4, 1996.

J.D. Hull,

Captain, U.S. Coast Guard Commander, Seventh Coast Guard District Acting.

[FR Doc. 96–24744 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WA51–7124b; FRL–5614–1]

Approval and Promulgation of Implementation Plans and Redesignation of Puget Sound, Washington for Air Quality Planning Purposes: Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Washington through the Washington State Department of Ecology approving the redesignation to attainment and maintenance plan of the Puget Sound area because they meet the maintenance plan and redesignation requirements. EPA also proposes to approve the 1993 baseline emissions inventory of the area. In the final rules section of this Federal Register, the EPA is approving the State of Washington's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final 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 October 28, 1996.

ADDRESSES: Written comments on this action should be addressed to Montel Livingston, 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.

Environmental Protection Agency, Region X, Office of Air Quality, 1200 6th Ave, Seattle, WA, 98101

Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504–7600.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, EPA Region X Office of Air Quality, at (206) 553–6917 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: September 16, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–24530 Filed 9–25–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WT Docket No. 96–198; FCC 96–382]

Wireless Services; Access to Telecommunications Equipment, Customer Premise Equipment, and Telecommunications Services by People With Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: The Commission adopts a *Notice of Inquiry* (*NOI*) in this proceeding as a first step toward implementing provisions of Section 255 of the Communications Act and related sections of the Telecommunications Act of 1996 regarding the accessibility of telecommunications equipment and services. In seeking comment from a broad spectrum of affected parties, the Commission hopes to ensure that persons with disabilities, as well as all other Americans, are given the opportunity to participate fully in, and to enjoy and utilize the benefits of the telecommunications infrastructure that has come to play such a prominent role in the Nation's cultural, educational, social, political, and economic life. The Commission believes that the record that will be established in this proceeding in response to the issues raised in this *NOI* will aid the Architectural and Transportation Barriers Compliance Board (Access Board) in implementing decisions.

DATES: Comments are due on or before October 28, 1996, and reply comments are due on or before November 27, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Stan Wiggins, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310, or David Siehl, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* in WT Docket No. 96–198, FCC 96–382, adopted September 17, 1996, and released September 19, 1996. The complete text of this *NOI* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. An unofficial copy of the full text of this *NOI* may be found on the Internet at www.fcc.gov/wtb/winhome.html.

Synopsis of Notice of Proposed Rule Making/NOI

1. The Commission adopts a *Notice of Inquiry* (*NOI*), the first step towards implementing Section 255 of the Communications Act and related sections of the Telecommunications Act of 1996 (1996 Act), regarding the accessibility of telecommunications equipment and services to persons with disabilities.

2. The Commission describes the requirements of Section 255(b), that a manufacturer of telecommunications equipment or customer premises equipment (CPE) ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by persons with disabilities, if readily achievable. Section 255(c) requires that a provider of telecommunications service shall ensure that the service is are accessible to and usable by persons with disabilities, if readily achievable. If accessibility is not readily achievable either with respect to equipment or services, Section 255(d) requires as an alternative that the equipment or service be compatible with existing peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access, to the extent compatibility is readily achievable. Section 255(a) adopts the definitions of ''disability'' and ''readily achievable'' contained in the Americans with Disabilities Act of 1990 (ADA).

3. The statutory requirements, which became effective upon enactment February 8, 1996, include the requirement in Section 255(d) that guidelines for accessibility of equipment, including CPE, be developed within 18 months of enactment by the Access Board, in conjunction with the Commission. Section 255(f) provides that the Commission shall have exclusive jurisdiction with respect to any complaint filed under this provision.

4. The Commission examines threshold jurisdictional issues and states that Section 255 grants the Commission authority to enforce the provisions of that Section and provides the Commission authority to work in conjunction with the Access Board to develop guidelines for the accessibility of telecommunications equipment and CPE. The *NOI* describes other provisions of the Communications Act, which give the Commission options for enforcing Section 255, including Sections 4(i) (general grant of authority to perform any and all acts ''as may be necessary in the execution of its functions.''); 201 (prescription of rules and regulations for common carriers); and 303 (prescription of services to be rendered by classes of licensed radio stations, and regulations necessary to carry out provisions of the Act). The *NOI* seeks comment on policy reasons for the Commission to exercise various aspects of its authority in order to best effectuate the requirements of Section 255.

5. The Commission seeks comment on whether several definitions in the 1996 Act require further clarification or definition—the terms ''provider of telecommunications service,'' and ''telecommunications equipment,'' and ''customer premises equipment''—and the possible need for clarification of the term ''manufacturer.'' The Commission also seeks comment on definitions incorporated in Section 255 from the Americans with Disabilities Act—''disability'' and ''readily achievable''—and on broader issues raised by the application of ADA terms in the telecommunications sector. For example, the meaning of ''readily achievable'' is continually changing as technology evolves, and the Commission seeks to recognize market and technical developments without constraining innovation.

6. The Commission also seeks comment on cost issues raised by application of the term ''readily achievable,'' including the types and levels of costs incurred to achieve or improve accessibility of existing offerings, the extent to which this experience may serve as a basis for anticipating costs associated with accessibility standards, and the relationship of costs to different types of accessibility standards—technical or performance standards, as well as more process-oriented standards. The *NOI* recognizes that the financial resources of telecommunications entities, the elements of ''readily achievable'' under the ADA, and differing regulatory requirements for foreign and domestic services or equipment also bear on cost issues.

7. The Commission notes that the statutory phrase ''accessible to and usable by'' is itself taken from the ADA statute, and suggests some interpretive difficulties that arise in the context of Section 255. It recognizes that physical access to telecommunications equipment and services is a genuine issue, but believes that Section 255 reaches only those aspects of accessibility to telecommunications that entities subject to the Commission's authority have direct control over. It seeks comment on whether each equipment or service offering must be accessible to persons with varied disabilities, or whether an equipment manufacturer or service provider might satisfy the statute by accommodating persons with disabilities through selected items in its offerings, and how alternative or modular-design approaches should be regarded under the ''readily achievable'' standard.

8. As to the alternative, compatibility requirement, the Commission asks commenters to consider the definition and examples of ''existing peripheral devices'' and ''specialized CPE'' referenced in the statute, and how to determine when such equipment is ''commonly used.'' The Commission also asks commenters to address the relationship of Section 251(a)(2) of the Communications Act, which requires telecommunications carriers ''not to install network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256[,]'' to the accessibility requirement imposed on equipment manufacturers by Section 255.

9. The *NOI* seeks comment on several different approaches to the implementation and enforcement of Section 255 requirements. It first requests comment on how the Commission should carry out its duty to resolve complaints filed under Section 255, and notes that the Commission could: (1) resolve complaints on a case-by-case basis, (2) issue voluntary guidelines as a policy statement to help service providers understand their obligations under Section 255, or (3) promulgate rules to assist in resolving complaints. Under each approach to complaints, the Commission seeks comment on the possible exemption of small businesses or other entities, and the relationship between obligations of service providers and equipment manufacturers, including the possibility of complaints when equipment guidelines are in place but no service guidelines have been adopted.

10. The *NOI* asks commenters to consider several aspects of the Commission's relationship with the Access Board. Should the Commission refer the record from this proceeding, and comment on the Board's guidelines, or adopt the Board's guidelines as Commission rules after appropriate proceedings? And, if the Commission adopts separate guidelines, policy statements, or rules with regard to complaints, should they apply to equipment manufacturers as well as service providers? Generally, the Commission seeks comment on the most appropriate way to provide guidance on the inter-related service and equipment issues.

11. The *NOI* considers procedural aspects of the complaint process. It asks for general comment on the implications of the Commission's view that Section 255 creates a substantive legal right to file complaints before the Commission, independent of the Section 208 complaint process and other enforcement provisions of the statute. Because Section 255(f) prohibits private rights of action, the Commission seeks comment on the Congressional intent evidenced by reference in the Conference Report to Section 207, which affords individuals the right to file suit in Federal court. The Commission also seeks comment on whether it should establish specific procedural rules for Section 255 complaints, either as to services or equipment, or whether it should adopt the existing complaint process in subpart E of part 1 of the Commission's Rules, 47 CFR §§ 1.711 through .735. Should those rules be applied on an interim basis, while the Access Board develops equipment guidelines, or should specific interim rules be applied? The Commission requests proposals for interim rules, if commenters consider them advisable, and seeks comment whether the Commission should provide additional interim guidance regarding complaints.

12. Finally, the *NOI* seeks comment on how statutory responsibility should be apportioned between equipment manufacturers and service providers, and how joint enforcement action may affect determination of what is readily achievable compared to separate review of each entity's conduct. The Commission also asks how specific determinations of accountability should be made when both service and equipment providers are contributing to an accessibility problem, and whether and how such entities may both be held responsible for implementing remedial steps as well as fines or other penalties. Similarly, the Commission seeks comment on whether, and in what circumstances, a defense to an accessibility complaint directed at a service provider might be that accessibility could be, or could have been, achieved through equipment design, as well as the converse situation, in which an equipment provider might defend against a complaint by contending that accommodation could be, or could have been, accomplished by the service provider.

Procedural Matters

13. Pursuant to applicable procedures set forth in §§ 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 October 28, 1996, and reply comments on or before November 27, 1996. To file formally in this proceeding, you must file an original plus four copies of all comments and reply comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine 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 (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

Ordering Clauses

14. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4, 201–205. 251(a)(2), 255, 303, and 403 of the Communications Act of 1934, 47 U.S.C. 151, 154, 201, 205, 215, 251(a)(2), 255, 303, and 403, a Notice of Inquiry IS HEREBY ADOPTED.

15. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN of the inquiry described above, and that COMMENT IS SOUGHT on the questions raised in the inquiry.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 96–24690 Filed 9–25–96; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 61, No. 188
Thursday, September 26, 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

Rural Utilities Service

Interest Rate for FY 1997 RUS Cost-of-Money Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) is announcing that interest rates on Cost-of-Money loans approved during fiscal year 1997 may exceed the 7 percent per year statutory limit.

FOR FURTHER INFORMATION CONTACT:

Robert Peters, Assistant Administrator—Telecommunications Program, Rural Utilities Service, STOP 1590, room 4056, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–1590. Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: Notice is given that under Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1997 (Appropriations Act of 1997) (Pub. L. 104–180, August 6, 1996), the interest rate for loans approved during fiscal year 1997 may exceed the 7 percent per year ceiling established by Public Law 103–129 (see 7 CFR 1735.31(c)(1)). The Appropriations Act of 1997 removes the 7 percent interest rate ceiling for loans made during fiscal year 1997 only (October 1, 1996 to September 30, 1997).

Dated: September 20, 1996.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 96–24737 Filed 9–25–96; 8:45 am]

BILLING CODE 3410–15–M

ARMS CONTROL AND DISARMAMENT AGENCY

Announcement of the Hubert H. Humphrey Fellowship Competition for the 1997–98 Academic Year

The United States Arms Control and Disarmament Agency will conduct a competition in 1997 for one-year Hubert H. Humphrey Fellowships in support of unclassified doctoral dissertation research in arms control, nonproliferation and disarmament studies. Law candidates for the Juris Doctor are also eligible if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for the Ph.D. candidates will be $8,000 plus reimbursement for tuition and fees up to a maximum of $6,000. Stipends and tuition for law candidates will be prorated according to the number of credits given for the research paper.

Qualified applicants must be citizens of the United States and degree candidates at a U.S. college or university. Candidates are asked to submit an application, a five-page thesis abstract with bibliography, three letters of reference, transcripts of all graduate course work, and university approval of the dissertation topic. The application deadline for the 1997 competition is March 15, 1997. Awards will be for a twelve month period beginning in September 1997 on January 1998.

For information and application materials please write to: Hubert H. Humphrey Doctoral Fellowship Program, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451; or call (202) 647–8090.

Dated: September 10, 1996.

Ambassador James Sweeney,

Chief Science Advisor.

[FR Doc. 96–24684 Filed 9–25–96; 8:45 am]

BILLING CODE 6820–32–M

Announcement of the William C. Foster Fellows Visiting Scholars Program for the 1997–98 Academic Year

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition to select visiting scholars to serve at the Agency during the 1997–98 academic year. University faculty from a variety of fields are sought, including those in the physical sciences, engineering, international relations, economics, chemistry, biology, mathematics and computer science.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568), as amended, provides that ''a program for visiting scholars in the field of arms control, nonproliferation,and disarmament shall be established by the Director in order to obtain the services of scholars from the faculties of recognized institutions of higher learning.'' The law states that ''the purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control, nonproliferation, and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer * * *.'' Scholars are known as William C. Foster Fellows, in honor of the first Director of ACDA,who served from 1961 to 1969.

Assignments are available in the Bureaus of Strategic and Eurasian Affairs (SEA); Multilateral Affairs (MA); Intelligence, Verification and Information Management (IVI); and Nonproliferation Policy and Regional Arms Control (NP). Visiting scholars participate in a wide range of Agency activities, such as performing arms control research and analyses, evaluating data relating to compliance with treaties in force, supporting interagency development of arms control policy, and taking part in international arms control and disarmament negotiations.

Visiting scholars will be detailed to ACDA by their universities for one full year. The institutions will be compensated for the scholars' salaries and benefits in accordance with the Intergovernmental Personnel Act of 1970 and within Agency budgetary limitations. Each Fellow will receive reimbursement for travel to and from the Washington, DC area for his/her one year assignment and either a per diem allowance during the one year detail or relocation costs.

Qualified candidates must be citizens of the United States, on the faculty of a recognized U.S. institution of higher learning, and tenured or on a tenure track. ACDA is an equal opportunity employer. Selections will be made without regard to race, color, religion,

sex, national origin, age, or physical handicap that does not interfere with performance of duties. Prior to appointment, all candidates will be subject to a full-field background investigation for a Top Secret security clearance, as required by Section 45 of the Arms Control and Disarmament Act, as amended. Visiting scholars will be subject to applicable Federal Conflict of interest laws and standards of conduct.

To apply, candidates must submit a letter outlining their interests and qualifications, a curriculum vitae, copies of two publications, and optional supporting material such as letters of reference. Applicants will be evaluated based on their potential to provide expertise or to perform services critical to ACDA's mission. The application deadline for assignments for the 1997–98 academic year is January 31, 1997, subject to extension at the Agency's discretion. ACDA expects to announce tentative selections in June or July 1997.

For an information brochure, please write to: Foster Fellows Program, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451; or call (202) 647–8090.

Dated: September 10, 1996.

Ambassador James Sweeney,

Chief Science Advisor.

[FR Doc. 96–24683 Filed 9–25–96; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held November 25, 1996, 9:30 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Subcommittee provides advice on matters pertinent to those portions of the Export Administrative Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1995, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: September 20, 1996.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 96–24655 Filed 9–25–96; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–469–805]

Stainless Steel Bar From Spain; Termination of Antidumping Duty Administrative Review

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

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request from Roldan, S.A. (Roldan), the Department of Commerce (the Department) published in the Federal Register (April 25, 1996, 60 FR 64413) the notice of initiation of administrative review of the antidumping duty order on stainless steel bar (SSB) from Spain, for the period of August 4, 1994 through February 29, 1996. We received a request for withdrawal of this review from Roldan on June 18, 1996. Because this request was timely submitted and because no other interested parties requested a review of this company, we are terminating this review. Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed after January 1, 1995.

EFFECTIVE DATE: September 26, 1996.

FOR FURTHER INFORMATION CONTACT: Sal Tauhidi or Wendy Frankel, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4851 or (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1996, Roldan requested that the Department conduct an administrative review of the antidumping order on SSB from Spain for the period August 4, 1994 through February 29, 1996. On April 25, 1996, in accordance with 19 CFR 353.22(c), we initiated an administrative review of this order. On June 18, 1996, we received a timely withdrawal of request for review from Roldan.

Pursuant to 19 CFR 353.22(a)(5) of the Department's regulations, the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review.

Because Roldan's request for termination was submitted within the 90 day time limit and there were no requests for review from other interested parties, we are terminating this review.

This notice is published in accordance with 19 CFR 353.22(a)(5).

Dated: September 18, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–24738 Filed 9–25–96; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 84–A0005.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Farmers' Rice Cooperative(''Farmers' '') on May 10, 1984. Notice of issuance of the Certificate was published in the Federal Register on May 17, 1984 (49 FR 20890).

EFFECTIVE DATE: June 11, 1996.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Ch. III Part 325 (1995).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

An interim Certificate of Review was issued to Farmers' Rice Cooperative (''FRC'') on March 12, 1984 (49 FR 9762, March 15, 1984). The final Certificate was issued on May 10, 1984 (49 FR 20890, May 17, 1984) and an amendment to the Certificate was issued on August 30, 1985 (50 FR 36126, September 5, 1985).

Farmers's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): American Rice, Inc. of Houston, Texas (Controlling Entity: ERLY Industries Inc. of Los Angeles, California) and California Pacific Rice Milling, Ltd. of Arbuckle, California.

2. Delete the following companies as ''Members'': Comet Rice of California, Inc.; Pacific International Rice Mills, Inc.; and C. E. Grosjean Milling Company.

3. Amend the ''Export Trade Activities and Methods of Operation'', to read as follows:

(1) Farmers' Rice Cooperative may, on a transaction-by-transaction basis, join with any or all of the Members to bid for the sale of, and to sell, California rice and rice products to the Export Markets.

(2) For each bid or sale, Farmers' Rice Cooperative and/or one or more of the Members may negotiate and agree on the terms of their participation in the bid or sale, and, in order to negotiate those terms, may exchange only the following information:

(a) information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale or United States business plans, strategies or methods of Farmers' Rice Cooperative or any other Member) that is already generally available to the trade or public,

(b) information (such as selling strategies, prices, projected demand, and customary terms of sale) solely about the Export Markets, and

(c) information on expenses specific to exporting to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing)

(3) For each bid or sale, the amount of California rice or rice products Farmers' Rice Cooperative and/or one or more of the Members will commit to the sale and the price to be bid may be determined in the following manner:

(a) Farmers' Rice Cooperative and the participating Member or Members will, without prior consultation among each other, provide the price and quantity information to an independent third-party.

(b) The independent third-party will independently incorporate such information into the joint bid or sales arrangement. For the purposes of this provision, ''independently'' means that the independent third-party will not disclose the information obtained from Farmers' Rice Cooperative and/or one Member to another Member and/or Farmers' Rice Cooperative.

(c) Neither Farmers' Rice Cooperative nor any participating Member shall intentionally obtain the information described in 3(a) above from the independent third-party.

(d) For purposes of this provision, ''independent third-party'' shall mean any individual, partnership, corporation (public or non-public) or any other entity (hereinafter collectively referred to as ''entity''), or any representative thereof, which is not an officer, director, principal, affiliate, subsidiary or employee of any entity that mills or grows California rice and/or rice products.

(4) Farmers' Rice Cooperative may negotiate with the Members to provide, and may provide, the storage, shipping and delivery, and associated services needed for each sale, including but not limited to export brokerage, processing of export orders, inspection and quality control, transportation, freight forwarding and trade documentation, insurance, billing of foreign buyers and collection (letters of credit and other financial instruments).

(5) Farmers' Rice Cooperative and/or one or more of the Members may, with respect to each bid, refuse to include in their bid any other company having rice and rice products for export.

(6) Farmers' Rice Cooperative may solicit Non-member Suppliers to sell their Products through the certified activities of Farmers' Rice Cooperative and its Members.

(7) Farmers' Rice Cooperative and/or one of the Members may purchase products from Non-member Suppliers to fulfill specific sales obligations, provided that Farmers' Rice Cooperative and/or the Members shall make purchases only on a transaction-by-transaction basis and when Members are unable to supply, in a timely manner, the requisite Products at a price competitive under the circumstances.

4. Under the heading ''Terms and Conditions of Certificate'', delete section (a) and replace sections (b) and (c) with the following:

(1) Except as expressly authorized in Export Trade Activity and Methods of Operation, paragraphs (2) and (3), in engaging in Export Trade Activities and Methods of Operation, neither Farmers' Rice Cooperative nor any Member shall intentionally disclose, directly or indirectly, to each other or to any Non-member Supplier (including parent companies, subsidiaries, or other entities related to any Member not named as a Member) any information that is about its or any other Member's or Non-member Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g. price, time required to fill an order, etc.) of an actual or potential *bona fide* export sale and the disclosure is limited to the prospective purchaser.

(2) Each Member shall determine independently of other Members the quantity of Products the Member will make available for export. Neither Farmers' Rice Cooperative nor any Member may solicit from any Member specific quantities for export or require any Member to export any minimum quantity of products.

(3) Farmers' Rice Cooperative and/or the Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce

believes that the information or documents are required to determine that the Export Trade Activities or Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

5. Delete the heading ''Members'' and its accompanying text.

6. Add a new heading, ''Definitions'', with the following text:

(1) Members, within the meaning of Section 325.2(l) of the Regulations, means American Rice, Inc. and California Pacific Rice Milling, Ltd.. Firms may withdraw from Member status by notifying the Department of Commerce in writing.

(2) Non-member Supplier shall mean any producer (including farmers and farm cooperatives), miller, or broker of California rice and rice products, apart from Farmers' Rice Cooperative, American Rice, Inc., and California Pacific Rice Milling, Ltd..

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: September 19, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–24516 Filed 9–25–96; 8:45 am]

BILLING CODE 3510–DR–U

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, Application No. 88–6A016.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Wood Machinery Manufacturers of America (''WMMA'') on February 3, 1989. Notice of issuance of the Certificate was published in the Federal Register on February 9, 1989 (54 FR 6312).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 88–00016, was issued to WMMA on February 3, 1989 (54 FR 6312, February 9, 1989) and previously amended on June 22, 1990 (55 FR 27292, July 2, 1990); August 20, 1991 (56 FR 42596, August 28, 1991); December 13, 1993 (58 FR 66344, December 20, 1993); and August 23, 1994 (59 FR 44408, August 29, 1994).

WMMA's Export Trade Certificate of Review has been amended to:

1. Add the following company as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Wood-Mizer Products, Indianapolis, IN;

2. Delete the following companies as ''Members'' of the Certificate: 3K Machinery, Co., Inc., New Albany, IN; Abrasive Engineering and Manufacturing, Olathe, KS; Crouch Machinery, Inc., Pinehurst, NC; Diehl Machines, Wabash, IN; Fletcher Machine Co., Lexington, NC; Ken Hazledine Machine Company, Inc., Terre Haute, IN; Kimwood Corporation, Cottage Grove, OR; Ligna Machinery, Inc., Burlington, NC; Medalist Automated Machinery (dba Wisconsin Automated), Oskosh, WI; Mid-Oregon Industries, Bend, OR; Northfield Foundry and Machine Company, Northfield, MN; Oliver Machinery Company, Grand Rapids, MI; Onsrud Cutter, Inc., Libertyville, IL; Porter-Cable Corporation, Jackson, TN; The Original Saw Co., Britt, IA; and The Wallace Company, Pasadena, CA;

3. Change the name of the current Member ''VETS, Inc.'' to the new name ''Viking Engineering''.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: September, 20 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–24723 Filed 9–25–96; 8:45 am]

BILLING CODE 3510–DR–U

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of membership of NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C., 4314(c)(4), NOAA announces the appointment of persons to serve as members of the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of these members to the NOAA PRB will be for periods of 24 months.

EFFECTIVE DATE: The effective date of service of appointees to the NOAA Performance Review Board is October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Monica M.P. Matthews, Senior Executive Service Program Manager, Human Resources Management Office, Office of Finance and Administration, NOAA, 1315 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0534 (ext. 204).

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the NOAA PRB (*NOAA officials unless otherwise identified*) are set forth below:

Daniel J. Basta: Chief, Strategic Environmental Assessments Division, National Ocean Service

Karl E. Bell: Deputy Director of Administration, (National Institute of Standards and Technology)

Margaret A. Davidson: Director, NOAA Coastal Services Center, National Ocean Service

David L. Evans: Senior Scientist, National Ocean Service

Susan B. Fruchter: Counselor to the Under Secretary, Office of Policy and Strategic Planning
Lois J. Gajdys: Chief, Management and Budget, National Weather Service
Margaret F. Hayes: Assistant General Counsel for Fisheries, Office of General Counsel
Walter J. Hussey: Director, Office of Systems Development National Environmental Satellite, Data and Information Service
Eugenia Kalnay: Chief, Development Division, National Weather Service
Martha R. Lumpkin: Director, Central Center, Office of Finance and Administration
Gary C. Matlock: Program Management Officer, National Marine Fisheries Service
Ronald D. McPherson: Director, National Centers for Environmental Prediction, National Weather Service
George P. Murphy: Chief, Automation Division, National Weather Service
Charles Pautler: Chief, Economics, Statistical Methods and Programming Division, (National Institute of Standards and Technology)
P. Krishna Rao: Director, Office of Research and Applications, National Environmental Satellite, Data and Information Service
James L. Rassmussen: Director, Environmental Research Laboratories, Office of Oceanic and Atmospheric Research
Kelly C. Sandy: Director, Western Center, Office of Finance and Administration
Hilda Diaz-Soltero: Regional Administrator, Southwest Region, National Marine Fisheries Service
Alan R. Thomas: Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research
John C. Williams: Director, Office of Technology Commercialization (National Institute of Standards and Technology)
Gregory W. Withee: Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service
Helen M. Wood: Director, Office of Satellite Data Processing and Distribution, National Environmental Satellite, Data and Information Service
Sally J. Yozell: Deputy Assistant Secretary, Office of the Assistant Secretary
Susan F. Zevin: Deputy Assistant Administrator for Operations, National Weather Service

Dated: September 20, 1996.

D. James Baker,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 96–24672 Filed 9–25–96; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. 96–77]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–77, with attached transmittal and policy justification pages.

Dated: September 20, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

16 SEP 1996

In reply refer to:
I-04267/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-77 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $80 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 96-77

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$67 million
Other	$13 million
TOTAL	$80 million

(iii) Description of Articles or Services Offered:
Two hundred seventy-one AIM-7M SPARROW air-to-air missiles (including training missiles), missile containers, support and test equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering and logistics personnel services and other related elements of program support.

(iv) Military Department: Navy (ABS)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 16 SEP 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - AIM-7M SPARROW Missiles

The Government of Egypt has requested the purchase of 271 AIM-7M SPARROW air-to-air missiles (including training missiles), missile containers, support and test equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering and logistics personnel services and other related elements of program support. The estimated cost is $80 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

These missiles will augment the current Egyptian AIM-7 missile inventory and provide added defensive capability for the F-16 aircraft in the air-to-air role. Egypt will have no difficulty absorbing these additional missiles into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be either the Raytheon Corporation, Lowell, Massachusetts or Hughes Industries, Tucson, Arizona, pending the outcome of a competitive procurement. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional US Government personnel in Egypt; however it is estimated that approximately two years of contractor in-country technical support will be required following delivery of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–24636 Filed 9–25–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 96–78]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–78, with attached transmittal and policy justification pages.

Dated: September 20, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

16 SEP 1996

In reply refer to:
I-04276/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-78, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $80 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 96-78

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$80 million
TOTAL	$80 million

(iii) Description of Articles or Services Offered:
Two Gulfstream IV-SP aircraft, installation of avionics/electronics equipment, two spare engines, special test and support equipment, spare and repair parts, the modification/upgrade of support equipment in-country, personnel training and training equipment, publications and technical data, maintenance of repairable material, U.S. Government and contractor engineering and logistics services, aircraft ferry services, and other related elements of program support.

(iv) Military Department: Air Force (STQ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None

(vii) Date Report Delivered to Congress: 16 SEP 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - Gulfstream IV-SP Aircraft

The Government of Egypt has requested the purchase of two Gulfstream IV-SP aircraft, installation of avionics/electronics equipment, two spare engines, special test and support equipment, spare and repair parts, the modification/upgrade of support equipment in-country, personnel training and training equipment, publications and technical data, maintenance of repairable material, U.S. Government and contractor engineering and logistics services, aircraft ferry services, and other related elements of program support. The estimated cost is $80 million ($10 million from Egyptian National Funds for VIP package and $70 million from foreign military financing (FMF) for the basic Gulfstream aircraft program).

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt will use these aircraft to augment and enhance its existing airlift capability, including the movement of its National Command Authority. Egypt currently operates four Gulfstream aircraft and will have no difficulty absorbing these additional aircraft.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Gulfstream Aerospace Corporation, Savannah, Georgia. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel to Egypt; however, it is estimated that two contractor representatives will be required in-country following delivery and initial operations of the new aircraft.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–24637 Filed 9–25–96; 8:45 am]
BILLING CODE 5000–04–C

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Policy Board Committee will meet in closed sessions from 0800 until 2100, October 10, 1996 and 0800 until 1200, October 11, 1996 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: September 20, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–24639 Filed 9–25–96; 8:45 am]

BILLING CODE 5000–04–M

U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense, USSTRATCOM.

ACTION: Notice.

SUMMARY: The Strategic Advisory Group (SAG) will meet in closed session on October 24 and 25, 1996. The mission of the SAG is to provide timely advice on scientific, technical, and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic warplans. At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12958, April 17, 1995. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense. In accordance with section 10(d) of the Federal Advisory Committee Act, (5 U.S.C. App 2), it has been determined that this SAG meeting concerns matters listed in 5 U.S.C. 552b(c) and that, accordingly, this meeting will be closed to the public.

Dated: September 20, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–24638 Filed 9–25–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR95–9–000]

Colonial Pipeline Company; Notice of Informal Settlement Conference

September 20, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, October 1, 1996, at 9:30 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Donald Williams at (202) 208–0743 or J. Carmen Gastilo at (202) 208–2182.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24666 Filed 9–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–796–000]

Manta Ray Offshore Gathering Company, L.L.C.; Notice of Petition for Declaratory Order

September 20, 1996.

Take notice that on September 17, 1996, Manta Ray Offshore Gathering Company, L.L.C. (Applicant), 600 Travis, 7200 Texas Commerce Tower, Houston, Texas 77002, filed a petition under Rule 207 of the Commission's Rules of Practice and Procedure, for an order declaring a new lateral addition to its gathering system exempt from the Commission's jurisdiction under Section 1(b), all as more fully set forth in the petition, which is on file with the Commission and open to public inspection.

Applicant states that the proposed lateral will consist of 47 miles of 24-inch line. The lateral will run from the Bullwinkle platform in Green Canyon Block 65, to its system end at the Ship Shoal Block 207 platform. Throughput capacity of the new lateral will be 300,000 Mcf per day.

Applicant states that the proposed lateral is needed to accommodate deep water reserves being dedicated to it in the Green Canyon area and to access interstate capacity. Applicant states further, that it determined that it needs new capacity in this area and that the lateral will allow maximum use of its existing system.

Accordingly, any person desiring to be heard or to make any protest with reference to said petition should on or before September 27, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 or 385.211. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24667 Filed 9–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–338–000]

Texas Eastern Transmission Corporation; Notice of Technical Conference

September 20, 1996.

In the Commission's order issued September 11, 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 Wednesday October 2, 1996, at 10:00 a.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. 96–24665 Filed 9–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–95–000, et al.]

Antigua Energy Operators Ltd., et al.; Electric Rate and Corporate Regulation Filings

September 19, 1996.

Take notice that the following filings have been made with the Commission:

1. Antigua Energy Operators Ltd.

[Docket No. EG96–95–000]

Antigua Energy Operators Ltd. (''Antigua Energy'') (c/o Lee M. Goodwin, Reid & Priest, 701 Pennsylvania Avenue, N.W., Washington, D.C. 20004) filed with the Federal Energy Regulatory Commission an application on September 16, 1996 for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Antigua Energy is a company formed under the laws of Antigua to operate the eligible facility. Antigua Energy will operate an 11 MW diesel electric generating facility located in Crabs Peninsula, Antigua.

Comment date: October 11, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Golden Spread Electric Cooperative v. Southwestern Public Service Company

[Docket No. EL96–71–000]

Take notice that on August 21, 1996, Golden Spread tendered for filing an amendment to its complaint filed on August 9, 1996 in this docket.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall be due on or before October 9, 1996.

3. Ruffin Energy Services, Inc., Ruffin Energy Services, Inc., Enpower, Inc., Texaco Natural Gas Inc., Texaco Natural Gas Inc., Energy Resources Management Corp., Energy Resources Management Corp.

[Docket No. ER95–1047–003; ER95–1047–004; ER95–1752–001; ER95–1787–002; ER95–1787–003; ER96–358–001; ER96–358–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On August 19, 1996, Ruffin Energy Services, Inc. filed certain information as required by the Commission's July 7, 1995, order in Docket No. ER95–1047–000.

On August 19, 1996, Ruffin Energy Services, Inc. filed certain information as required by the Commission's July 7, 1995, order in Docket No. ER95–1047–000.

On August 26, 1996, Enpower, Inc. filed certain information as required by the Commission's October 23, 1995, order in Docket No. ER95–1752–000.

On September 12, 1996, Texaco Natural Gas Inc. filed certain information as required by the Commission's January 25, 1996, order in Docket No. ER95–1787–000.

On September 12, 1996, Texaco Natural Gas Inc. filed certain information as required by the Commission's January 25, 1996, order in Docket No. ER95–1787–000.

On September 3, 1996, Energy Resources Management Corp. filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–358–000.

On September 3, 1996, Energy Resources Management Corp. filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–358–000.

4. Southern Company Services, Inc.

[Docket No. ER96–1203–000]

Take notice that on August 28, 1996, Entergy Power, Inc. submitted an amendment in the above-referenced docket.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER96–2269–000]

Take notice that on August 27, 1996, Entergy Services, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy

[Docket No. ER96–2988–000]

Take notice that on September 12, 1996, Cinergy tendered for filing a revised service agreement between Cinergy, Consumers Power Company and The Detroit Edison Company under Cinergy's Non-firm Power Sales Standard Tariff per FERC Docket No. ER96–2333–000.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER96–3004–000]

Take notice that on September 16, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Montana Power Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC asks that the Agreement becomes effective on the date of execution by WPSC.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric Company

[Docket No. ER96–3006–000]

Take notice that on September 16, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, 1st Revised Volume No. 2, executed Service Agreements with Edison Source and Williams Energy Service Company.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreements to become effective September 1, 1996.

A copy of this filing was caused to be served upon Edison Source and Williams Energy Services Company.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Minnesota Power & Light Company

[Docket No. ER96–3007–000]

Take notice that on September 16, 1996, Minnesota Power & Light Company (MP), tendered for filing Supplement No. 4 to its Electric Service Agreement with the City of Buhl, Minnesota (Buhl). MP requests an effective date of sixty days from the filing date. MP states that the amendment extends the term of the Agreement to December 31, 2010.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company

[Docket No. ER96–3008–000]

Take notice that on September 16, 1996, Louisville Gas and Electric

Company (LG&E), tendered for filing a copy of a Service Agreement between LG&E and SCANA Energy Marketing, Inc. under Rate Schedule GSS—Generation Sales Service.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER96–3009–000]

Take notice that on September 16, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a service agreement between LG&E and Entergy Services, Inc. under Rate Schedule GSS—Generation Sales Service.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER96–3010–000]

Take notice that on September 16, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Purchase and Sales Agreement between LG&E and Williams Energy Services Company under Rate Schedule GSS—Generation Sales Service.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER96–3011–000]

Take notice that on September 16, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to AIG Trading Corporation under the NU System Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to AIG Trading Corporation.

NUSCO requests that the Service Agreement become effective September 13, 1996.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER96–3012–000]

Take notice that on September 16, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to Federal Energy Sales, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to Federal Energy Sales, Inc.

NUSCO requests that the Service Agreement become effective September 13, 1996.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Incorporated County of Los Alamos

[Docket No. OA96–230–000]

Take notice that on September 16, 1996, the Incorporated county of Los Alamos, New Mexico tendered for filing pursuant to 18 CFR 35.28(e)(2) a Request for Waiver of Reciprocity Requirement under FERC Order No. 888, including waiver of any obligation to establish and maintain an OASIS and to separate its merchant and transmission personnel pursuant to FERC Order No. 889.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. EcoElectrica, L.P.

[Docket No. QF95–328–001]

On September 18, 1996, EcoElectrica, L.P. supplemented its May 28, 1996, filing in this docket. No determination has been made that the submittal constitutes a complete filing.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24719 Filed 9–25–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RM95–9–000]

Order Granting Request for Extension of Time for Commencing Phase 1 Oasis Operations and Complying with Standards of Conduct

Issued September 20, 1996.

Open Access Same-time Information System (OASIS) and Standards of Conduct.

Introduction

As discussed below, we will grant a request from the How Working Group for a two-step extension of time of the implementation schedule for compliance with the Phase 1 OASIS requirements and Standards of Conduct (from November 1, 1996), with OASIS operations to begin on a test basis starting on December 2, 1996, and with full commercial operations and compliance with the Standards of Conduct to begin by January 3, 1997.

Background

In Order No. 889, we promulgated regulations that require transmission providers to establish and operate OASIS sites and to comply with Standards of Conduct. The regulations require, among other matters, the posting on an OASIS of transmission-related information and the separation of transmission operation functions and generation marketing functions.[1] Order No. 889 requires OASIS sites, in conformance with the regulations, to be in operation by November 1, 1996.

On September 9, 1996, the How Working Group,[2] on behalf of the electric industry, filed a letter presenting the above-mentioned request for a two-month, two-step time extension to comply with the Commission's requirements established in Order No. 889. The How Working Group's letter delineates the industry's progress in developing Phase 1 OASIS nodes and in meeting the Commission's November 1, 1996 deadline for compliance. The letter concludes that, despite best efforts, industry members require additional time to meet the Commission's Phase 1 OASIS requirements.[3]

On September 10, 1996, Siemens Power Systems Control (Siemens) and

[1] *See* Open Access Same-Time Information System and Standards of Conduct, Final Rule, Order No. 889, FERC Stats. & Regs. ¶ 31,037, 61 Fed. Reg. 21,737 (1996), *reh'g pending.*

[2] The How Working Group is an industry-led group, with the participation of diverse industry and customer representatives, working to reach consensus on OASIS-related issues.

[3] We issued a notice given interested persons an opportunity (until September 16, 1996) to file comments in response to the How Working Group's letter.

ISSC, Inc. (ISSC) filed a letter stating that they expect to be ready to meet and/or exceed the Commission's Phase 1 OASIS requirements by November 1, 1996. They explain that they do not believe that any further delay in the OASIS compliance schedule is required or would be beneficial to the electric industry at large or to ''solution providers'' such as themselves.

On September 13, 1996, Public Service Company of New Mexico filed an answer in support of the How Working Group's request for a time extension. On September 16, 1996, Electric Clearinghouse Inc. (Electric Clearinghouse) and Enron Power Marketing, Inc. (Enron) filed comments supporting the request of the How Working Group for a two-step time extension, so long as the Commission does not delay implementation of the Standards of Conduct that, they claim, are not dependent on implementation of the OASIS for compliance.

On that same date, comments supporting the How Working Group's request for a time extension were filed by Centerior Energy Corporation, El Paso Electric Company, Jacksonville Electric Authority, Public Service Company of Colorado, Salt River Project Agricultural Improvement and Power District, and Tuscon Electric Power Company. These comments describe problems that have arisen in meeting the Commission's November 1, 1996 deadline and urge that we grant the How Working Group's request. Additionally, on September 17, 1996, a group of eight utilities [4] filed an answer in support of the How Working Group's request. This group offers the Commission's September 10, 1996 order issuing a revised Standards and Protocols document [5] as a reason why a short time extension is appropriate.

Also on September 17, 1996, comments were filed by Power System Engineering Inc. (PSE), a participant in the How Working Group. PSE supports a staged implementation schedule, as advanced by the How Working Group, but advocates additional stages, with operational OASIS test nodes publicly available on the Internet for all regions on November 1, 1996, followed by the incremental posting of transmission paths on successive dates, leading to full commercial implementation by January 3, 1997.[6]

Discussion

After a review of the How Working Group's request and related comments, we agree that the How Working Group's suggested two-step modification to the timetable contained in Order No. 889 is appropriate. At the time that we issued Order No. 889, we did so with the knowledge that the schedule contained therein, for the development and implementation of a new information system, was ambitious. In our view, the How Working Group, and the industry at large, appear to be making best efforts to comply with these new requirements, but need additional time to complete their work.

While we do not believe that a longer extension would be warranted, we will grant the How Working Group's request for a two-step, two-month extension, with test operations to begin by December 2, 1996, and with full commercial operations to begin by January 3, 1997. We will not adopt the suggested alternative approach advocate by PSE, as it appears both vague and too complicated.

While we are pleased to learn that Siemens/ISSC will be ready to meet the Commission's OASIS requirements by November 1, 1996, we are persuaded by the How Working Group's letter and the responses to that letter that other affected entities may need more time to complete their preparations, and we are making our decision on this basis.

Under the How Working Group's proposal, all required OASIS nodes will be operational and available for public access on or before December 2, 1996. After that time, users will be able to access and download all required OASIS information and will be able to submit electronic forms and upload data, as required by the OASIS Standards and Protocols. However, all user interactions initially will be on a test basis only, with no transmission service reservations being executed on the OASIS and no OASIS transactions being binding on any party. This testing period will allow providers and users to develop and test their capabilities to use the system. We find this proposal acceptable and approve it. Our time extension for commercial operations until January 3, 1997 is based on the availability of the OASIS on a test basis, as outlined by the How Working Group's proposal, starting on December 2, 1996.

Notwithstanding the objections of Electric Clearinghouse and Enron, we also will extend the compliance date for the Standards of Conduct until January 3, 1997 because OASIS implementation is essential to compliance with the required separation for functions. In light of this extension of time, transmission providers need not comply with section 37.4(c) of our regulations, *Maintenance of Written Procedures*, until January 3, 1997, at which time they must file written procedures detailing their actions to implement the Standards of Conduct.

The Commission orders: The request of the How Working Group for a two-month, two-step extension of time before transmission providers are required to commence full commercial Phase 1 OASIS operations and comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–24718 Filed 9–25–96; 8:45 am]

BILLING CODE 6717–01–M

[4] This group is comprised of Associated Electric Cooperative, Inc., Basin Electric Power Cooperative, Boston Edison Company, Central Vermont Public Service Corporation, Montaup Electric Company, Vermont Electric Power Company, Virginia Electric and Power Company, and Wisconsin Public Service Corporation.

[5] *See* Open Access Same-Time Information System and Standards of Conduct, Order Issuing Revised OASIS Standards and Protocols Document, 76 FERC ¶ __, ____ (1996).

[6] On this same date, Edison Electric Institutes also filed a letter supporting the How Working Group's request for an extension.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5614–8]

Acid Rain Program: Permit and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permit and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing, as a direct final action, a Phase I Acid Rain permit and permit modifications including nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: The permit and permit modifications issued in this direct final action will be final on November 5, 1996 or 40 days after publication of a similar notice in a local publication, whichever is later, unless significant, adverse comments are received by October 28, 1996 or 30 days after publication of a similar notice in a local publication, whichever is later. If significant, adverse comments are timely received on any permit or permit modification in this direct final action, that permit or permit modification will

be withdrawn through a notice in the Federal Register.

ADDRESSES: Administrative Records. The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for plants in Maryland, Pennsylvania, or West Virginia, EPA Region 3, 841 Chestnut Building, Philadelphia, PA, 19107; for plants in Kentucky, EPA Region 4, 100 Alabama Street, SW, Atlanta, GA, 30303; for plants in Indiana or Ohio, EPA Region 5, 77 West Jackson Blvd., 18th floor, Chicago, IL, 60604; and for plants in Missouri and Nebraska, EPA Region 7, 726 Minnesota Ave., Kansas City, KS, 66101.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to: for plants in Maryland, Pennsylvania, or West Viriginia, EPA Region 3, Air, Radiation, and Toxics Division, Attn: Linda Miller (address above); for plants in Kentucky, EPA Region 4, Air, Pesticides and Toxics Management Division, Attn: Scott Davis (address above); for plants in Indiana and Ohio, EPA Region 5, Air and Radiation Division, Attn: Cecilia Mijares (address above); and for plants in Missouri and Nebraska, EPA Region 7, Air, RCRA, and Toxics Division, Attn: Jon Knodel (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION: For plants in Maryland, Pennsylvania, or West Viriginia, call Linda Miller, (215) 566–2068; for plants in Kentucky, call Scott Davis, (404) 562–9127; for plants in Indiana or Ohio, call Cecilia Mijares, (312) 886–0968; and for plants in Missouri and Nebraska, call Jon Knodel, (913) 551–7622.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. In today's action, EPA is issuing a permit that includes approval of an early election plan for NO_X for the Platte plant in Nebraska. Platte unit 1 will be required to meet an actual annual average emissions rate for NO_X of 0.45 lbs/MMBtu beginning on January 1, 1997 through December 31, 2007, after which it will be required to meet any applicable Phase II emissions limitation for NO_X. The designated representative for Platte is Gary Mader.

Additionally, EPA is approving permit modifications that include approval of emissions averaging plans for NO_X. Under each year in each plan, the actual Btu-weighted annual average emission rate for the units in the plan shall be less than or equal to the Btu-weighted annual average rate for the same units had they each been operated, during the same period of time, in compliance with the applicable emission limitation in 40 CFR 76.5. For each unit in the plan, each plan also includes emission limits and/or annual heat input limits, with which the units must comply if the requirement concerning the Btu-weighted average emission rate for the units as a group is not met. The following plans are being approved:

R P Smith units 9 and 11 in Maryland, Armstrong unit 2 and Mitchell unit 33 in Pennslvania, and Albright units 1, 2, and 3 and Pleasants units 1 and 2 in West Virginia will each comply with four identical NO_X averaging plans, one for each year, 1996–1999. The designated representative is David C. Benson.

Portland units 1 and 2 in Pennsylvania will each comply with a NO_X averaging plan for 1996–1998. The designated representative is Ronald P. Lantzy.

Frank E. Ratts units 1SG1 and 2SG1 in Indiana will each comply with a NO_X averaging plan for 1996–1999. The designated representative is J. Steven Smith.

Cayuga units 1 and 2, R Gallagher units 1, 2, 3, and 4, Gibson units 1, 2, and 3, and Wabash River units 2, 3, 5, and 6 in Indiana, Miami Fort unit 6 and Walter C Beckjord units 5 and 6 in Ohio, and East Bend unit 2 in Kentucky will each comply with a NO_X averaging plan for 1996. The same group of units, with the addition of Gibson unit 4, will each comply with a NO_X averaging plan for 1997–1999. The designated representative is David W. Hoffman.

James River units 3, 4, and 5 and Southwest unit 1 in Missouri will each comply with a NO_X averaging plan for 1996–1999. The designated representative is G. Duane Galloway.

Dated: September 17, 1996.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 96–24483 Filed 9–25–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5614–9]

Acid Rain Program: Draft Permit and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment a draft Phase I Acid Rain permit and permit modifications including nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the permit and permit modifications are also being issued as a direct final action in the notice of permit and permit modifications published elsewhere in today's Federal Register.

DATES: Comments on the draft permit and permit modifications must be received no later than October 28, 1996 or the date of publication of a similar notice in a local newspaper.

ADDRESSES: Administrative Records. The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for plants in Maryland, Pennsylvania, or West Virginia, EPA Region 3, 841 Chestnut Building, Philadelphia, PA, 19107; for plants in Kentucky, EPA Region 4, 100 Alabama Steet, SW, Atlanta, GA, 30303; for plants in Indiana or Ohio, EPA Region 5, 77 West Jackson Blvd., 18th floor, Chicago, IL, 60604; and for plants in Missouri and Nebraska, EPA Region 7, 726 Minnesota Ave., Kansas City, KS, 66101.

Comments. Send comments, requests for public hearings, and requests to receive notices of future actions to: for plants in Maryland, Pennsylvania, or West Viriginia, EPA Region 3, Air, Radiation, and Toxics Division, Attn: Linda Miller (address above); for plants in Kentucky, EPA Region 4, Air, Pesticides and Toxics Management Division, Attn: Scott Davis (address above); for plants in Indiana and Ohio, EPA Region 5, Air and Radiation Division, Attn: Cecilia Mijares (address

above); and for plants in Missouri and Nebraska, EPA Region 7, Air, RCRA, and Toxics Division, Attn: Jon Knodel (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION: For plants in Maryland, Pennsylvania, or West Viriginia, call Linda Miller, (215) 566–2068; for plants in Kentucky, call Scott Davis, (404) 562–9127; for plants in Indiana or Ohio, call Cecilia Mijares, (312) 886–0968; and for plants in Missouri and Nebraska, call Jon Knodel, (913) 551–7622.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to this draft permit and these draft permit modifications and the permit and permit modifications issued as a direct final action in the notice of permit and permit modifications published elsewhere in today's Federal Register will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any permit or permit modification, that permit or permit modification in the notice of permit and permit modifications will be withdrawn and public comment received on that permit or permit modification based on this notice of draft permit and permit modifications will be addressed in a subseqent notice of permit or permit modification. Because the Agency will not institute a second comment period on this notice of draft permit and permit modifications, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the permit and permit modifications, see the information provided in the notice of permit and permit modifications elsewhere in today's Federal Register.

Dated: September 17, 1996.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 96–24484 Filed 9–25–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5613–8]

Public Water System Supervision Program Revision for the State of Illinois

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provision of Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWRs), that the State of Illinois is revising its approved Public Water System Supervision (PWSS) primacy program. The Illinois Environmental Protection Agency (IEPA) has adopted new analytical methods, withdrawn outdated analytical methods, and updated older analytical methods for regulated drinking water contaminants. The IEPA has also removed legally obsolete or redundant rules from its regulations, and has adopted technical amendments to correct typographical errors and clarify regulatory language. These regulations correspond to the NPDWRs promulgated by the U.S. Environmental Protection Agency (U.S. EPA) on June 30, 1994, (59 FR 33860–33864); on July 1, 1994, (59 FR 34320–34325); on June 29, 1995, (60 FR 33926–33932); and, on December 5, 1994, (59 FR 62456–62471), as amended on June 29, 1995, (60 FR 34084–34086). The U.S. EPA has completed its review of Illinois' PWSS primacy program revision.

The U.S. EPA has determined that the Illinois rule revision meets the requirements of the Federal rule. Therefore, the U.S. EPA is proposing to approve the IEPA's rule revision.

All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before October 25, 1996. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

Requests for public hearing should be addressed to: Jennifer Kurtz Crooks (WD–15J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the Federal Register and in newspapers of general circulation in the State of Illinois. A notice will be sent to the person(s) requesting the hearing as well as to the State of Illinois. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator not elect to hold a hearing on his own motion, these determinations shall become effective on Ocotber 25, 1996. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents related to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Illinois Environmental Protection Agency, Division of Public Water Supplies, Bureau of Water, 1340 North Ninth Street, Springfield, Illinois 62794–9276, State Docket Officer: Mr. Roger D. Selburg, (217) 782–1724

Safe Drinking Water Branch, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jennifer Kurtz Crooks, Region 5, Safe Drinking Water Branch at the Chicago address given above, telephone 312/886–0244.

(Section 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Signed this 25th day of July, 1996.

Bertram C. Frey,

Acting Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 96–24589 Filed 9–25–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Renewal Application Designated for Hearing

1. The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following application for renewal of broadcast license:

Licensee	City/state	File No.	MM docket No.
Bluestone Broadcasters, Inc.	Hinton, West Virginia	BR–950531ZF	96–192

(Seeking renewal of the license of WMTD(AM))

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a proceeding upon the following issues:

(a) To determine whether Bluestone Broadcasters, Inc. has the capability and intent to expeditiously resume the broadcast operations of WMTD(AM), consistent with the Commission's Rules.

(b) To determine whether Bluestone Broadcasters, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the dockets section of the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–24629 Filed 9–25–96; 8:45 am]

BILLING CODE 6712–01–P

Licensee Order To Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/state	MM docket No.
Lamoille Broadcasting and Communications Licensee of WSJR(AM).	Madawaska, Maine	96–189

(Regarding the silent status of Station WSJR(AM))

Pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Lamoille Broadcasting and Communications has been directed to show cause why the license for Station WSJR(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Lamoille Broadcasting and Communications has the capability and intent to expeditiously resume broadcast operations of WSJR(AM) consistent with the Commission's Rules.

2. To determine whether Lamoille Broadcasting and Communications has violated Sections 73.561 and/or 73.1750 of the Commissions Rules.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Lamoille Broadcasting and Communications is qualified to be and remain the licensee of Station WSJR(AM).

A copy of the complete Show Cause Order and Hearing Designation Order in this proceeding 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. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–24628 Filed 9–25–96; 8:45 am]

BILLING CODE 6712–01–9

Licensee Order To Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/state	MM docket No.
Lamoille Broadcasting and Communications Licensee of WLVC(AM).	Fort Kent, Maine	96–190

(Regarding the silent status of Station WLVC(AM))

Pursuant to Section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Lamoille Broadcasting and Communications has been directed to show cause why the license for Station WLVC(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Lamoille Broadcasting and Communications has the capability and intent to

expeditiously resume broadcast operations of WLVC(AM) consistent with the Commission's Rules.

2. To determine whether Lamoille Broadcasting and Communications has violated Sections 73.561 and/or 73.1750 of the Commissions Rules.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Lamoille Broadcasting and Communications is qualified to be and remain the licensee of Station WLVC(AM).

A copy of the complete Show Cause Order and Hearing Designation Order in this proceeding 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. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–24631 Filed 9–25–96; 8:45 am]

BILLING CODE 6712–01–P

Licensee Order To Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/state	MM docket No.
Charles B. Moss, Jr., Licensee of KRKE(AM)	Aspen, Colorado	96–191

(Regarding the silent status of Station KRKE(AM))

Pursuant to Section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Charles B. Moss, Jr. has been directed to show cause why the license for Station KRKE(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Charles B. Moss has the capability and intent to expeditiously resume broadcast operations of KRKE(AM) consistent with the Commission's Rules.

2. To determine whether Charles B. Moss has violated Sections 73.561 and/or 73.1750 of the Commissions Rules.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Charles B. Moss is qualified to be and remain the licensee of Station KRKE(AM).

A copy of the complete Show Cause Order and Hearing Designation Order in this proceeding 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. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–24630 Filed 9–25–96; 8:45 am]

BILLING CODE 6712–02–P

[Report No. 2155]

Petitions for Reconsideration and Clarifications of Action in Rulemaking Proceedings

September 23, 1996.

A petition for reconsideration and clarification has been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to this petition must be filed October 11, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Section 302 of the Telecommunications Act of 1996—Open Video Systems. (CS Docket No. 96–46)

Number of Petitions Filed: 1.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 96–24691 Filed 9–25–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, October 1, 1996 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration

Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, October 3, 1996 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Advisory Opinion 1996–38: Michael H. Chanin on behalf of the American Seniors Housing Association

Advisory Opinion 1996–39: Jennifer Shoha on behalf of Heintz for Congress

Advisory Opinion 1996–41: James R. Bayes on behalf of A.H. Belo Corporation

Regulations:

Notice of Proposed Rulemaking: Best Efforts to Obtain Contributor Identifications (11 CFR § 104.7(b))

Independent Expenditures by Party Committees—Initiation of Rulemaking (11 CFR Part 109 and § 110.7)

Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 96–24876 Filed 9–24–96; 3:24 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have 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 applications 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Carlinville National Bank Shares, Inc., Carlinville, Illinois; to acquire 100 percent of the voting shares of Lincoln Trail Bancshares, Inc., Taylorville, Illinois, and thereby indirectly acquire Palmer State Bank, Taylorville, Illinois.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Pacific Capital Bancorp, Salinas, California; to acquire 100 percent of the voting shares of South Valley Bancorporation, and thereby indirectly acquire South Valley National Bank, both of Morgan Hill, California.

Board of Governors of the Federal Reserve System, September 20, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–24647 Filed 9–25–96; 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 companies listed in this notice have 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.

Each 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 applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 7, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. FBOP Corporation, Oak Park, Illinois; to acquire Regency Savings Bank, FSB, Naperville, Illinois, Topa Savings Bank, and FSB and Topa Thrift and Loan, both of Beverly Hills, California, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 23, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–24788 Filed 9–25–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 082696 AND 091396

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Ingersoll-Rand Company, Zimmerman International Corp., Zimmerman International Corp	96–2276	08/26/96
Morgan Products Ltd., James Schulman, Tennessee Building Products, Inc	96–2570	08/26/96
Morgan Products Ltd., James Fishel, Tennessee Building Products, Inc	96–2571	08/26/96
Alco Standard Corporation, Richard Hornstein, Norel Plastic Corporation	96–2710	08/26/96
Wasserstein Perella Group, Inc., Alliance Entertainment Corp., Alliance Entertainment Corp	96–2712	08/26/96
AECOM Technology Corporation-ESOP, McClier Corporation, McClier Corporation	96–2659	08/28/96
MedPartners/Mullikin, Inc., Caremark International Inc., Caremark International Inc	96–2119	08/29/96
Bell Atlantic, Bell Communications Research, Inc., Bell Communications Research, Inc	96–2560	08/29/96
Stephen A. Levin, Berkshire Fund Limited Partnership, Gold Coast Holdings, Inc., Gold Coast Beverage Distribu	96–2657	08/29/96
Mellon Bank Corporation, Ford Motor Company, BEF Corporation	96–2690	08/29/96
BankAmerica Corporation, Ford Motor Company, Ford Motor Credit Company	96–2697	08/29/96
Westinghouse Air Brake Company, Mark IV Industries, Inc., Mark IV Transportation Products Corporation	96–1548	08/30/96
Tyco International Ltd., The Horne Family Voting Trust, Henry Pratt Company and James Jones Company	96–2283	08/30/96
TPG Partners, L.P., William H. Ellis, Farley Candy Company	96–2535	08/30/96
William H. Ellis, TPG Partners, L.P., Favorite Brands International Holding Corp	96–2536	08/30/96
Packerland Holdings, L.P., Sun Land Beef Company, Sun Land Beef Company	96–2606	08/30/96
Minnesota Mining and Manufacturing Company, PyMaH Corporation, PyMaH Corporation	96–2665	08/30/96
Fluor Corporation, John L. Marshall, III and Joananne Marshall, Marshall Contractors, Inc	96–2706	08/30/96
Jeffrey A. Levitetz, Bruce H. Rosen, Supreme Distributors Company	96–2713	08/30/96
Personnel Group of America, Inc., Business Enterprise Systems and Technology, Inc., Business Enterprise Systems and Technology, Inc	96–2717	08/30/96
L'Air Liquide, S.A., Lincoln Electric Company, Lincoln Big Three, Inc	96–2721	08/30/96
Warburg, Pincus Ventures, L.P., Classic Sports, Inc., Classic Sports, Inc	96–2722	08/30/96
Jefferson-Pilot Corporation, Timothy R. Sullivan, San Diego Broadcasting Corporation	96–2724	08/30/96
Fairey Group plc, Fusion Systems Corporation, Fusion Aetek UV Systems, Inc. and Fusion UV Curing Syst	96–2725	08/30/96
Ray H. Witt, Freudenberg & Co. (A German company), Auttocom, L.L.C	96–2728	08/30/96
Staffan Encrantz, Jan Tonnby (a resident of Switzerland), Calciner Industries, Inc. and Chalmette Terminal, Inc	96–2729	08/30/96
Dura Pharmaceuticals, Inc., Eli Lilly and Company, Eli Lilly and Company	96–2742	08/30/96
United Auto Group, Inc., Steven Knappenberger, Scottsdale Jaguar, Ltd., SL Automotive, Ltd., SPA Autom	96–2751	08/30/96
McLeod Inc., Telecom*USA Publishing Group, Inc., Telecom*USA Publishing Group, Inc	96–2753	08/30/96
Colony Investors II, L.P., Clement Vaturi, Credicom Asia Limited	96–2757	08/30/96
Plum Creek Timber Company, L.P., Clayton, Dubilier & Rice Fund V Limited Partnership, Riverwood International Corporation and New River	96–2760	08/30/96
D'Arcy Masius Benton & Bowies, Inc. d/b/a The Macmanus, Adcom Ltd, Adcom Inc	96–2763	08/30/96
Willis Stein & Partners, L.P., Robert E. Petersen and Margaret McNally Petersen, Petersen Publishing Company	96–2769	08/30/96
CRH plc, BTR plc (an English Company), Tilcon Inc	96–2217	09/03/96
American Province of Little Company of Mary Sisters, Harbor Health Systems, Inc., Bay Harbor, Hospital Inc	96–2589	09/03/96
SBC Communications Inc., Bell Communications Research, Inc., Bell Communications Research, Inc	96–2605	09/03/96
Mariner Health Group, Inc., Allegis Health Services Inc., Allegis Health Services, Inc	96–2653	09/03/96
Alper Holdings USA, Inc., James River Corporation of Virginia, James River Corporation of Virginia	96–2709	09/03/96
Ernest L. Samuel, The Interlake Corporation, Interlake Packaging Corporation	96–2715	09/03/96
SBC Communications Inc., AT&T Corporation, AT&T Corporation	96–2737	09/03/96
AT&T Corporation, SBC Communications Inc., SBC Communications Inc	96–2738	09/03/96
MBNA Corporation, TCF Financial Corporation, TCF Bank Minnesota fsb	96–2754	09/03/96
Daifuku Co., Ltd., Auto-Soft-Corporation, Auto-Soft Corporation	96–2759	09/03/96
Europe Capital Partners (Delaware) LP, Schneider S.A., MGE–UPS Systems, SA, EPE Technologies, Inc & Schneider	96–2755	09/04/96
Novametrix Medical Systems, Inc., Genstar Capital Partners II, L.P., Andros Holdings Inc	96–2772	09/04/96
Genstar Capital Partners II, L.P., Novametrix Medical Systems, Inc., Novametrix Medical Systems, Inc	96–2773	09/04/96
Jeffry M. Picower, Advanced Medical, Inc., Advanced Medical, Inc	96–2774	09/04/96
Western Resources, Inc., ADT Limited, ADT Limited	96–2726	09/05/96
RWE AG, Linotype-Hell AG, Linotype-Hell AG	96–2750	09/06/96
Collins Holding Company, John M. Rudey, U.S. Timberlands Holdings Company, L.L.C	96–2638	09/07/96
South Central Utah Telephone Association, Inc., U.S. WEST, Inc., U.S. WEST Communications, Inc	96–2705	09/09/96
H Group Holding, Inc., David R. Livingston, Starwood Corporation	96–2764	09/09/96
Mellon Bank Corporation, Perry Schwartz, FUL Incorporated	96–2771	09/09/96
The General Electric Company, The Grand Union Company, The Grand Union Company	96–2775	09/09/96
IAT Group, Inc., Grupo Empresarial Agricola Mexicano S.A., de C.V., Fresh Del Monte Produce N.V/Global Reefer Carriers, Ltd	96–2777	09/09/96
Seymour N. Okner, HA–LO Industries, Inc., HA–LO Industries, Inc	96–2779	09/09/96
Alice S. White Trust, Estate of Willet H. Brown, Deceased, Puget Sound Broadcasting Company	96–2780	09/09/96
H Group Holding, Inc., Baker Family Trust, Baker Tanks, Inc	96–2783	09/09/96
Michael Pieper, UNR Asbestos-Disease Claims Trust, UNR Industries, Inc	96–2785	09/09/96
TSG2 L.P., American Home Products Corporation, American Cyanamid Company	96–2786	09/09/96
Societe Cooperative Agricole De Semences De Limagne, Rhone-Poulenc S.A., Harris Moran Seed Company	96–2787	09/09/96
Summer M. Redstone, Hubbard Broadcasting, Inc., WTOG–TV, Inc	96–2789	09/09/96
Hubbard Broadcasting, Inc., Sumner M. Redstone, ViaCom International, Inc	96–2790	09/09/96
Federal Express Corporation, AMR Corporation, American Airlines, Inc	96–2794	09/09/96
Applied Power Inc., Wallace H. Twedt, Everest Electronic Equipment, Inc	96–2796	09/09/96
CKE Restaurants, Inc, Unigate PLC, Casa Bonita Incorporated	96–2800	09/09/96
MDS Health Group Limited, Harris Laboratories Inc., Harris Laboratories, Inc	96–2801	09/09/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 082696 AND 091396—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
S.A. Louis Dreyfus et Cie, Winter Garden Citrus Products Cooperative, Winter Garden Citrus Products Cooperative	96–2806	09/09/96
Strata Holdings L.P., Scesaplana Settlement (a Liechtenstein trust), E&S Holdings Corporation	96–2802	09/10/96
Strata Holdings L.P., Ricardo Cisneros, E&S Holdings Corporation	96–2803	09/10/96
Apollo Real Estate Investment Fund II, L.P., Hollyrock, Ltd., Allright Corporation	96–2804	09/10/96
Mr. Yasuhiro Ohshima, Ricoh Company, Ltd., Vivitar Holding, Inc	96–2805	09/10/96
AEW Partners, L.P., Hollyrock, Ltd., Allright Corporation	96–2807	09/10/96
Stimson Lumber Company, Plum Creek Timber Company, L.P., Plum Creek Timber Company, L.P	96–2808	09/10/96
The Prudential Insurance Company of America, Seagull Energy Corporation, Seagull Energy Corporation	96–2809	09/10/96
Seagull Energy Corporation, Global Natural Resources Inc., Global Natural Resources Inc	96–2812	09/10/96
U.S. Office Products Company, James E. Claypoole, Bay State Computer Group, Inc	96–2813	09/10/96
James E. Claypoole, U.S. Office Products Company, U.S. Office Products Company	96–2814	09/10/96
E.J. Elliott, Ingersoll-Rand Company, California Pellet Mill Co & Silver Engineering Works Inc	96–2825	09/10/96
SunGard Data Systems Inc., CheckFree Corporation, CheckFree Securities Products Business	96–2827	09/10/96
Monsanto Company, Calgene, Inc., Calgene, Inc	96–2828	09/10/96
AMF Holdings Inc., Charan Industries, Inc., Charan Industries, Inc	96–2833	09/10/96
Sanford N. Penseler, Equity Holdings Limited, Denman Tire Corporation	96–2837	09/10/96
Hicks, Muse, Tate & Furst Equity Fund II, L.P., Sunrise Medical Inc., Comfort Clinic	96–2838	09/10/96
JP Foodservice, Inc., Charles A. Squeri, Squeri Food Service, Inc	96–2842	09/10/96
Charles A. Squeri, JP Foodservice, Inc., JP Foodservice, Inc	96–2843	09/10/96
The SK Equity Fund, L.P., Lawrence Merchandising Corporation, Lawrence Merchandising Corporation	96–2851	09/10/96
American Securities Partners, L.P., CRI Holding, Inc., CRI Holdings, Inc	96–2862	09/10/96
Archer-Daniels-Mildland Company, Roberto Gonzalez Barrera, Gruma S.A. de C.V	96–0189	09/11/96
Benedictine Health System, Duluth Clinic, Ltd., Duluth Clinic, Ltd	96–2678	09/11/96
Duluth Clinic, Ltd., Benedictine Health System, Benedictine Health System	96–2679	09/11/96
Kellogg Company, James Appold, Consolidated Biscuit Company	96–2727	09/11/96
Astor Holdings, Inc., ADCO Technologies Inc., ADCO Technologies, Inc	96–2734	09/11/96
Integrated Health Services, Inc., Signature Home Care, Inc., Signature Home Care, Inc	96–2765	09/11/96
Edward H. Hamm, The Roanoke Companies, Inc., The Roanoke Companies, Inc	96–2768	09/11/96
St. Ives Group plc, Richard Perlmuter, The Perlmuter Printing Company	96–2977	09/11/96
Jean-Pierre Savare, Kirk R. Hyde, Kirk Plastic Company, Inc	96–2810	09/11/96
Merrill Lynch & Co., Inc., Hotchkis and Wiley, a Delaware L.L.C., Hotchkis and Wiley, a Delaware L.L.C	96–2815	09/11/96
OSI Holdings Corp., Payco American Corporation, Payco American Corporation	96–2823	09/11/96
Paul G. Allen, Edward M. Snider, Ticketmaster Delaware Valley, Inc	96–2719	09/12/96
Liechtenstein Global Trust, AG, Chancellor Partners, L.P., Chancellor Capital Mangement, Inc	96–2792	09/12/96
Employers Insurance of Wausau, Nationwide Mutual Insurance Company, San Diego Lotus Corp	96–2788	09/13/96
St. Jude Medical, Inc., Cyberonics, Inc., Cyberonics, Inc	96–2820	9/13/96
First Data Corporation, Old Kent Financial Corporation, Old Kent Bank	96–2844	9/13/96
Munchener Ruckversicherungs-Gesellschaft, American Re Associates, L.P., American Re Corporation	96–2859	9/13/96
Coca-Cola Enterprises, Inc., Ahmad Hbouss, Nora Beverages Inc	96–2860	9/13/96
Memtec Limited, Gelman Sciences, Inc., Gelman Sciences, Inc	96–2864	9/13/96
Hicks, Muse, Tate & Furst Equity Fund III, L.P., Circo Craft Co. Inc., Circo Craft Co. Inc	96–2867	9/13/96
Richfood Holdings, Inc., Charles J. Greco, Norristown Wholesale, Inc	96–2874	9/13/96
Masayoshi Son, Concentric Network Corporation, Concentric Network Corporation	96–2880	9/13/96
Randgold & Exploration Company Limited, The Broken Hill Proprietary Company Ltd., BHP Minerals Mali Inc	96–2881	9/13/96
Komatsu Ltd., Robert G. Thomson, Rocky Mountain Machinery Company	96–2887	9/13/96
Franklin Electronic Publishers, Incorporated, Water Street Corporate Recovery Fund I, L.P., Insilco Corporation	96–2908	9/13/96

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Renee A. Horton Contact Representatives

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–24709 Filed 9–25–96; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Policy and Evaluation; Notice of Reporting Requirement Under Executive Order 12999—Educational Technology: Ensuring Opportunity for All Children In the Next Century

Summary

Executive Order 12999 was signed by President Clinton on April 17, 1996. The order streamlines the transfer of excess educationally useful equipment, including Federal computer equipment, to schools and nonprofit organizations pursuant to section 11(i) of the Stevenson Wydler Technology Innovation Act, as amended (15 U.S.C. 3710(i)). The Stevenson-Wydler Act authorizes the heads of Federal agencies and laboratories to transfer excess research equipment directly to educational institutions or nonprofit organizations for technical and scientific education and research.

The order mandates that agencies give the highest preference permitted by law to elementary and secondary schools. It further directs agencies to report to GSA, any excess research equipment that is transferred directly to schools.

In addition to the reporting requirement in EO 12999, section 202(e) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483(e)), requires executive agencies to submit to GSA an annual report of personal property furnished to non-Federal recipients

(Non-Federal Recipients Report) during the previous fiscal year.

In an effort to minimize agencies' reporting burden, GSA has identified an already existing reporting vehicle (i.e., the Non-Federal Recipients Report) to satisfy the reporting requirement of EO 12999. Agencies must, therefore, be sure to include any transfers under EO 12999 in the Non-Federal Recipients Report. The report, in letter form, must include the name and address of each recipient, the original acquisition cost of all property furnished to each recipient identified by the appropriate two-digit Federal supply classification group, and an explanation as to the type of recipient; e.g., schools that receive property under EO 12999, other Stevension-Wydler Act donees, all contractors (fixed-price, cost-reimbursable, etc.), all grantees (project, formula, etc.), and any other individual or organization that is not a Federal agency. The report is required to be submitted to GSA within 90 calendar days after the close of each fiscal year. Negative reports are required.

Additional information may be obtained by writing to the General Services Administration, Office of Governmentwide Policy, Personal Property Management Policy Division (MTP), Washington, DC 20405.

Dated: September 12, 1996.

G. Martin Wagner,

Associate Administrator.

[FR Doc. 96–24680 Filed 9–25–96; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Announcement of Meeting and Request for Comments on Proposed Incorporation of IPV/OPV Sequential Schedule Into the Vaccines for Children Program

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates:

8:30 a.m.–6:00 p.m., October 23, 1996

8:30 a.m.–1:15 p.m., October 24, 1996

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose

The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. § 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise, the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) Program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed

Under the authority of 42 U.S.C. § 1396s, the Committee will consider adoption of a resolution to incorporate into the VFC Program a recommended sequential schedule of inactivated poliovirus vaccine (IPV) followed by oral poliovirus vaccine (OPV), with schedules of OPV alone or IPV alone also being acceptable. This proposed VFC resolution is consistent with the Committee's general poliomyelitis recommendation that was adopted at the June 20, 1996, ACIP meeting.

Given the considerable interest in the polio immunization schedule, opportunity for submitting written comments was provided and a public hearing was held prior to the Committee's adoption of their general poliomyelitis recommendation at the June 20 ACIP meeting. The Committee now invites submission of written comments on the proposed VFC resolution pertaining to incorporation of the sequential IPV/OPV schedule into the VFC Program. Copies of the proposed resolution are available by notifying the contact person. Copies will be sent electronically upon request. Written comments on the proposed resolution should be submitted to the contact person and must be received by October 18, 1996.

Other topics to be discussed at the meeting include a draft statement on measles, mumps, and rubella (MMR); implementation of polio vaccination recommendation; acellular pertussis vaccines recommendations; recommendations for rabies postexposure prophylaxis (PEP); COMVAX® (combined Hib and Hepatitis B vaccine); draft statement on the immunization of health care workers; varicella vaccine update; recommendations for strategies to increase immunization coverage; the National Immunization Survey (NIS); assessment and feedback of practice-based immunization coverage data; activation of HIV replication due to immunizations and acute illnesses; harmonization of the childhood immunization schedule; status of SmithKline Beecham Biological's candidate herpes simplex virus vaccine; update on Vaccine Injury Compensation Program; and the results of a study on influenza during pregnancy. Other matters of relevance among the Committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Gloria A. Kovach, Committee Management Specialist, CDC (16–4346), 1600 Clifton Road, NE, Mailstop D50, Atlanta, Georgia 30333, telephone 404/639–7250.

Dated: September 23, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–244797 Filed 9–25–96; 8:45 am]

BILLING CODE 4163–18–M

Advisory Committee for Injury Prevention and Control (ACIPC): Family and Intimate Violence Prevention Subcommittee: 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 subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 8:30 a.m.–4 p.m., October 21, 1996.

Place: Terrace Garden Hotel Buckhead, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: To provide and make recommendations to ACIPC and the Director, National Center for Injury Prevention and Control (NCIPC), regarding feasible goals for prevention and control of family and intimate violence. The Subcommittee makes recommendations regarding policies, strategies, objectives and priorities; and advises on the development of a national plan for family and intimate violence and the development of new technologies and their subsequent application.

Matters to be Discussed

The Subcommittee will discuss ways the CDC can implement the recommendations proposed in the National Research Council Report, Understanding Violence Against Women.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Ms. Denise Johnson, Acting Team Leader, Family and Intimate Violence Prevention Team, Division of Violence Prevention, NCIPC, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341–3724, telephone 770/488–4410.

Dated: September 20, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–24674 Filed 9–25–96; 8:45 am]

BILLING CODE 4163–18–M

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and Date: 8 a.m.–4 p.m., October 22, 1996.

Place: Terrace Garden Hotel Buckhead, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

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

The Science and Program Review Work Group (SPRWG) will meet to discuss a research grants update, upcoming program announcements, and issues. Following the Work Group meeting, the full Committee will meet to discuss (1) reports from the Family and Intimate Violence Prevention Subcommittee, the SPRWG, the Motor Vehicle Programmatic Review Team, and the Poison Control Work Group; (2) Safe America; and (3) other agency announcements and updates.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Mr. Thomas E. Blakeney, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

Dated: September 20, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–24675 Filed 9–25–96; 8:45 am]

BILLING CODE 4163–18–M

The National Center for Environmental Health; Meeting

The National Center for Environmental health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: State Childhood Blood Lead Surveillance Coordinators' Meeting.

Times and Dates:

4 p.m.–6 p.m., October 6, 1996
8 a.m.–4:30 p.m., October 7, 1996
8:30 a.m.–4:30 p.m., October 8, 1996
8:30 a.m.–4:30 p.m., October 9, 1996
9 a.m.–11:30 a.m., October 10, 1996

Place: Holiday Inn-Select Atlanta-Decatur Hotel and Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: This meeting will provide a forum for State childhood blood lead coordinators to review program progress and discuss surveillance issues and concerns.

Matters To Be Discussed

Agenda items will include a discussion of case definitions and data fields for the National Childhood Blood Lead Surveillance System; presentation on the computer programming issues related to data analysis and the use of data to make decisions; CDC laboratory update; and a panel discussion on the revisions to, and the implementation of, the CDC Lead Guidelines.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Nancy Tips, Surveillance and Programs Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F42), Chamblee, Georgia 30341–3724, telephone 404/488–7330.

Persons wishing to make written or oral comments at the meeting should notify the contact person in writing or by telephone no later than close of business October 1, 1996.

All oral comment requests should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

Dated: September 20, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 96–24673 Filed 9–25–96; 8:45 am]

BILLING CODE 4163–18–M

Health Care Financing Administration

[HCFA–1957]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collection for public comment. 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 subjects: (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 burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* SSO Report of State Buy-In Problems, 42 CFR 407.40; *Form No.:* HCFA–1957; *Use:* The HCFA–1957 is issued to assist with communications between the Social Security District Offices, Medicaid State Agencies and HCFA Central Offices in the resolution of beneficiary complaints, regarding entitlement under state buy-ins. It is used when a problem arises which cannot be resolved through normal data exchange. *Frequency:* On occasion; *Affected Public:* Individuals or Households, State, Local or Tribal Government; *Number of Respondents:* 22,000; *Total Annual Hours:* 6,417.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov , or to obtain the

supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 18, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 96–24676 Filed 9–25–96; 8:45 am]

BILLING CODE 4120–03–P

[ORD–092–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: August 1996

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice identifies proposals submitted during the month of August 1996 under the authority of section 1115 of the Social Security Act and those that were approved, disapproved, pending, or withdrawn during this time period. (This notice can be accessed on the Internet at HTTP://WWW.HCFA.GOV/ORD/ORDHP1.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the Federal Register with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, Disapproved, and Withdrawn Proposals for the Month of August 1996

A. Comprehensive Health Reform Programs

1. New, Pending, Approved, Disapproved, and Withdrawn Proposals:

We did not receive any new proposals or approve or disapprove any proposals during the month of August nor were any proposals withdrawn during that month. Therefore, pending proposals for the month of July 1996 published in the Federal Register of September 11, 1996, 61 FR 47946, remain unchanged.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

No new proposals were received during the month of August.

2. Pending, Approved, Disapproved, and Withdrawn Proposals

We did not approve or disapprove any Other Section 1115 Demonstration Proposals during August nor were any proposals withdrawn during that month. The one proposal submitted in July and now pending is as follows:

Demonstration Title/State: Continuing Care Networks (CCN) Demonstration—Monroe County, New York.

Description: The CCN project is designed to test the efficiency and effectiveness of financing and delivery systems which integrate primary, acute and long term care services under combined Medicare and Medicaid capitation payments. Participants will be both Medicare only, and dually eligible Medicare/Medicaid beneficiaries, who are 65 or older. Enrollment will be voluntary for all participants.

Date Received: July 1, 1996

State Contact: C. Christopher Rush, Assistant Bureau Director, Bureau of Long Term Care, Division of Health and Long Term Care, New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243–0001, (518) 473–5507.

Federal Project Officer: Kay Lewandowski, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–23–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Other pending proposals can be found in the Federal Register of September 11, 1996, 61 FR 47946.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: September 18, 1996.

Barbara Cooper,

Acting Director, Office of Research and Demonstrations.

[FR Doc. 96–24635 Filed 9–25–96; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Submission for OMB Review; Comment Request; Survey for the National 5 A Day for Better Health Program

Summary: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, The National

Institutes of Health (NIH), National Cancer Institute (NCI) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. The proposed information collection was previously published in the Federal Register on March 12, 1996, Page 10001 and allowed 60 days for the public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for the public comment. The National Institutes of Health 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.

Proposed Collection: Title: Survey for the National 5 A Day for Better Health Program—NEW—Need and use of information collection: This study will measure fruit and vegetable intakes and the knowledge, attitudes, and beliefs about diet and nutrition specific to fruit and vegetable intake. The purpose of this study is to provide data to the National 5 A Day for Better Health Program after the first five years of existence. Frequency of Response: Once. Affected Public: One questionnaire will be administered via telephone using a national sample of households, with an over sampling of African-American and Hispanics. Study participants will be U.S. adults 18 years and older residing in the coterminous states. Burden estimates are as follows:

Type of respondents	No. of respondents	No. of responses per respondent	Average burden/response	Estimated total annual burden hours requested
Individuals or Households	3,050	1	.251	766
Total				766

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Amy F. Subar, Ph.D., National Cancer Institute, EPN 313, 6130 Executive Boulevard, Rockville, MD 20892–7364, or call non-toll-free number (301) 594–0831.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before October 28, 1996.

Dated: September 20, 1996.

Nancie L. Bliss,

NCI Project Clearance Liaison.

[FR Doc. 96–24624 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Clinical Trials Review Group, October 14–15, 1996 at the Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, Maryland.

This meeting will be open to the public on October 14, 1996 from 8:00 am to 2:00 pm for discussions of methods of convincing people of all backgrounds to participate in cancer clinical trials and on October 15 from 8:00 am until 2:00 pm for discussions of methods of attracting the best young scientists to careers in clinical research.

The meeting will be closed to the public on October 14, 1996 from 2:00 am to approximately 6:00 pm and on October 15 from 2:00 pm until approximately 6:00 pm for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the Clinical Trials Extramural Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. John S. Cole, III, Executive Secretary, National Cancer Institute Board of Scientific Advisors Clinical Trials Review Group, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 540, Bethesda, MD 20892 (301–496–1718). Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Dr. Cole in advance of the meeting.

Dated: September 19, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24617 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Prevention Working Group, October 3, 1996 at the Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland.

This meeting will be open to the public on October 3, 1996 from 8:30 a.m. to 9:00 a.m. for general introductory remarks and announcements relating to the Institute's Prevention Programs.

The meeting will be closed to the public on October 3, 1996 from 9:00 am to approximately 5:00 p.m. for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and project conducted by the NCI Prevention Program. These discussions will reveal confidential trade secrets or

commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Jack Gruber, Executive Secretary, National Cancer Institute Board of Scientific Advisors Prevention Working Group, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 540, Bethesda, MD 20892 (301–496–9740). Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Dr. Gruber in advance of the meeting.

Dated: September 19, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24618 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Cancer Centers Working Group, October 14, 1996 at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland.

This meeting will be closed to the public from 7:30 a.m. to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the Cancer Centers Extramural Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting maybe obtained from Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute Board of Scientific Advisory Cancer Centers Working Group, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 600C, Bethesda, MD 20892 (301–496–4218).

Dated: September 18, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24623 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, November 18, 1996. The meeting will be held at the National Institutes of Health, Rockledge II, Conference Room 9112, 6701 Rockledge Drive, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Clarice D. Reid, Executive Secretary, Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, NHLBI, Two Rockledge Center, Suite 10160, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0080, will furnish substantive program information, a summary of the meeting, and a roster of the committee members.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated September 18, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24619 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

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 meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 9, 1996.

Time: 7:30 p.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1000.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 9, 1996.

Time: 8 p.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1000.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 17, 1996.

Time: 3 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 23, 1996.

Time: 2 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 522b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: September 19, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24614 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, National Institute of

Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public as indicated below to discuss Council decisions on training matters and updates on NIH training policy. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Natcher Building, Room 6AS–37J, Bethesda, Maryland 20892, (301) 594–8892, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the contact person.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should notify the contact person at least two weeks prior to the meeting date.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee B.
Date: October 24–25, 1996.
Place: Marriott at Metro Center, 775 12th Street, NW., Washington, DC 20005.
Contact Person: Ned Feder, M.D., Natcher Building, Room 6AS–25S, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8890.
Open: October 24, 5:30 p.m.–7 p.m.
Closed: October 25, 8:00 a.m.–Adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee C.
Date: October 24–25, 1996.
Place: Marriott at Metro Center, 775 12th Street, NW., Washington, DC 20005.
Contact Person: Daniel Matsumoto, Ph.D., Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8894
Open: October 24, 5:30 p.m.–7 p.m.
Closed: October 24–25, 8:00 a.m.–5 p.m.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee D.
Date: October 24–25, 1996.
Place: Marriott at Metro Center, 775 12th Street, NW., Washington, DC 20005
Contact Person: Ann A. Hagan, Ph.D., Natcher Building, Room 6AS–37F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8886.
Open: October 24, 5:30 p.m.–7 p.m.
Closed: October 25, 8:00 a.m.–Adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 19, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24615 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meeting of the National Institute of Dental Research Special Grants Review Committee

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Dental Research Special Grants Review Committee.
Date: October 17–18, 1996.
Time: 8:30 a.m. to Adjournment.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.
Contact Person: Dr William Gartland, Scientific Review Administrator, NIDR Special Grants Review Committee, Natcher Building, Room 4AN–38E, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To review and evaluate grant applications and/or contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the extramural research review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Dental Research Institute; National Institutes of Health, HHS)

Dated: September 19, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24616 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Panel: National Institute on Aging Behavior and Sociology of Aging Review Committee.
Dates of Meeting: October 16-18, 1996.
Times of Meeting: October 16–7:00 p.m. to recess, October 17–8:00 a.m. to recess, October 18–8:00 a.m. to adjournment.
Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Purpose/Agenda: To review grant applications.
Contact Person: Paul Lenz, Ph.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: September 18, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24621 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

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 meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To revise and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: October 2, 1996.
Time: 11 a.m.
Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6470.

Committe Name: National Institute of Mental Health Special Emphasis Panel.
Date: October 9, 1996.
Time: 3 p.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Angela L. Redlingshafer, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1367.

Committe Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 9, 1996.

Time: 7 p.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1000.

Committe Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 10, 1996.

Time: 10:30 a.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Rehana A. Chowdhury, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6470.

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.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: September 18, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24622 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Environmental/Occupational Medicine Academic Awards (Telephone Conference Call).

Date: October 28, 1996.

Time: 1:00 P.M.

Place: National Institute of Environmental Health Sciences, Building 17, Rm. 1713, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title, 5 U.S.C. Grant applications and 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, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: September 20, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24729 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Environmental Health Sciences Review Committee.

Date: November 13–15, 1996.

Time: 8:30 a.m. to Adjournment.

Place: Omni Europa Hotel, 1 Europa Drive, Chapel Hill, North Carolina 27514.

Contact Person: Dr. Ethel Jackson, Scientific Review Administrator, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–7826.

Purpose: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Research and Manpower Development, National Institutes of Health)

Dated: September 20, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24731 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Meeting of the Board of Scientific Counselors, National Institute on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, October 23–25, 1996, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public for the review of the Epidemiology, Demography, Biometry Program and the Laboratory of Behavioral Science from 8:15 a.m. until 12:15 p.m.; and from 1:15 until 4:15 p.m. on Thursday, October 24; and from 9:00 a.m. until 12:00 p.m. on Friday, October 25. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on Wednesday, October 23, from 8:00 p.m. to recess; Thursday, October 24, from 8:00 to 8:15 a.m.; 12:15 to 1:15 p.m.; and 4:15 p.m. until recess; and on Friday, October 25, from 8:00 to 9:00 a.m. and 12:00 to 3:00 p.m. for the review, discussion, and evaluation of individual programs and projects conducted by the National Institute on Aging, (NIA), including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer, NIA, Gateway Building, Room 2C218, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Dr. Dan L. Longo, Scientific Director, NIA, Gerontology Research Center, 4940 Eastern Avenue, Baltimore, Maryland 21224, will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: September 19, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24732 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on October 28–29, 1996.

The meeting on October 29 will be open to the public from 9 a.m. to 3 p.m. in the Board Room of the Library, 8600 Rockville Pike, Bethesda, Maryland, for the review of research and development programs and preparation of reports of the National Center for Biotechnology Information. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. David Lipman at 301–496–2475.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 28 from 7 p.m. to approximately 10 p.m., at the Bethesda Hyatt Hotel, and on October 29, from 3 p.m. to approximately 5 p.m., in the Board Room of the National Library of Medicine, for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: September 19, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24612 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on October 24–25, 1996, convening at 9 a.m. on October 24 and 8:30 a.m. on October 25 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on October 24 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaianni at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5 U.S.C., Pub. L. 92–463, the meeting will be closed on October 24 from 10:30 a.m. to approximately 5 p.m. and on October 25 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: September 19, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24613 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on November 6–7, 1996, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on November 6 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger W. Dahlen at 301–496–4221 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting on November 6 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on November 7 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: September 18, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24620 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Safety and Occupational Health Study Section.

Dates of Meeting: October 10–11, 1996.

Time: 8:00 a.m.

Place of Meeting: Pooks Hill Mariott Hotel, Bethesda, Maryland.

Contact Person: Dr. Pervis C. Major, 1095 Willowdale Road, Room P–146, Morgantown, West Virginia 26505, (304) 285–5910.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

(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: September 20, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–24730 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Office of Cancer Communications; Notice of Partnership Initiative

Pursuant to Pub. L. 92–463, notice is hereby given that the Office of Cancer Communications, National Cancer Institute, is seeking partnerships with non-Federal organizations to conduct public awareness programs on cancer research, patient education, clinical trials, screening, prevention, genetics education, and cancer risk communication. The goal is to strengthen the National Cancer Program by forming partnerships with private sector organizations. These cooperative efforts are intended to bring the resources of several partners to bear on cancer-related problems that are too complex or massive for any one organization to handle alone.

Note: Partnerships between NCI and outside organizations will be formalized through Memorandum of Agreements and will not involve grants or contracts.

Date of Effectiveness: Beginning immediately.

For more information, please contact John Burklow, Office of Cancer Communications, National Cancer Institute, at (301) 496–6631.

Dated: September 12, 1996.

Philip D. Amoruso,

Director, Office of Extramural Management.

[JR Dos. 96–24625 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

The National Toxicology Program (NTP) Revised Criteria and Process for Listing Substances in the Biennial Report on Carcinogens

AGENCY: National Institute of Environmental Health Sciences, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services is providing this notice of changes in the criteria for listing carcinogens in the Biennial Report on Carcinogens. The process for developing these changes was public and included participation of a broad base of interested parties. The revised criteria will be used to develop the eighth annual report.

FOR FURTHER INFORMATION CONTACT: Dr. C.W. Jameson, NIEHS/NTP, Biennial Report on Carcinogens, MD WC–05, P.O. Box 12233, Research Triangle Park, North Carolina 27709: fax 919 541–2242; internet Jameson@niehs.nih.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, Department of Health and Human Services (HHS), shall publish a report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The Biennial Report on Carcinogens is prepared by the National Toxicology Program (NTP).

A review of the criteria used to list substances in the Report was initiated by the Director, NTP in late 1994. The process for the review was public and included participation of a broad base of interested persons including Academia, Industry, Labor, Federal, State and Local Agencies and Private Organizations. During 1995 the review included two open, public meetings by the NTP Board of Scientific Counselors and a number of internal reviews by HHS and the NTP Executive Committee agencies.

At each step of the review there was concurrence with the following points: (1) the current criteria should be revised; (2) mechanistic information should be used as part of the listing criteria; (3) the categories (known to be human carcinogens and reasonably anticipated to be human carcinogens) should remain the same as described in the original legislation; and (4) there should be a formal mechanism which allows for the removal of substances from the BRC. Based on these recommendations, revised criteria and a new procedure for applying these criteria for inclusion or removal of substances in the BRC were prepared by the NTP with the assistance of NTP participating agencies.

Revised Criteria

A point by point comparison of the former BRC criteria to the revised criteria follows. Sections that have been deleted from the former BRC criteria are in brackets []. The changes/additions in the revised criteria are highlighted by underlining.

Former BRC Criteria Known To Be Carcinogens

There is sufficient evidence of carcinogenicity from studies in humans which indicates a causal relationship between the agent and human cancer.

Revised BRC Criteria Known To Be Human Carcinogens

There is sufficient evidence of carcinogenicity from studies in humans which indicates a causal relationship between *exposure to* the agent, *substance or mixture* and human cancer.

Former BRC Criteria Reasonably Anticipated To Be Carcinogens

[a.] There is limited evidence of carcinogenicity from studies in humans, which indicates that causal interpretation is credible, but that alternative explanations, such as chance, bias or confounding, could not adequately be excluded, or

[b.] There is sufficient evidence of carcinogenicity from studies in experimental animals which indicates that there is an increased incidence of malignant tumors: (a) in multiple species [or strains], or (b) [in multiple experiments (preferably with different routes of administration or using different dose levels)], or (c) to an unusual degree with regard to incidence, site or type of tumor, or age at onset. Additional evidence may be provided by data concerning dose-response effects, as well as information on mutagenicity or chemical structure.]

Revised BRC Criteria Reasonably Anticipated To Be Human Carcinogens

There is limited evidence of carcinogenicity from studies in humans, which indicates that causal interpretation is credible, but that alternative explanations, such as chance, bias or confounding, could not adequately be excluded, or

There is sufficient evidence of carcinogenicity from studies in experimental animals which indicates that there is an increased incidence of malignant *and/or combined benign and malignant tumors:* (a) in multiple species *or at multiple tissue sites,* or *(b) by multiple routes of exposure,* or (c) to an unusual degree with regard to incidence, site or type of tumor, or age at onset; *or*

There is less than sufficient evidence of carcinogenicity in humans or laboratory animals, however; the agent,

substance or mixture belongs to a well defined, structurally-related class of substances whose members are listed in a previous Annual or Biennial Report on Carcinogens as either a known to be human carcinogen, or reasonably anticipated to be human carcinogen or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.

The following descriptive paragraph has been added to the criteria:

Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive sub populations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore reasonably be anticipated not to cause cancer in humans.

Expanded Review Procedure

External peer review is added to the review process through the establishment of a new, standing subcommittee of the NTP Board of Scientific Counselors. The BRC Subcommittee will meet twice a year, in public session, to review nominations for listing and /or delisting and to receive public comment.

Listing/Delisting Procedures

Nominations of chemicals for listing or delisting will be solicited from government, industry, academia, Federal, State and local agencies, and the general public. However, nominations can be submitted to the National Toxicology Program at any time. Interested persons should send nominations which contain a justification for listing or delisting the agent, substance, or mixture in the BRC to the: National Toxicology Program, Biennial Report on Carcinogens, MD WC–05, P.O. Box 12233, Research Triangle Park, NC 27709. To the extent feasible, all appropriate background information and relevant data (e.g. scientific journal publications, NTP reports, IARC listings, exposure surveys, release inventories, etc.) that support the nomination should be provided or fully referenced to permit retrieval. Nominations will be reviewed as expeditiously as possible. A list of new petitions for listing or delisting will be routinely published in appropriate publications, including the Federal Register, trade journals, and the NTP Liaison Office mail-outs, soliciting public comment and input on the nominations.

Dated: August 15, 1996.

Kenneth Olden,

Director National Institute of Environmental Health Sciences and the National Toxicology Program.

Dated: September 12, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–24227 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–P

National Toxicology Program; Availability of Technical Report of Comparative Initiation/Promotion Skin Paint Studies of B6C3F$_1$ Mice, Swiss (CD–1®) Mice, and SENCAR Mice

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the Comparative Initiation/Promotion Skin Paint Studies of B6C3F$_1$ Mice, Swiss (CD–1®) Mice, and SENCAR Mice.

All three strains of mice demonstrated sensitivity by developing skin tumors after topical application of the chemicals under study (7,12–dimethylbenz(a)anthracene (DMBA), N-methyl-N′-nitro-N-nitrosoguanidine (MNNG), 12-O-tetradecanoylphorbol-13-acetate (TPA), and benzoyl peroxide (BPO). The most sensitive of the three strains appeared to be SENCAR mice, in the sense that lower doses of the test chemical were generally required to produce effects equivalent to those in the other two strains. Skin tumors also tended to develop earlier and with greater multiplicity in SENCAR mice than in the other two strains. By these criteria, the overall sensitivity of Swiss (CD–1®) mice was intermediate, and B6C3F$_1$ mice showed the least overall sensitivity to dermal carcinogenicity.

The 1-year complete carcinogen studies used repeated applications of low concentrations of the carcinogens DMBA and MNNG. There was a high incidence of skin tumors in all three strains with both carcinogens. More B6C3F$_1$ and SENCAR mice developed skin tumors and averaged more tumors per mouse than did Swiss (CD–1®) mice. Skin tumors developed earlier in SENCAR mice than in B6C3F$_1$ and Swiss (CD–1®) mice. Although B6C3F$_1$ mice exhibited the lowest overall sensitivity to the initiation/promotion protocol when compared to Swiss (CD–1®) and SENCAR mice, the response of B6C3F$_1$ mice was similar to Swiss (CD–1®) and SENCAR mice for complete carcinogen studies.

Questions or comments about the Technical Report should be directed to Central Data Management at NIEHS, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of the *Comparative Initiation/Promotion Skin Paint Studies of B6C3F$_1$ Mice, Swiss (CD–1®) Mice, and SENCAR Mice* (TR–441) are available without charge from Central Data Management, NIEHS, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: August 21, 1996.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 96–24626 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Acetonitrile

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of acetonitrile. Acetonitrile is used primarily as a solvent in extractive distillation and crystallization of pharmaceutical and agricultural products and as a catalyst in chemical reactions.

Toxicology and carcinogenicity studies were conducted by administration of acetonitrile by inhalation to groups of 56 F344/N rats of each sex at doses of 0, 100, 200, or 400 ppm (equivalent to 0, 168, 335, or 670 mg/m^3) and 60 B6C3F$_1$ mice of each sex were exposed at doses of 0, 50, 100, or 200 ppm (equivalent to 0, 84, 168, or 335 mg/m^3) for 6 hours per day, 5 days per week for 2 years.

Under the conditions of these 2-year inhalation studies, there was equivocal evidence of carcinogenic activity [1] of acetonitrile in male F344/N rats based on marginally increased incidences of hepatocellular adenoma and carcinoma. There was no evidence of carcinogenic activity of acetonitrile in female F344/

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results (''clear evidence'' and ''some evidence''), one category for uncertain findings (''equivocal evidence''), one category for no observable effect (''no evidence''), and one category for studies that cannot be evaluated because of major flaws (''inadequate study'').

N rats exposed to 100, 200, or 400 ppm. There was no evidence of carcinogenic activity of acetonitrile in male or female $B6C3F_1$ mice exposed to 50, 100, or 200 ppm.

Exposure to acetonitrile by inhalation resulted in increased incidences of hepatic basophilic foci in male rats and of squamous hyperplasia of the forestomach in male and female mice.

Questions or comments about the Technical Report should be directed to Central Data Management at MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709–2233 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Acetonitrile (CAS No. 75–05–8)* (TR–447) are available without charge from Central Data Management, NIEHS, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: August 21, 1996.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 96–24627 Filed 9–25–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4021–N–02]

Office of the Assistant Secretary for Public and Indian Housing; NOFA for Public and Indian Housing Economic Development and Supportive Services (EDSS) Grant: Amendment of Application Availability and Deadline Dates and Announcement of OMB Control Number

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Amendment of application availability and deadline dates.

SUMMARY: This notice amends the NOFA published in the Federal Register on August 14, 1996 (61 FR 42356) to: (1) revise the application kid availability and extend the application due date to October 29, 1996; and (2) announce the OMB control number issued for the information collection requirements.

FOR FURTHER INFORMATION CONTACT: Marcia Y. Martin, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 7th Street, SW, room 4108, Washington, DC 20410; telephone (202) 708–4233. Hearing- or speech-impaired persons may contact the Federal Information Relay Service on 1–800–877–8339 or 202–708–9300 for information on the program. (With the exception of the ''800'' number, the numbers listed above are not toll free numbers).

SUPPLEMENTARY INFORMATION: Because of unforeseen circumstances, the availability of the application kit for the funds announced in this NOFA has been delayed. Therefore, the Department is extending the deadline for applications accordingly. In addition, this amendment publishes the control number assigned by OMB for the information collection requirements associated with this NOFA.

Accordingly, the NOFA for Public and Indian Housing Economic Development and Supportive Services (EDSS) Grants, published at 61 FR 42356 (August 14, 1996, FR Doc. 96–20698) is amended as follows:

1. On page 42356, column 1, the paragraph following the heading ''Dates'' is revised to read as follows:

Application kits will be available beginning September 27, 1996. The application deadline will be 3:00 p.m., local time on October 29, 1996.

2. On page 42356, column 2, the text following the heading ''Paperwork Reduction Act Statement'' and preceding the heading ''I. Purpose and Substantive Description'' is revised to read as follows:

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3404(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0211.

Dated: September 19, 1996.

Kevin Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–24656 Filed 9–25–96; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgment of the Golden Hill Paugussett Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs (Assistant Secretary) by 209 DM 8.

Pursuant to 25 CFR 83.10(m), notice is hereby given that the Assistant Secretary declines to acknowledge that the Golden Hill Paugussett Tribe, P.O. Box 1645, Bridgeport, Connecticut 06601–1645, exists as an Indian tribe within the meaning of Federal law. This notice is based on the determination that the group does not satisfy one of the criteria set forth in 25 CFR 83.7, namely: 83.7(e).

DATES: This determination is final and is effective December 26, 1996, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

A notice of the Proposed Finding to decline to acknowledge the Golden Hill Paugussett Tribe (GHP) was published in the Federal Register on June 8, 1995 (60 FR 30430, June 8, 1995), pursuant to 25 CFR 83.10(e) of the revised Federal acknowledgment regulations, which became effective March 28, 1994. Under 25 CFR 83.10(e), prior to active consideration the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicate that there is little or no evidence that establishes that the group can meet any one of the mandatory criteria in paragraphs (e), (f), or (g) of § 83.7.

The GHP received one obvious deficiency (OD) letter dated August 26, 1993, and a second technical assistance (TA) letter dated October 19, 1994. Both OD/TA letters addressed the issue of the undocumented parentage of William Sherman, the only ancestor through whom the petitioner claimed Golden Hill Paugussett ancestry. They also addressed the problem posed under criterion 83.7(e) of the claimed Indian descent of the present-day GHP membership through one person, William Sherman, rather than descent from a historical tribe. The GHP responded to both TA letters and on November 15, 1994, requested the petition be placed on active consideration. The GHP petition was not placed on active consideration, but on November 21, 1994, was added to the ''ready'' list of petitioners waiting to be placed on active consideration.

The Assistant Secretary concluded after the responses to the TA letters that there was little or no evidence that the GHP met criterion 83.7(e). Preliminary genealogical analysis by the BIA indicated that there was little or no evidence that the petitioner could establish descent from a historical tribe. Under 25 CFR 83.10(e), the Federal acknowledgment regulations call for

issuance of an expedited Proposed Finding by the Assistant Secretary when there is little or no evidence that the petitioner can meet criterion 83.7(e). Expedited findings may only be done *after* the petition is complete and *before* the petition has been placed on active consideration. In the regulations themselves, the time frame and the requirements for issuing an expedited Proposed Finding are clearly delineated:

(e) Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicate that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7 (83.10(e)).

The standard under which the Proposed Finding is made is stated as follows:

83.10(e)(1) If this review finds that the evidence clearly establishes that the group does not meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, a full consideration of the documented petition under all seven of the mandatory criteria will not be undertaken pursuant to paragraph (a) of this section. Rather, the Assistant Secretary shall instead decline to acknowledge that the petitioner is an Indian tribe and publish a Proposed Finding to that effect in the Federal Register. The periods for receipt of comments on the Proposed Finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall follow the timetables established in paragraphs (h) through (l) of this section (83.10(e)(1)).

The Proposed Finding was issued in accord with 83.10(e), which requires a conclusion that the petitioner clearly does not meet the requirements of criterion 83.7(e). To make a Proposed Finding under 83.10(e), the burden of proof is on the government to show that the petitioner clearly does not meet the criterion. The Proposed Finding demonstrated that the GHP clearly did not meet criterion 83.7(e), descent from a historical tribe, meeting the burden of proof required of the government for making a proposed finding under 83.10(e).

Once a Proposed Finding has been issued, however, the burden of proof shifts to the petitioner for rebuttal. The standard of proof which must be met in the petitioner's response to the Proposed Finding is a lesser one, the ''reasonable likelihood of the validity of the facts'' standard described in section 83.6, the same standard used for all acknowledgment determinations. If, in its response to the Proposed Finding, the petitioner can show that it meets the criterion under which the expedited negative Proposed Finding was issued under the ''reasonable likelihood of the validity of the facts'' standard, then the BIA will undertake a review of the petition under all seven mandatory criteria before the Assistant Secretary issues the Final Determination. The petitioner's response to the Proposed Finding did not establish under the ''reasonable likelihood of the validity of the facts'' standard that the GHP met criterion 83.7(e). No new evidence was submitted or found which rebutted the conclusions of the Proposed Finding. Therefore, the GHP response did not trigger a BIA evaluation of the GHP petition under all seven mandatory criteria.

The Associate Solicitor has responded to the petitioners concerning legal issues raised by their attorney about the acknowledgment process as it operated in this matter and to inquiries from the state of Connecticut pertaining to post-comment period meetings between the petitioners and their attorney with him and with the Assistant Secretary—Indian Affairs.

This Final Determination is based upon a new analysis of all the information in the record. This includes the information available for the Proposed Finding, the information submitted by the petitioner in its response to the Proposed Finding, evidence and documentation submitted by interested and informed parties during the comment period, the petitioner's response to the third party comments, and new evidence and documentation collected by the BIA staff for evaluation purposes. None of the evidence submitted by the petitioner, submitted by interested parties, or located by the BIA during the acknowledgment process demonstrated that William Sherman was of Paugussett or other Indian ancestry.

The petitioner continued to claim ancestry from the historic Paugussett tribe through a single individual, William Sherman, a common ancestor of the entire present membership. Extensive research by the petitioner, third parties, and the BIA has failed to document, using acceptable genealogical methods, that William Sherman was Paugussett or Indian. The evidence submitted in the GHP Response focussed on William Sherman's ancestry. No document was submitted or located for the Final Determination that identified the parents of William Sherman. No document was submitted or found for the Final Determination that provided sufficient evidence acceptable to the Secretary that William Sherman was descended from a historical Indian tribe. Considerable circumstantial evidence was submitted and located to indicate that William Sherman did not live in tribal relations during his lifetime (ca.1825–1886).

There was insufficient documentation to demonstrate who William Sherman's mother was, and thus his maternal lineage remains undocumented. William Sherman's paternal lineage is unknown. There was no evidence concerning who his father was, nor his earlier ancestors on his father's side. The petitioner did not claim that William Sherman was Indian, or Paugussett, through his father's family. It was not documented that he was the descendant of either Ruby Mansfield or of Nancy Sharpe, alias Pease, who were identified in historical records as Golden Hill Paugussett Indians and whom the petitioner claims were the ancestors of William Sherman.

By most accounts, William Sherman, the GHP ancestor, was born in New York in 1825. On Federal census records, his age varied somewhat. He apparently spent his youth as a sailor on whaling ships, and first appeared in records relating to Trumbull, Connecticut, in 1857. While documentation pertaining to William Sherman's ethnicity in Federal census records and state vital records was inconsistent, he was not identified as Indian until 1870 or later, nor were his children identified as Indian in records predating the 1870 Federal census. The documents do not indicate that he interacted with known Paugussett descendants who lived elsewhere in Connecticut during the 19th century. Most accounts of his supposed Paugussett ancestry have depended upon internally inconsistent descriptions provided in books published by two local historians, D. Hamilton Hurd in 1881 and Samuel Orcutt in 1886.

For purposes of this determination, evidence has also been examined to determine if the group's membership otherwise meets the requirements of criterion 83.7(e) of descent from a historic tribe. The present-day membership of the GHP descends from two of William Sherman's nine children. Neither William Sherman nor his children married Paugussett Indians or other Indians; therefore, the membership does not have Indian ancestry through any other possible Indian ancestors.

A substantial body of documentation was available about the petitioning entity and its ancestors. None of the documentation demonstrated descent from the historic Paugussett tribe or from any other tribe for the GHP. The

available documentation did not demonstrate any American Indian descent, regardless of tribal affiliation. Even if Paugussett or other Indian ancestry could be determined for William Sherman, descent through one person with Indian ancestry does not meet the requirements of criterion 83.7(e) for tribal descent.

The Golden Hill Paugussett Tribe has not demonstrated that its membership is descended from a historic tribe, or tribes that combined and functioned as a single autonomous political entity. Therefore, the Golden Hill Paugussett Tribe does not meet criterion 83.7(e).

This determination is final and will become effective 90 days from the date of publication, unless a request for reconsideration is filed pursuant to § 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Appeals (§ 83.11(a)(1)). The petitioner's or interested party's request must be received no later than 90 days after publication of the Assistant Secretary's determination in the Federal Register (§ 83.11(a)(2)).

Dated: September 16, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–24688 Filed 9–25–96; 8:45 am]

BILLING CODE 4310–02–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–819943

Applicant: Jack Sites, Brigham Young University, Provo, UT.

The applicant request a permit to import and re-export tartaruga (*Podocnemis expansa*) liver tissue samples collected by the Centro Nacional dos Quelonios da Amazonia, Brazil for scientific research.

PRT–819813

Applicant: Gary Dean Willis, Mesa, AZ.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–819755

Applicant: Michael Kiedrowski, Phoenix, AZ.

The applicant requests a permit to acquire through interstate commerce one male and one female San Esteban Island chuckwalla (*Sauromalus varius*) for enhancement of the species through captive propagation.

PRT–817945

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant request a permit to export one female Pygmy chimpanzee (*Pan paniscus*) born in captivity from Zoological Society of San Diego to Apenheul Primate Park, The Netherlands, for enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 20, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–24633 Filed 9–25–96; 8:45 am]

BILLING CODE 4310–55–P

Emergency Exemption: Issuance

On September 13, 1996, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–819183) to Denver Zoological Gardens, City Park, Denver, to import a captive born black rhinoceros (*Diceros bicornis*) from the Tennoji Zoological Garden, Osaka, Japan. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the survival of the rhino existed and that no reasonable alternative was available to the applicant. Due to limited space, the juvenile rhino was at risk of potentially fatal injury from attacks by the adult rhinos brought on by the recent birth of another offspring.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 20, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–24634 Filed 9–25–96; 8:45 am]

BILLING CODE 4310–55–P

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service.

ACTION: Notice.

SUMMARY: This notice advises the public that a decision has been made, incidental take permits have been issued, and decision documents are available, upon request, for 11 applications for permits to incidentally take threatened and endangered species, pursuant to the Endangered Species Act of 1973, as amended. Take would occur incidental to otherwise lawful land use activitities (planned urban growth and associated infrastructure) within the planning area of the Natural Community Conservation Plan/Habitat Conservation Plan for the Central and Coastal Subregion of Orange County, California.

ADDRESSES: Individuals wishing copies of the Record of Decision, Biological/Conference Opinion, or Findings and Recommendations should contact the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Mr. Gail Kobetich, Field Supervisor, at the

above address; telephone (619) 431–9440.

SUPPLEMENTARY INFORMATION:

Decision

Based on the Natural Community Conservation Plan/Habitat Conservation Plan for the Central and Coastal Subregion of Orange County, California, as described in the Final Environmental Impact Report/Environmental Impact Statement, the U.S. Fish and Wildlife Service has adopted the Preferred Alternative and issued incidental take permits to the following 11 applicants, subject to certain conditions therein:

Name	Permit No.	Issuance date
The Irvine Company	810191	7/10/96
Irvine Ranch Water District	810567	7/10/96
Orange County	810569	7/10/96
Southern California Edison Company	810572	7/10/96
Transportation Corridor Agencies	810574	7/10/96
University of California-Irvine	810575	7/10/96
Metropolitan Water District of Southern California.	810579	7/10/96
Santiago Water District	810580	7/10/96
Chandis Securities Company	810581	7/10/96
M.H. Sherman Company	810582	7/10/96
Sherman Foundation	810583	7/10/96

These permits authorize the incidental take of seven species listed as threatened or endangered under the Endangered Species Act, of 1973, as amended: the threatened coastal California gnatcatcher (*Polioptila californica californica*), and the endangered American peregrine falcon (*Falco peregrinus anatum*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax trailliiextimus*), Arroyo toad (*Bufo microscaphus californicus*), Riverside fairy shrimp (*Streptocephalus wootoni*), and Pacific pocket mouse (*Perognathus longimembris pacificus*). These permits also authorize the future incidental take, should it be necessary, of 37 currently unlisted species, effective upon listing.

Rationale for Decision

This decision is based on a thorough review of the environmental consequences of the action and three alternatives. Implementation of the Natural Community Conservation Plan/Habitat Conservation Plan for the Central and Coastal Subregion of Orange County was selected as the Preferred Alternative based on consideration of environmental, social, and economic factors. This alternative provides for the establishment of a comprehensive 37,378-acre reserve system for the coastal sage scrub ecosystem in the subregion which will be managed in perpetuity to provide long-term benefits to 44 species and their habitats. This alternative also accommodates necessary and compatible land uses within the subregion while avoiding significant environmental impacts. Implementation of this alternative is assured through an Implementation Agreement (legal contract) among the 11 permittees, U.S. Fish and Wildlife Service, and California Department of Fish and Game. By adopting the Preferred Alternative with its assurances that the Natural Community Conservation Plan/Habitat Conservation Plan for the Central and Coastal Subregion of Orange County will be implemented, all practicable means to avoid or minimize the impacts of the taking have been adopted.

The permits were granted only after the U.S. Fish and Wildlife Service determined that each permit was applied for in good faith; that all permit issuance criteria were met, including the requirement that granting the permits will not jeopardize the continued existence of the species; and that the permits are consistent with the purposes and policies set forth in the Endangered Species Act of 1973, as amended.

Dated: September 13, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–24677 Filed 9–25–96; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Federal Geographic Data Committee (FGDC), Public Meeting of the Standards Working Group

AGENCY: U.S. Geological Survey.

ACTION: Notice of meetings.

SUMMARY: This notice is to invite public participation in meetings of the FGDC Standards Working Group. The major topics for these meeting will be: Standards Working Group reviews of proposals for standards development, reviews of FGDC draft standards for readiness for public review, and review of standards for final FGDC endorsement. Meetings include reports on the status of other FGDC standards.

TIME AND PLACE: 8 October 1996, from 9:00 a.m. until 12:00 noon; 5 November 1996, from 9:00 a.m. until 12:00 noon; 10 December 1996, from 9:00 a.m. until 12:00 noon. The October and November meetings will be held in Room 410 at the National Archives and Records Administration, 8th Street and Pennsylvania Avenue, NW, Washington, DC. Information on the location of the December meeting will be available in November from the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Jennifer Fox, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; telephone (703) 648–5514; facsimile (703) 648–5755; Internet ''gdc@usgs.gov''. Meeting announcements, agenda items, and minutes are available by clicking on Standards at the FGDC Internet address http://www.fgdc.gov.

SUPPLEMENTARY INFORMATION: The FGDC is a committee of Federal agencies engaged in geospatial activities. The FGDC Standards Working Group promotes and coordinates the standards activities of the Subcommittees and Working Groups that makeup the FGDC. The Standards Working Group provides guidance on FGDC standards policy and procedures, facilitates the coordination of standards activities between Subcommittees and Working Groups that have mutual interests, reviews and recommends approval of proposals for FGDC standards, reviews standards for compliance to FGDC policy and

procedure, and makes recommendations to the FGDC Coordination Group as to the readiness of a standard for advancement to the next stage toward endorsement. Guidelines on the development of FGDC standards are documented in the FGDC Standards Reference Model. This document and the Standards Working Group Charter, as well as other information about the status of FGDC standards activities, Standards Working Group meeting notices, and meeting minutes are available on the World Wide Web home page of the Standards Working Group at the FGDC Internet address listed above under contact information.

Dated: September 13, 1996.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 96–24678 Filed 9–25–96; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of Chickasaw National Recreation Area, National Park Service, Sulphur, OK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains in the possession of the National Park Service, Chickasaw National Recreation Area, Sulphur, OK.

A detailed assessment of the human remains was made by National Park Service professional staff in consultation with representatives of the Caddo Indian Tribe, Pawnee Indian Tribe, and Wichita and Affiliated Tribes.

In 1942, human remains representing one adult male was donated to the Chickasaw National Recreation Area by H.R. Antle, an amateur archeologist in Oklahoma. No known individuals were identified. No associated funerary objects are present. The remains, a cranium, were recovered from a site approximately 35 miles northeast of park boundaries and located near the banks of the Big Sandy River.

In 1958, human remains representing one adult male was donated to the Chickasaw National Recreation Area by O.K. Lowrance, a local rancher. No known individuals were identified. No associated funerary objects are present. The remains, a cranium, were recovered from a site near State Site 34MR10, located near Lowrance Springs and approximately 10 miles south of park boundaries.

Documentation of the context of these remains is incomplete. However, archeological examination of the remains dates the occupation of the sites to ca. 800–1500 AD. Anthropological evidence indicates that Caddoan language-family groups were present in the area of these sites during the pre-contact period, making the Caddo and the Wichita likely affiliates. Additionally, the Caddo and Pawnee were documented as being in the area by the 1500s and the Wichita confederacy by the beginning of the 1700s. Presently, the Wichita claim the entire area surrounding the sites as their ancestral homeland.

Based on the above mentioned information, officials of the National Park Service have determined that pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably trace between these Native American human remains and the Caddo Indian Tribe, Pawnee Indian Tribe, and Wichita and Affiliated Tribes.

This notice has been sent to officials of the Caddo Indian Tribe, Pawnee Indian Tribe, and Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact John Welch, Superintendent, Chickasaw National Recreation Area, P.O. Box 201, Sulphur, OK 73086; telephone: (405) 622–3161, before October 28, 1996. Repatriation of the human remains to the Caddo Indian Tribe, Pawnee Indian Tribe, and Wichita and Affiliated Tribes may begin after that date if no additional claimants come forward.

Dated: September 20, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist Manager, Archeology and Ethnography Program.

[FR Doc. 96–24686 Filed 9-25-96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Gila Cliff Dwellings National Monument, National Park Service, Silver City, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the control of the National Park Service, Gila Cliff Dwellings National Monument, Silver City, NM.

A detailed assessment of the human remains and associated funerary objects was made by National Park Service professional staff in consultation with representatives of the Apache Tribe, Fort McDowell Mohave-Apache Indian Community, Fort Sill Apache Business Committee, Hopi Tribe, Jicarilla Apache Tribe, Kaibab Band of Paiute Indians, Mescalero Apache Tribe, Navajo Nation, Pueblo of Acoma, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Pojoaque, Pueblo of San Ildefonso, Pueblo of Taos, Pueblo of Tesuque, Southern Ute Indian Tribe, Ute Mountain Tribe, White Mountain Apache Tribe, Yavapai-Apache Indian Nation, and Zuni Tribe. The Piro-Manso-Tiwa, a non-federally recognized Native American group, was also consulted. The Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Picuris, Pueblo of San Felipe, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, and Pueblo of Zia were invited to consultation meetings but did not attend. The Tortugas, a non-federally recognized Native American group, was also invited to consultation meetings but did not attend.

In 1963 and 1968, human remains representing 45 individuals were recovered from the Main Group site during legally authorized excavations. No known individuals were identified. The associated funerary objects include one blanket wrapped with fur strips and feathers, three cordage remnants, three unworked feathers, one fur artifact, three matting fragments, one yucca leaf paho, and three textile fragments. The Main Group site consists of several masonry cliff structures located off the Gila River. Based on the associated funerary objects, this site dates to the Pueblo III period (ca. 1250–1300 AD).

In the 1980s, human remains representing one individual were recovered through surface collecting at the TJ Ruin site. No known individuals were identified. No associated funerary objects are present. Based on other non-funerary material culture evidence, this site is dated to the Pueblo I period (ca. 900–1100 AD).

Both the Main Group and TJ Ruin sites are classified as Mogollon. However, the Main Group is associated

with the Cibola Mogollon culture group and TJ Ruin is associated with the Mimbres Mogollon culture. As noted by scholars, Mimbres sites are most likely related to the pueblo cultures to the north and east of the Gila River area. These cultures are particularly the Zuni and, to a lesser degree, the Pueblo of Acoma. Based on archeological evidence, the Pueblo of Laguna, like Acoma, are regarded as peripheral to the Mogollon culture area. Zuni affiliation to the Mogollon cultural area is supported by origin and migration stories. Oral tradition of the Hopi and the Piro-Manso-Tiwa indicate a cultural affiliation with the Gila Cliff Dwelling Mogollon sites.

Based on the above-mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 46 individuals of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 15 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe, Pueblo of Acoma, Pueblo of Laguna, Zuni Tribe. Further, officials of the National Park Service recognze that there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Piro-Manso-Tiwa, a non-federally recognized Indian group.

This notice has been sent to officials of the Apache Tribe, Fort McDowell Mohave-Apache Indian Community, Fort Sill Apache Business Committee, Hopi Tribe, Jicarilla Apache Tribe, Kaibab Band of Paiute Indians, Mescalero Apache Tribe, Navajo Nation, Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Southern Ute Indian Tribe, Ute Mountain Tribe, White Mountain Apache Tribe, Yavapai-Apache Indian Nation, and Zuni Tribe. It has also been sent to the Piro-Manso-Tiwa and the Tortugas, two non-federally recognized Indian groups. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these remains should contact Susan Kozacek, Superintendent, Gila Cliff Dwellings National Monument, Route 11, Box 100, Silver City, NM 88061; telephone: (505) 536–9461, before October 28, 1996. Repatriation of the human remains and associated funerary objects to the Hopi Tribe, Pueblo of Acoma, Pueblo of Laguna, and Zuni Tribe may begin after that date if no additional claims come forward.

Dated: September 20, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist Manager, Archeology and Ethnography Program.

[FR Doc. 96–24685 Filed 9-25-96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Tonto National Forest, United States Forest Service, Phoenix, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the control of Tonto National Forest, United States Forest Service, Phoenix, AZ.

A detailed assessment of the human remains was made by U.S. Forest Service professional staff, American Museum of Natural History professional staff, Arizona State Museum professional staff, Arizona State University professional staff, Museum of Northern Arizona professional staff, and the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Ak-Chin Indian Community, the Gila River Indian Community, the Hopi Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, and the Yavapai-Prescott Indian Tribe.

In the early 1960s, human remains representing six individuals were recovered from the Azatlan Ruin site during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. The Azatlan Ruin site has been identified as a Hohokam site (350–1100 AD) based on ceramics, architecture, and site organization.

In 1971, human remains representing fifteen individuals were recovered from the Brazeletas Pueblo site during legally authorized excavations. No known individuals were identified. The fifty four associated funerary objects include ceramics, projectile points, stone and shell necklaces, stone tools, and a painted staff. The Brazeletas Pueblo site has been identified as a Hohokam site occupied during 1100–1300 AD based on ceramics, architecture, and site organization.

In the early 1980s, human remains representing five hundred and seventy two individuals were recovered from sites AZ U:03:0049, AZ U:03:0050, and AZ U:03:0086 within the Tonto National Forest during legally authorized excavations. No known individuals were identified. The four hundred and forty two associated funerary objects include ceramics, stone tools, manos, turquoise and shell jewelry, and animal bones. Sites AZ U:03:0049, AZ U:03:0050, and AZ U:03:0086 have been identified as Hohokam sites occupied during 1250–1400 AD based on ceramics, architecture, and site organization.

In the early 1980s, human remains representing one individual were recovered from a site AZ U:02:0029 near Horseshoe Reservoir during legally authorized excavations. No known individual was identified. No associated funerary objects are present. Site AZ U:02:0029 has been identified as a Hohokam pueblo occupied during 1150–1300 AD based on ceramics, architecture, and site organization.

In the 1980s, human remains representing one individual were recovered from site AR–03–12–02–179 during legally authorized excavations. No known individual was identified. No associated funerary objects are present. Site AR–03–12–02–179 has been identified as a Salado pueblo occupied during 1300–1350 based on ceramics, architecture, and site organization.

In 1974, human remains representing twelve individuals were recovered from the Columbus site during legally authorized excavations. No known individuals were identified. The one hundred and forty nine associated funerary objects include ceramics, bone tools, shell jewelry, crystals, and whistles. The Columbus site has been identified as a pueblo occupied during the Salado and Hohokam periods (500–1400 AD) based on ceramics, architecture, and site organization.

During the 1980s, human remains representing two individuals were recovered from the Devil's Chasm site during a legally authorized surface survey. No known individuals were

identified. No associated funerary objects are present. The Devil's Chasm site has been identified as a Mogollon site occupied during 1275–1350 AD based on ceramics, architecture, and site organization.

In the early 1970s, human remains representing one individual were removed from the Dugan Ranch site during an illegal excavation by Charles H. Stephens. No known individual was identified. The one associated funerary object is a pottery vessel. The human remains and associated funerary object were confiscated by the U.S. Forest Service. The Dugan Ranch site has been identified as a Lower Verde tradition pueblo (a Hohokam phase designation) occupied during 1250–1350 AD based on ceramics, architecture, and site organization.

In 1930, human remains representing one individual were recovered from the Grapevine Springs site during legally authorized excavations. No known individual was identified. The ten associated funerary objects include ceramics, a slate palette, and a shell bracelet. The Grapevine Springs site has been identified as Hohokam site in the Colonial period (700–900 AD) based on ceramics, architecture, and site organization.

In 1950, human remains representing one individual were transferred to the Arizona State Museum with a precontact pottery collection attributed to Keystone Ruin within Tonto National Forest. Apparently assembled prior to 1929, this collection was in the possession of Gila Pueblo Archaeological Foundation, a private research institute. No known individuals were identified. The ten associated funerary objects include pottery bowls and jars. The Keystone Ruin site has been identified as a Salado site occupied during 1275–1325 AD based on ceramics, architecture, and site organization.

In 1974, human remains representing three individuals were recovered from the Multigrade site during legally authorized excavations. No known individuals were identified. The twenty seven associated funerary objects include a pottery bowl, shell beads, and a worked stone. The Multigrade Site has been identified as a Salado site occupied during 1200–1350 AD based on ceramics, architecture, and site organization.

In 1981, human remains representing one individual were recovered from site AZ P:9:6 during legally authorized archeological investigations. No known individual was identified. The one associated funerary object consists of a pottery bowl fragment. Site AZ P:9:6 has been identified as a Payson Tradition site (a Hohokam phase designation) utilized during 1150–1300 AD based on ceramics found at the site.

In the late 1980s, human remains representing one hundred and thirty six individuals were recovered from sites AZ U:03:0083, AZ U:03:0084, and AZ U:03:0087 in Pine Creek Valley during a legally authorized mitigation project. No known individuals were identified. The one thousand one hundred and eighty nine associated funerary objects include pottery jar, bowls and sherds, stone tools, projectile points, shell beads, manos, and animal bone. These three Pine Creek Valley sites have been identified as Hohokam and Salado occupations between 900–1400 AD based on ceramics, architecture, and site organization.

In 1974, human remains representing one individual were recovered from the Refugia site during a legally authorized mitigation project. No known individual was identified. The one associated funerary object is a pottery bowl. The Refugia site is a Salado structure occupied between 1300–1400 AD based on ceramics, architecture, and site organization.

In the mid-1920s, human remains representing twenty six individuals were recovered from three sites near Roosevelt Lake (AR–03–12–06–13; AR–03–12–06–101; AR–03–12–06–347) during legally authorized excavations. No known individuals were identified. The seven associated funerary objects include pottery sherds, a ceramic pendant, a spindle whorl, and a stone hoe. Sites AR–03–12–06–13; AR–03–12–06–101; AR–03–12–06–347 have been identified as a Salado pueblo and two Salado compounds occupied between 1250–1400 AD based on ceramics, architecture, and site organization.

In 1929, human remains representing four individuals were removed from the Round Valley Ruin site under unknown circumstances and purchased as part of a collection by the Gila Pueblo Archaeological Foundation, a private archeological research institute. In 1950, this collection and the human remains were transferred to the Arizona State Museum. No known individuals were identified. The twelve associated funerary objects include a pottery pitcher, ceramic jars and bowls. The Round Valley Ruin site has been identified as a Payson Tradition pueblo (a Hohokam phase designation) occupied between 1150–1300 AD based on ceramics, architecture, and site organization.

During 1929–1934, human remains representing three individuals were recovered from the Rye Creek Ruin site through unknown and legally authorized excavations by the Gila Pueblo Archaeological Foundation, a private archeological research institute. No known individuals were identified. The two associated funerary objects are a pottery jar and bowl. The Rye Creek Ruin site has been identified as a Salado platform mound occupied between 1250–1375 AD based on ceramics, architecture, and site organization.

In 1972, human remains representing one individual were recovered from the Scorpion Ridge Ruin site during legally authorized excavations. No known individual was identified. The three associated funerary objects include a pottery bowl and stone tools. The Scorpion Ridge Ruin site has been identified as a small Salado compound occupied between 1175–1250 AD based on ceramics, architecture, and site organization.

During the 1980s, human remains representing one hundred and twelve individuals were recovered from the Shoofly Village site during legally authorized excavations. No known individuals were identified. The one thousand and eighty associated funerary objects include pottery bowls, jars and sherds; projectile points; manos and metates; stone ornaments; stone and bone tools; beads; quartz; shell fragments; and spindle whorls. The Shoofly Village site has been identified as a Salado pueblo site occupied between 1100–1250 AD based on ceramics, architecture, and site organization.

In the late 1960s, human remains representing five individuals were recovered from three sites (AZ V:05:0004; AZ V:05:0014; AZ V:05:0018) in the Sierra Anchas during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. Sites AZ V:05:0004; AZ V:05:0014; AZ V:05:0018 have been identified as Hohokam occupation sites used between 700–1250 AD based on ceramics, architecture, and site organization.

In the late 1960s, human remains representing two individuals were recovered from two sites (AZ V:05:0029 and AZ V:05:0044) in the Sierra Anchas during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. Sites AZ V:05:0029 and AZ V:05:0044 have been identified as small Salado pueblos occupied between 1250–1325 AD based on ceramics, architecture, and site organization.

Between 1984–1986, human remains representing seventeen individuals were

recovered from site AZ O:11:0076 and site AZ O:11:0089 in Star Valley during legally authorized excavations. No known individuals were identified. The one hundred and sixty six associated funerary objects include pottery bowls, jars and sherds; projectile points; stone and bone tools; groundstone; stone ornaments; spindle whorls; quartz and animal bone. Site AZ O:11:0076 has been identified as a Salado pueblo occupied between 1150–1200 AD based on ceramics, architecture, and site organization. Site AZ O:11:0089 has been identified as a Hohokam pueblo occupied between 800–1150 based on ceramics, architecture, and site organization.

During the mid-1920s, human remains representing seventy six individuals were recovered from Togetzoge Ruin during legally authorized excavations. No known individuals were identified. The twelve associated funerary objects include pottery jar and bowls; projectile points; shell pendant, bracelets and beads; and bone tools. The Togetzoge Ruin has been identified as a Salado pueblo occupied between 1300–1400 AD based on ceramics, architecture, and site organization.

During the 1980s, human remains representing one individual were recovered from the Two Week site during legally authorized powerline mitigation work. No known individual was identified. The eight associated funerary objects include pottery pitcher jars and bowls. The Two Week site has been identified as a Salado site utilized between 1150–1300 AD based on ceramics, architecture, and site organization.

In 1971, human remains representing fourteen individuals were recovered from Ushklish Ruin during legally authorized excavations. No known individuals were identified. The five associated funerary objects include a pottery bowl and projectile points. The Ushklish Ruin has been identified as a Hohokam pithouse village occupied between 850–1000 AD based on ceramics, architecture and site organization.

Between 1967–1970, human remains representing two hundred and fifty four individuals were recovered from four sites at Vosberg Mesa (AZ P:13:0001; AZ P:13:0007; AZ P:13:0010; AZ P:13:0026). No known individuals were identified. The three hundred and twenty nine associated funerary objects include pottery bowls, jars, beads, figurine fragments and sherds; projectile points; stone tools; stone beads, pendants and ornaments; shell bracelets, beads and ornaments; turquoise beads; burned seeds; and animal bone. Sites AZ P:13:0001; AZ P:13:0007; AZ P:13:0010; AZ P:13:0026 have been identified as a group of Hohokam pithouse villages occupied between 800–1300 AD based on ceramics, architecture and site organization.

In 1990 (prior to Nov. 16), human remains representing approximately thirteen individuals were recovered from the Water Users' site during legally authorized excavations. No known individuals were identified. The two associated funerary objects are a pottery bowl and palette. The Water Users' site has been identified as a Hohokam pithouse village occupied between 700–900 AD based on ceramics, architecture and site organization.

During the 1980s, human remains representing one individual were recovered from site AR–03–12–02–278 during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. Site AR–03–12–02–278 has been identified as Salado pueblo occupied between 1250–1300 AD based on ceramics, architecture, and site organization.

Between 1968–1974, human remains representing two individuals were recovered from sites NA 9875 and NA 10020 during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. Sites NA 9875 and NA 10020 have been identified as Hohokam pueblos occupied between 900–1400 AD based on ceramics, architecture, and site organization.

In 1934, human remains representing one individual were recovered from the Meddler Point site during legally authorized excavations. No known individual was identified. No associated funerary objects are present. The Meddler Point site has been identified as a Salado and Hohokam platform mound compound occupied between 600–1350 AD based on ceramics, architecture, and site organization.

In 1934, human remains representing four individuals from the Indian Point Ruin site were donated to the Peabody Museum of Archaeology & Ethnology by Gila Pueblo Archaeological Foundation, a private archeological research institute. These remains were recovered during legally authorized excavations by Gila Pueblo Archaeological Foundation at an unknown time prior to their donation to the Peabody Museum. No known individuals were identified. No associated funerary objects are present. The Indian Point Ruin site has been identified as a Salado village occupied between 1100–1350 AD based on ceramics, architecture, and site organization.

In 1989, human remains representing ten individuals were recovered from the Blue Point Bridge site during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. The Blue Point Bridge site has been identified as a Hohokam pithouse village occupied between 850–1000 AD based on ceramics, architecture, and site organization.

In 1989, human remains representing two individuals were recovered from the Schoolhouse Ruin site during legally authorized excavations designed to assess damage caused to the site by an unauthorized excavation. No known individuals were identified. The two associated funerary objects are animal bone. The Schoolhouse Ruin site has been identified as a Salado platform mound occupied between 1350–1450 AD based on ceramics, architecture, and site organization.

In 1987, human remains representing two individuals were recovered from Triangle Cave as a result of vandalism to the site. No known individuals were identified. The four associated funerary objects include pottery sherds, basketry, and a shell bead. The Triangle Cave site has been identified as having three distinct occupations. The first two, dating around 850 AD and 1300 AD, are identified as Hohokam based on the cultural items associated with these occupations. The latest occupation, between 1700–1900 AD, has been by the Yavapai people, based on historical records, the cultural items associated with this occupation, and consultation evidence. The human remains and associated funerary objects are from the Hohokam occupation of Triangle Cave.

In 1988, human remains representing one individual were recovered from site AR–03–12–03–313 during an authorized emergency recovery when the individual was discovered eroding from a bank. No known individual was identified. The nine associated funerary objects are pottery sherds. Site AR–03–12–03–313 has been identified as a Salado settlement occupied between 1150–1450 AD based on ceramics, architecture, and site organization.

In 1988, human remains representing six individuals were recovered from the Pine Creek site during an authorized emergency recovery when they were exposed by eroding banks. No known individuals were identified. No associated funerary objects are present. The Pine Creek site has been identified as an isolated burial area used by a Salado settlement between 1150–1450

AD based on ceramics, architecture and site organization.

In 1968, human remains representing one individual were recovered from the Jones-Gevara site during legally authorized salvage excavations following vandalism of the site. No known individual was identified. No associated funerary objects are present. The Jones-Gevara site has been identified as a Perry Mesa Tradition settlement (a Hohokam phase designation) occupied between 1300–1400 AD based on ceramics, architecture, and site organization.

In 1988, human remains representing four individuals were recovered from site AR–03–12–03–229 during legally authorized excavations. No known individuals were identified. The eleven associated funerary objects include pottery sherds, shell bracelet, and shells. Site AR–03–12–03–229 has been identified as a Hohokam pithouse village occupied between 850–1150 AD based on ceramics, architecture, and site organization.

In 1988, human remains representing two individuals were recovered from site AR–03–12–06–303 during a legally authorized salvage excavation from an eroding bank. No known individuals were identified. The one hundred and ninety one associated funerary objects include pottery sherds, shell and chipped stone. Site AR–03–12–06–303 has been identified as a Salado settlement occupied between 1250–1350 AD based on ceramics, architecture, and site organization.

In 1988, human remains representing one individual were recovered from site AR–03–12–06–132 during legally authorized excavations following vandalism of the site. No known individual was identified. No associated funerary objects are present. Site AR–03–12–06–132 has been identified as a Salado platform mound occupied between 1350–1450 AD based on ceramics, architecture, and site organization.

In 1988, human remains representing one individual were recovered from site AR–03–12–06–202 during legally authorized excavations. No known individual was identified. No associated funerary objects are present. Site AR–03–12–06–202 has been identified as a Salado platform mound occupied between 1150–1450 AD based on ceramics, architecture, and site organization.

In 1980, human remains representing one individual were recovered from site AR–03–12–01–153 during legally authorized recovery following vandalism of the site. No known individual was identified. No associated funerary objects are present. Site AR–03–12–01–153 has been identified as a Hohokam compound occupied between 1150–1450 AD based on ceramics, architecture, and site organization.

During the 1980s, human remains representing two individuals were recovered from site AR–03–12–04–106 during legally authorized recovery following vandalism of the site. No known individuals were identified. No associated funerary objects are present. Site AR–03–12–04–106 has been identified as a Payson Tradition compound (a Hohokam phase designation) occupied between 600–1300 AD based on ceramics, architecture, and site organization.

In 1975, human remains representing one individual were recovered from site AR–03–12–02–215 during legally authorized excavations. No known individual was identified. The ten associated funerary objects include pottery sherds. Site AR–03–12–02–215 has been identified as a Salado settlement occupied between 1150–1450 AD based on ceramics, architecture, and site organization.

In 1988, human remains representing thirteen individuals were recovered from site AR–03–12–06–1155 during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. Site AR–03–12–06–1155 has been identified as a Salado compound occupied between 1350–1450 AD based on ceramics, architecture, and site organization.

In 1977, human remains representing two individuals were recovered from site AR–03–12–06–348 during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. Site AR–03–12–06–348 has been identified as a Salado compound occupied between 1150–1450 AD based on ceramics, architecture, and site organization.

In 1989, human remains representing four individuals were recovered from site AR–03–12–06–115 during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. Site AR–03–12–06–115 has been identified as a Salado platform mound occupied between 1350–1450 AD based on ceramics, architecture, and site organization.

In 1990 (prior to Nov. 16, 1990), human remains representing one individual were recovered from site AR–03–12–06–398 during legally authorized excavations. No known individual was identified. No associated funerary objects are present. Site AR–03–12–06–398 has been identified as a Salado platform mound occupied between 1350–1450 AD based on ceramics, architecture, and site organization.

In 1977, human remains representing one individual were recovered from site AR–03–12–02–140 during a legally authorized mitigation program. No known individual was identified. No associated funerary objects are present. Site AR–03–12–02–140 has been identified as a Hohokam habitation site occupied between 1100–1450 AD based on ceramics, architecture, and site organization.

In 1974, human remains representing one individual were recovered from site AR–03–12–02–88 during a legally authorized mitigation program. No known individual was identified. No associated funerary objects are present. Site AR–03–12–02–88 has been identified as a Hohokam settlement occupied between 11500–1450 AD based on ceramics, architecture, and site organization.

In 1982, human remains representing one individual were recovered from site AR–03–12–06–132 following vandalism of the site by persons unknown. No known individual was identified. The five hundred and seventy six associated funerary objects include pottery sherds, shell, and chipped stone. Site AR–03–12–06–132 has been identified as a Salado platform mound occupied between 1350–1450 AD based on ceramics, architecture, and site organization.

In 1982, human remains representing two individuals were recovered from site AR–03–12–06–2253 during legally authorized excavations. No known individuals were identified. The three associated funerary objects include pottery sherds. Site AR–03–12–06–2253 has been identified as a Salado compound occupied between 1250–1350 AD based on ceramics, architecture, and site organization.

In 1978, human remains representing eleven individuals from site AR–03–12–06–52 were illegally excavated and were recovered by law enforcement during investigations of illegal pothunting at the site. The bones and associated funerary objects were returned to Forest Service custody as a result of a guilty plea in Magistrate Court. No known individuals were identified. The two hundred and ninety three associated funerary objects include pottery sherds, chipped stone, and a turquoise bead. Site AR–03–12–06–52 has been identified as a Salado settlement occupied between 150–1400 AD based on ceramics, architecture, and site organization.

In 1981, human remains representing one individual from site AR–03–12–04–324 were illegally excavated by unknown individuals and recovered by law enforcement during investigations of illegal pothunting at the site. No known individual was identified. The four hundred and forty nine associated funerary objects include pottery sherds. Site AR–03–12–04–324 has been identified as a Hohokam settlement occupied between 1150–1450 AD based on ceramics, architecture, and site organization.

In 1983, human remains representing nine individuals from site AR–03–12–06–690 were illegally excavated by unknown individuals and recovered by law enforcement during investigations of illegal pothunting at the site. No known individuals were identified. The two hundred fifty eight associated funerary objects include pottery sherds. Site AR–03–12–06–690 has been identified as a Salado hamlet occupied between 1250–1350 AD based on ceramics, architecture, and site organization.

In 1977, human remains representing one individual from site AR–03–12–01–33 were illegally excavated by unknown individuals and recovered by law enforcement during investigations of illegal pothunting at the site. No known individual was identified. The ten associated funerary objects include shell bracelet and manos. Site AR–03–12–01–33 has been identified as a Hohokam settlement occupied between 1150–1450 AD based on ceramics, architecture, and site organization.

In 1977, human remains representing six individuals from site AR–03–12–01–55 were illegally excavated by unknown individuals and recovered by law enforcement during investigations of illegal pothunting at the site. No known individuals were identified. No associated funerary objects are present. Site AR–03–12–01–55 has been identified as a Hohokam settlement occupied between 1150–1450 AD based on ceramics, architecture, and site organization.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of the above mentioned sites with historic and present-day Piman and O'odham cultures. Oral traditions presented by representatives of the Ak-Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation support affiliation with the Salado and Hohokam sites in this area of central Arizona.

In the 1980s, human remains representing two individuals were recovered from the Rock House Pueblo site during legally authorized excavations. No known individuals were identified. No associated funerary objects were present. The Rock House Pueblo site has been identified as a Mogollon pueblo occupied between 1275–1350 AD based on ceramics, architecture and site organization.

Continuities of ethnographic materials, technology and architecture indicate affiliation of the Rock House Pueblo site with the present-day Hopi Tribe and Pueblo of Zuni. Oral traditions of these two Indian tribes support affiliation with the Mogollon sites in this area of central Arizona.

Based on the above mentioned information, officials of the USDA National Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one thousand three hundred seventy six individuals of Native American ancestry. Officials of the USDA Forest Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the five thousand three hundred and twenty six objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the USDA National Forest Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these One thousand three hundred and seventy six Native American human remains and Five thousand three hundred and twenty six associated funerary objects from the Azatlan Ruin site, the Brazeletas Pueblo site, site AZ U:03:0049, site AZ U:03:0050, site AZ U:03:0086, site AZ U:02:0029, site AR–03–12–02–179, the Columbus site, the Devil's Chasm site, the Dugan Ranch site, the Grapevine Springs site, the Keystone Ruin site, the Multigrade site, site AZ P:9:6, sites AZ U:03:0083, AZ U:03:0084, and AZ U:03:0087, the Refugia site, site AR–03–12–06–13; site AR–03–12–06–101, site AR–03–12–06–347, the Round Valley Ruin site, the Rye Creek Ruin site, the Scorpion Ridge Ruin site, the Shoofly Village site, site AZ V:05:0004; site AZ V:05:0014 site AZ V:05:0018, site AZ V:05:0029, site AZ V:05:0044, site AZ O:11:0076 site AZ O:11:0089, the Togetzoge Ruin, the Two Week site, the Ushklish Ruin, site AZ P:13:0001; site AZ P:13:0007; site AZ P:13:0010; site AZ P:13:0026, the Water Users' site, site AR–03–12–02–278, sites NA 9875, site NA 10020, the Meddler Point site, the Indian Point Ruin site, the Blue Point Bridge site, the Schoolhouse Ruin site, the Triangle Cave site, site AR–03–12–03–313, the Pine Creek site, the Jones-Gevara site, site AR–03–12–03–229, site AR–03–12–06–303, site AR–03–12–06–132, site AR–03–12–06–202, site AR–03–12–01–153, site AR–03–12–04–106, site AR–03–12–02–215, site AR–03–12–06–1155, site AR–03–12–06–348, site AR–03–12–06–115, site AR–03–12–06–398, site AR–03–12–02–140, site AR–03–12–02–88, site AR–03–12–06–132, site AR–03–12–06–2253, site AR–03–12–06–52, site AR–03–12–04–324, site AR–03–12–06–690, site AR–03–12–01–33, and site AR–03–12–01–55 and the Ak-Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community and the Tohono O'odham Nation. Lastly, officials of the USDA National Forest Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the two Native American human remains from the Rock House Pueblo site and the Hopi Tribe and the Pueblo of Zuni.

This notice has been sent to officials of the Ak-Chin Indian Community, the Gila River Indian Community, the Hopi Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, and the Yavapai-Prescott Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Ave. SW, Albuquerque, NM 87102; telephone: (505) 842–3238, fax (505) 842–3800, before October 28, 1996. Repatriation of the human remains and associated funerary objects to the Ak-Chin Indian Community, the Gila river Indian Community, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, the Hopi Tribe and the Pueblo of Zuni, as indicated above, may begin after that date if no additional claimants come forward.

Dated: September 20, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 96–24687 Filed 9–25-96; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Extension of Announcement of Vacancies to October 15, 1996; Request for Nominations

The announcement of vacancies to the ERISA Advisory Council is being extended through October 15, 1996. Earlier candidates whose nominations have been acknowledged need not reapply.

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an ''Advisory Council on Employee Welfare and Pension Benefit Plans'' (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his functions under ERISA, and to submit to the Secretary, or his designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the council expire on Thursday, November 14, 1996. The groups or fields represented are as follows: employer organizations (multiemployer plans), investment management, corporate trust, employee organizations and the general public (pensioners). Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.E., Suite N–5677, Washington, D.C. 20210. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of Section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, D.C.

This 19th say of September, 1996.

Olena Berg,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

[FR Doc. 96–24583 Filed 9–25–96; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Grant Application Availability Notice for Fiscal Year 1997

AGENCY: Institute of Museum Service, NFAH.

SUMMARY: This grant application announcement applies to the General Operating Support (GOS), Conservation Project Support (CP), Conservation Assessment Program (CAP), Museum Assessment Program (MAP I), Museum Assessment Program (MAP II), Museum Assessment Program III (MAP III) and Professional Services Program (PSP) awards under 45 CFR Part 1180 for Fiscal Year 1997.

ADDRESSES: Institute of Museum Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Tania Said, IMS Public Affairs Assistant, (202) 606–8536. Deaf and hearing impaired individuals may call the TTY line at (202) 606–8636.

SUPPLEMENTARY INFORMATION: The purpose of these awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions.

Eligibility

Museums meeting the definitions in 45 CFR 1180.3 may apply for these programs. The definition of ''museum'' includes (but is not limited to) the following institutions if they satisfy the other provisions of this section: aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art; history (including historic buildings); natural history; science and technology; and planetariums.

To be eligible for support from IMS a museum must:

Be organized as a public or private nonprofit institution and exist on a permanent basis for essentially educational or aesthetic purposes; and

Exhibit tangible objects through facilities it owns or operates; and

Have at least one professional staff member or the full-time equivalent whose primary responsibility is the care, or exhibition to the public of objects owned or used by the museum; and

Be open and have provided museum services to the general public on a regular basis for at least two full years* prior to the date of application to IMS; and

Be located in one of the fifty States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Program Categories

General Operating Support (GOS). IMS makes awards under the GOS program to museums to maintain, increase, or improve museum services through support for basic general operating expenses.

Conservation Project Support Program (CP). Awards are made through the CP program to assist with the conservation of museum collections, both living and non-living.

Conservation Assessment Program (CAP). Awards are made through CAP to provide an overall assessment of the condition of a museum's environment and collections to identify conservation needs and priorities. CAP is a non-competitive, one-time funding opportunity, offered on a first-come, first-served basis. It is administered in

*Applicants to the Museum Assessment Program and the Conservation Assessment Program need not be open for two years.

cooperation with the National Institute for Conservation. See 45 CFR Part 1180, Subpart D.

Museum Assessment Program (MAP). The MAP I funds an overall assessment of a museum's operations. The MAP II funds an assessment of the museum's collection-related policies. The MAP III provides an assessment of the public dimension of museum operations. All of the Museum Assessment Programs are non-competitive, one-time funding opportunities, offered on a first-come, first-served basis. The Museum Assessment Programs are administered in cooperation with the American Association of Museums through a memorandum of understanding. See 45 CFR Part 1180, Subpart D.

Professional Services Program (PSP). This program provides matching funds to professional museum associations for projects that serve the museum community.

Section 206 of the Museum Services Act, Title II of Pub. L. 94–462, as amended, contains authority for the programs. (20 U.S.C. 965)

Museum Leadership Initiatives. No regulations to cite for this program.

Deadline Date for Transmittal of Applications

Applications must be mailed or hand-delivered by the deadline date:

Program	Deadline
GOS	February 14, 1997.
CP	February 28, 1997.
PSP	April 11, 1996.
CAP	December 6, 1997.
MAP I	October 25, 1996 and April 25, 1997.
MAP II	March 14, 1997.
MAP III ...	February 28, 1997.
MLI	March 21, 1997.

For GOS, CP, MLI and PSP. Applications that are sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW, Room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-canceled by the U.S. Postal Service.

Applicaitons that are hand-delivered must be taken to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506. Hand-delivered applications will be accepted between 9:00 a.m. and 4:30 p.m. (E.S.T.) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

For MAP I, MAP II, and MAP III. Applicants must apply to IMS through the American Association of Museums (AAM). IMS supplies the AAM with application forms and instructions. These are forwarded by AAM to applicant museums. The Director of IMS approves applications meeting the MAP I, MAP II, and MAP III requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds. If a museum's MAP I, MAP II or MAP III application is received on or before the indicated dates, it will be processed together with other MAP I, MAP II, or MAP III applications be received during that period. Applications received after the indicated dates will be processed during the subsequent MAP I, MAP II or MAP III periods. In no event will MAP I applications be received after October 25, 1996 or April 25, 1997, MAP II applications received after March 14, 1997, or MAP III application received after February 28, 1997, be processed for Fiscal Year 1997 awards. Applicants should contact the American Association of Museums, 1225 Eye Street, NW., Washington, DC 20005, for application packets. After November 18, 1996, they should contact 1575 Eye Street, NW., Washington, DC 20005.

For CAP. Applicants must apply to IMS through the National Institute for Conservation (NIC). IMS supplies the NIC with application forms and instructions. These are forwarded by NIC to applicant museums. The Director of IMS approves applications meeting the CAP requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds. Applicants must be received by December 6, 1996. Applications for FY 1997 awards which cannot be funded will not be carried over to the next fiscal year. All unfunded applicants who wish to receive an award in the subsequent year, must reapply. Interested parties should contact the National Institute for Conservation, 3299 K Street, NW., Suite 403, Washington, DC 20007 for applications.

Program Informaiton

GOS program regulations are contained in 45 CFR XI 1180.7 (1988) and related provisions.

CP program regulations are contained in 45 CFR Section 1180.20 91988) and related provisions.

CAP and MAP program regulations are contained in 45 CFR 1180, Subpart D (1988).

PSP program regulations are contained in 45 CFR 1180, Subpart E (1988).

Further program information may be found in the Application forms and accompanying instructions in the Application. See paragraph on Application Forms.

Available Funds

As of publication time, funds for fiscal year 1997 have not been appropriated. Figures given in this section pertain to available funds for the 1996 fiscal year.

GOS. For FY 1996, $15,374,000 was available for this program. The GOS program award is equal to 15% of the museum's operating budget to a maximum of $112,500 to be spent over a two year period. The grant amount is determined annually by the National Museum Services Board. A museum that receives an award in one fiscal year may not apply for the following year's competition. (See 45 CFR 1190.16(b)).

CR. For FY 1996, $1,770,000 was available for this program. IMS makes matching conservation grants of no more than $50,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstances warrant, the Director, with the advice of the Board, may award a Conservation Project Support grant which obligates in excess of $25,000 in Federal funds to a maximum of $75,000. The Director may make such a determination with respect to a category of Conservation grants by notice published in the Federal Register. IMS awards Conservation Project Support grants only on a matching bases. At least 50% of the costs of a project must be met with non-federal funds. (See 45 CFR 1180.20(f)).

CAP. For FY 1996, $722,000 was available for this program.

MAP, MAP II, MAP III. For FY 1996 $445,000 was available for this program.

PSP. For FY 1996, $650,000 was available for this program. This program

provides matching funds for cooperative agreements that generally do not exceed $50,000.

MLI. For FY 1996, $709,000 was available for this program. This program will provide funds for cooperative agreements that generally do not exceed $30,000. Cost sharing is encouraged.

Application Forms

IMS mails application forms and program information in General Operating Support. Conservation Project Support and Professional Services Program application packets to museums and other institutions on its mailing list. Applicants may obtain application packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506, (202) 606–8539. Deaf and hearing impaired individuals may call the TTY Line, (202) 606–8636.

To received an application for the Conservation Assessment Program contact the National Institute for Conservation, 3299 K Street, NW., Suite 403, Washington, DC 20007 (202) 625–1495.

To receive an application for the Museum Assessment Programs contact the American Association of Museums, 1225 Eye Street, NW., Washington, DC 20005 (202) 289–1818. After November 18, 1996, contact 1575 Eye Street, NW., Washington, DC 2005 (202) 289–1818.

(Catalog of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: September 13, 1996.

Diane B. Frankel,

Director, Institute of Museum Services.

[FR Doc. 96–24681 Filed 9–25–96; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

President's Committee on the Arts and the Humanities: Meeting XXXVII

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on October 4, 1996 from 9:30 a.m. to 3:00 p.m. This meeting will be held at the National Gallery of Art, West Building on 6th Street and Constitution Avenue NW., Washington, DC. The meeting will be located in the Lecture Hall, which is to the right through the Galleries. Visitors should use the 6th Street Entrance.

This meeting will be open to the public on a space available basis and will begin with an opening statement by the Chairman. The Executive Director will provide an update on Committee activities and a briefing discussion will be held regarding the report requested by the President. Following a lunch break, the Committee will discuss recommendations to be included in the report.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the IMS on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited in meeting rooms and the staff of the National Gallery will need to know in advance who will be attending. Therefore, for this meeting, individuals wishing to attend are required to notify the staff of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue NW., Suite 526, Washington, DC 20506.

Dated: September 18, 1996.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 96–24682 Filed 9–25–96; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison; San Onofre Nuclear Generating Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–10 and NPF–15, issued to Southern California Edison (the licensee) for the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of the Proposed Action

By letter dated December 6, 1995, the licensee proposed to change the technical specifications (TSs) to allow an increase in fuel enrichment (Uranium 235) up to 4.8 weight percent. The present TS permit a maximum enrichment of 4.1 weight percent.

Need for Proposed Action

The licensee intends to load fuel into the core during Cycle 9 and subsequent refueling outages which does not currently meet the TSs. By increasing the fuel enrichment, the licensee will implement the fuel strategies developed for SONGS Units 2 and 3.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs and concludes that storage and use of fuel enriched with U–235 up to 4.8 weight percent at SONGS Units 2 and 3 is acceptable. The safety considerations associated with higher enrichments have been evaluated by the NRC staff and the staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. As a result, there is no increase in individual or cumulative radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation.'' This assessment was published in the Federal Register on August 11, 1988 (53 FR 30355) as corrected on August 24, 1988 (53 FR 32322) in connection with the Shearon Harris Nuclear Power Plant, Unit I: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60 Gigawatt Days per Metric Ton (GWD/MT) are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed amendment for SONGS Units 2 and 3. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed

changes involve systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with this action was published in the Federal Register on April 10, 1996 (61 FR 15997).

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for SONGS Units 2 and 3, dated April 1981 (NUREG–0490).

Agencies and Persons Contacted

In accordance with its stated policy, on September 19, 1996, the Commission consulted with the California State official, Mr. Steve Hsu of the State Department of Health Services, 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 this action, see the application for license amendment dated December 6, 1995. Copies are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the temporary local public document room located at the Science Library, University of California, Irvine, California 92713.

Dated at Rockville, Maryland, this 19th day of September 1996.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Project Directorate IV–2 Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–24694 Filed 9–25–96; 8:45 am]

BILLING CODE 7590–01–P

Periodic Verification of Design-Basis Capability of Safety-Related Motor-Operated Valves; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 96–05 to all holders of operating licenses (except those licenses that have been amended to possession-only status) or construction permits for nuclear power reactors, to (1) discuss the periodic verification of the capability of safety-related motor-operated valves to perform their safety functions consistent with the current licensing basis of nuclear power plants, (2) request that each addressee of this generic letter establish a program, or ensure the effectiveness of its current program, to verify on a periodic basis that safety-related MOVs continue to be capable of performing their safety functions within the current licensing basis of the facility, and (3) require addressees to provide to the NRC a written response relating to implementation of the requested action. This generic letter is available in the NRC Public Document Room under accession number 9609100488.

DATES: The generic letter was issued on September 18, 1996.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Thomas G. Scarbrough, at (301) 415–2794.

SUPPLEMENTARY INFORMATION: NRC regulations require that components that are important to the safe operation of a nuclear power plant, including motor-operated valves (MOVs), be treated in a manner that provides assurance of their performance. Appendix A, ''General Design Criteria for Nuclear Power Plants,'' and Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50) include broad-based requirements in this regard. In 10 CFR 50.55a(f), the NRC requires licensees to comply with Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code).

Nuclear power plant operating experience, valve performance problems and MOV research have revealed that the focus of the ASME Code on stroke time and leak-rate testing for MOVs was not sufficient for ensuring the long-term capability of MOVs to perform their design-basis safety functions in light of the design of the valves and the conditions under which they must function. For this reason, on June 28, 1989, the NRC staff issued Generic Letter (GL) 89–10, ''Safety-Related Motor-Operated Valve Testing and Surveillance.'' In GL 89–10, the staff requested that certain actions be taken to ensure the capability of MOVs in safety-related systems to perform their intended functions. The staff issued seven supplements to GL 89–10 that provided additional guidance and information.

GL 89–10 and its supplements provide only limited guidance regarding periodic verification and the measures appropriate to assure preservation of design-basis capability. This generic letter provides more complete guidance regarding periodic verification of safety-related MOVs and supersedes GL 89–10 and its supplements with regard to MOV periodic verification. Although this guidance could have been provided in a supplement to GL 89–10, the staff has prepared this new generic letter to allow closure of the staff review of GL 89–10 programs as promptly as possible.

Dated at Rockville, Maryland, this 18th day of September 1996.

For the Nuclear Regulatory Commission.

Thomas T. Martin,

Director, Division of Reactor Program Management Office of Nuclear Reactor Regulation.

[FR Doc. 96–24695 Filed 9–25–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

1996 List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act of 1978 (IG Act), as subsequently amended.

FOR FURTHER INFORMATION CONTACT: Suzanne Murrin (telephone: 202–395–1040), Office of Federal Financial

Management, Office of Management and Budget.

SUPPLEMENTARY INFORMATION: This notice provides a copy of the 1996 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget (OMB) is required to publish annually under the IG Act.

The List is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The 29 Designated Federal Entities are as listed in the IG Act, except that those agencies which have ceased to exist have been deleted from the list. This year we have deleted the Interstate Commerce Commission, which has been abolished since the last publication of this list in the November 2, 1995 Federal Register.

Federal Entities are required to annually report to each House of the Congress and the OMB on audit and investigative activities in their organizations. Federal Entities are defined as ''any Government controlled corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive Branch of the government, or any independent regulatory agency'' other than the Executive Office of the President and agencies with statutory Inspectors General. There are 7 deletions and 3 additions in the 1996 Federal Entities list from the 1995 list.

The 1996 Designated Federal Entities and Federal Entities List was prepared in consultation with the U.S. General Accounting Office.

G. Edward DeSeve,

Controller, Office of Federal Financial Management.

Herein follows the text of the 1996 List of Designated Federal Entities and Federal Entities:

1996 List of Designated Federal Entities and Federal Entities

The IG Act, as subsequently amended, requires OMB to publish a list of ''Designated Federal Entities'' and ''Federal Entities'' and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General before April 17, 1989. Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

Designated Federal Entities and Entity Heads

1. Amtrak—Chairperson
2. Appalachian Regional Commission—Federal Co-Chairperson
3. The Board of Governors, Federal Reserve System—Chairperson
4. Commodity Futures Trading Commission—Chairperson
5. Consumer Product Safety Commission—Chairperson
6. Corporation for Public Broadcasting—Board of Directors
7. Equal Employment Opportunity Commission—Chairperson
8. Farm Credit Administration—Chairperson
9. Federal Communications Commission—Chairperson
10. Federal Election Commission—Chairperson
11. Federal Housing Finance Board—Chairperson
12. Federal Labor Relations Authority—Chairperson
13. Federal Maritime Commission—Chairperson
14. Federal Trade Commission—Chairperson
15. Legal Services Corporation—Board of Directors
16. National Archives and Records Administration—Archivist of the United States
17. National Credit Union Administration—Board of Directors
18. National Endowment for the Arts—Chairperson
19. National Endowment for the Humanities—Chairperson
20. National Labor Relations Board—Chairperson
21. National Science Foundation—National Science Board
22. Panama Canal Commission—Chairperson
23. Peace Corps—Director
24. Pension Benefit Guaranty Corporation—Chairperson
25. Securities and Exchange Commission—Chairperson
26. Smithsonian Institution—Secretary
27. Tennessee Valley Authority—Board of Directors
28. United States International Trade Commission—Chairperson
29. United States Postal Service—Postmaster General

Federal Entities and Entity Heads

1. Advisory Council on Historic Preservation—Chairperson
2. African Development Foundation—Chairperson
3. American Battle Monuments Commission—Chairperson
4. Architectural and Transportation Barriers Compliance Board—Chairperson
5. Armed Forces Retirement Home—Board of Directors
6. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
7. Christopher Columbus Fellowship Foundation—Chairperson
8. Commission for the Preservation of America's Heritage Abroad—Chairperson
9. Commission of Fine Arts—Chairperson
10. Commission on Civil Rights—Chairperson
11. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson
12. Defense Nuclear Facilities Safety Board—Chairperson
13. Delaware River Basin Commission—U.S. Commissioner
14. Export-Import Bank—President and Chairperson
15. Farm Credit System Insurance Corporation—Board of Directors
16. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
17. Federal Mediation and Conciliation Service—Director
18. Federal Mine Safety and Health Review Commission—Chairperson
19. Federal Retirement Thrift Investment Board—Chairperson
20. Franklin Delano Roosevelt Memorial Commission—Chairperson
21. Harry S. Truman Scholarship Foundation—Chairperson
22. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
23. Institute of Museum Services—Board of Directors
24. Inter-American Foundation—Chairperson
25. Interstate Commission on the Potomac River Basin—Chairperson
26. James Madison Memorial Fellowship Foundation—Chairperson
27. Japan-U.S. Friendship Commission—Chairperson
28. Marine Mammal Commission—Chairperson
29. Merit Systems Protection Board—Chairperson
30. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation—Chairperson
31. National Bankruptcy Review Commission—Chairperson
32. National Capital Planning Commission—Chairperson
33. National Commission on Libraries and Information Science—Chairperson
34. National Council on Disability—Chairperson

35. National Education Goals Panel—Chairperson
36. National Endowment for Democracy—Chairperson
37. National Mediation Board—Chairperson
38. National Science Foundation/Arctic Research Commission—Chairperson
39. National Transportation Safety Board—Chairperson
40. Neighborhood Reinvestment Corporation—Chairperson
41. Nuclear Waste Technical Review Board—Chairperson
42. Occupational Safety and Health Review Commission—Chairperson
43. Office of Government Ethics—Director
44. Office of Navajo and Hopi Indian Relocation—Chairperson
45. Office of Special Counsel—Special Counsel
46. Office of the Nuclear Waste Negotiator—Negotiator
47. Offices of Independent Counsel—Independent Counsels
48. Ounce of Prevention Council—Chairperson
49. Overseas Private Investment Corporation—Board of Directors
50. Postal Rate Commission—Chairperson
51. Selective Service System—Director
52. Smithsonian Institution/John F. Kennedy Center for the Performing Arts —Chairperson
53. Smithsonian Institution/National Gallery of Art—Board of Trustees
54. Smithsonian Institution/Woodrow Wilson International Center for Scholars—Board of Trustees
55. State Justice Institute—Director
56. Susquehanna River Basin Commission—U.S. Commissioner
57. Trade and Development Agency—Director
58. Thrift Depositor Protection Oversight Board—Chairperson
59. U.S. Enrichment Corporation—Chairperson
60. U.S. Holocaust Memorial Council—Chairperson
61. U.S. Institute of Peace—Chairperson

[FR Doc. 96–24692 Filed 9–25–96; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the October 9, 1996, meeting of the Trade and Environment Policy Advisory Committee will be held from 10:00 a.m. to 3:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 2:30 p.m. and open to the public from 2:30 p.m. to 3:00 p.m.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on October 9, 1996 from 10:00 a.m. to 3:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 2:30 p.m. The meeting will influence a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 2:30 p.m. to 3:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for October 9, 1996, unless otherwise notified.

ADDRESSES: The meeting will be held at the Sheraton Carlton Hotel in the Chandelier Room, located at 16th and K Streets, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Suzanna Kang, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–24689 Filed 9–25–96; 8:45 am]

BILLING CODE 3190–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Pension Plan Reports

(2) *Form(s) submitted:* G–88p, G–88r, and G–88r.1

(3) *OMB Number:* 3220–0089

(4) *Expiration date of current OMB clearance:* October 31, 1996

(5) *Type of request:* Extension of a currently approved collection

(6) *Respondents:* Business or other for-profit

(7) *Estimated annual number of respondents:* 500

(8) *Total annual responses:* 2,240

(9) *Total annual reporting hours:* 300

(10) *Collection description:* The Railroad Retirement Act provides for payment of a supplemental annuity to a qualified railroad retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) The existence of a railroad employer pension plans and whether such plans, if they exist, require a reduction to supplemental annuities paid to the employer's former employees and (b) the amount of supplemental annuities due railroad employees.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–24679 Filed 9–25–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22236; 812–9844]

Daily Money Fund, et al.; Notice of Application

September 20, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Daily Money Fund, Daily Tax-Exempt Money Fund, Fidelity Advisor Korea Fund, Inc., Fidelity Advisor Emerging Asia Fund, Inc., Fidelity Advisor Series I, Fidelity

Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Advisor Annuity Fund, Fidelity Beacon Street Trust, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Destiny Portfolios, Fidelity Deutsche Mark Performance Portfolio, L.P., Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Government Securities Fund, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Institutional Tax-Exempt Cash Portfolios, Fidelity Institutional Investors Trust, Fidelity Institutional Trust, Fidelity Investment Trust, Fidelity Magellan[Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fideity Municipal Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust Fidelity New York Municipal Trust II, Fidelity North Carolina Capital Management, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Sterling Performance Portfolio, L.P., Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investments—Bond fund, L.P., Fidelity U.S. Investments—Government Securities Fund, L.P., Fidelity Yen Performance Portfolio, L.P., Variable Insurance Products Fund, Variable Insurance Products Fund II (collectively, the ''Trust''); Fidelity Advisor World U.S. Large-Cap Stock Fund (Bermuda) Ltd., Fidelity Advisor World Europe fund (Bermuda) Ltd., Fidelity Advisor World Europe Fund (Bermuda) Ltd., Fidelity Advisor World Southeast Asia Fund (Bermuda) Ltd., Fidelity World Advisory World U.S. Limited Term Bond Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Government Investment Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Treasury Money Fund (Bermuda) Ltd. (collectively, the ''Fidelity Advisor World Funds''); Fidelity Management and Research Company (''FMR''); Fidelity Management Trust Company (or an affiliate trustee) (''FMTC''); Fidelity Group Trust for Employee Benefit Plans (''Fidelity Group Trust''); FMR Texas Inc. (''FMR Texas''); [1] Fidelity Service Co. ''FSC''); Fidelity Investments Institutional Operations Company (''FIIOC''); [2] each Trust and all other registered investment companies and series thereof that are advised by FMR or a person controlling, controlled by, or under common control with FMR (collectively, the ''Adviser'') and all other registered investment companies and series thereof for which the Adviser in the future acts as investment adviser (collectively, the ''Registered Funds''); the Fidelity Advisor World Funds, and other pooled investment funds advised or in the future advised by the Adviser, or a person controlling, controlled by, or under common control with the Adviser, offered exclusively outside the United States to non-U.S. residents (the ''Off-Shore Funds''); state and local entities or accounts thereof advised or in the future advised by the Adviser that are exempt from regulation under the Act pursuant to section 2(b) of the Act (the ''2(b) Entities''); collective trust funds of the Fidelity Group Trust, the trustee for which, or in the future the trustee for which, is FMTC, that are excepted from the definition of investment company by section 3(c)(11) of the Act (the ''3(c)(11) Entities''); and individual institutional accounts advised by the Adviser (collectively, the Registered Funds, the Off-Shore Funds, the 2(b) Entities, the 3(c)(11) Entities, and the individual institutional accounts are the ''Funds'').

RELEVANT ACT SECTIONS: Order of exemption requested under section 6(c) of the Act from section 12(d)(1)(A)(ii) of the Act and rule 2a–7(c)(4) (i) and (ii) thereunder, under sections 6(c) and 17(b) that would grant an exemption from section 17(a), and under rule 17d–1 to permit certain transactions in accordance with section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: The requested order would permit certain Funds, including money market funds (the ''Participating Funds''), to purchase shares of affiliated investment companies (the ''Central Funds'') for cash management purposes (the ''Cash Management Transactions'') and permit the Participating Funds and the Central Funds to engage in certain transactions with each other.

FILING DATES: The application was filed on November 11, 1995, and amended on March 18, and July 10, 1996. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 15, 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 writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Registered Funds is registered under the Act and most of the Trusts are series companies. The current Off-Shore Funds are portfolios of mutual funds established under the laws of Bermuda. Each of the 3(c)(11) Entities is organized as a separate pooled account under the Fidelity Group Trust, for which FMTC acts as trustee. The only 2(b) Entity that currently intends to rely on the requested order is the Massachusetts Municipal Depository Trust (''Municipal Trust''), which is established pursuant to Massachusetts law.[3]

[1] The term ''FMR Texas'' includes any other company controlled or under common control with FMR Texas that acts in the future as investment adviser to the non-publicly traded Fidelity money market or short-term bond funds that are the subject of the requested relief.

[2] The terms ''FSC'' and ''FIIOC'' include any other company controlled by or under common control with FMR that acts in the future as shareholder servicing or dividend disbursing agent for the Trusts.

[3] A 2(b) Entity (including the Municipal Trust) may participate in the Cash Management Transactions if it determines that the proposed investments in instruments through the proposed transactions are consistent with state laws or

Continued

2. The Adviser, a registered investment adviser, acts as each Fund's investment manager and provides the Funds with administrative services. FMR Texas will provide investment management services to the Central Funds that are money market funds. FSC is the transfer and dividend paying agent for each of the retail Registered Funds and FIIOC is the transfer and dividend paying agent for each of the institutional Registered Funds. FMR Corp. is the parent holding company for FMR, FMTC, FMR Texas, FSC, and FIIOC.

3. Each Participating Fund has, or may be expected to have, uninvested cash held by its custodian bank. Such cash may result from a variety of sources, including dividends or interest received from portfolio securities, securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors.

4. The Central Funds will be open-end management investment companies registered under the Act, but will not register their shares under the Securities Act of 1933. Shares of the Central Funds will be sold only to the Participating Funds. The Central Funds will be taxable or tax-exempt money market funds or short-term bond funds with a portfolio maturity of three years or less. The Central Funds will be used as a cash management device for temporary investment by the Participating Funds.

5. Certain of the Participating Funds currently engage in interfund purchase and sale transactions involving short-term money market instruments in reliance on rule 17a–7.[4] These transactions are typically between one entity that has a need to raise cash and another that has cash to invest on a short-term basis or between a fund that was seeking to implement portfolio strategy and another fund that was seeking to raise or invest cash. Applicants propose that the Participating Funds and the Central Funds also be permitted to engage in such interfund purchase and sale transactions in securities (''Interfund Transactions'').

administrative rules regulating the 2(b) Entity. If not, it must seek to have those laws or rules amended. Accordingly, the Municipal Trust is not named as an applicant because it considers it premature to join formally.

[4] Rule 17a–7 provides for purchase or sale transactions between registered investment companies and certain affiliated persons provided that certain conditions are met.

Applicants' Legal Analysis

A. Sections 6(c) and 12(d)(1) and Rule 2a–7

1. Section 12(d)(1)(A) of the Act prohibits any registered investment company (the ''acquiring company'') or any company or companies controlled by such acquiring company to purchase any security issued by any other investment company (the ''acquired company'') if such purchase will result in the acquiring company or companies it controls owning in the aggregate (a) More than 3% of the outstanding voting stock of the acquired company, (b) securities issued by the acquired company with an aggregate value in excess of 5% of the acquiring company's total assets, or (c) securities issued by the acquired company and all other investment companies with an aggregate value in excess of 10% of the value of the acquiring company's total assets.

2. Since the Participating Funds will be the only shareholders of the Central Funds, more than 3% of the shares of each Central Fund may be owned by one or more of the Registered Funds and more than 10% of each Central Fund's shares may be held by one or more investment companies. In addition, applicants propose that each Registered Fund be permitted to invest in, and hold shares of, the Central Funds to the extent that a Registered Fund's aggregate investment in the Central Funds at the time the investment is made does not exceed 25% of the Registered Fund's total net assets. For these reasons, applicants seek an exemption from the provisions of section 12(d)(1) to the extent necessary to implement the Cash Management Transactions.

3. Rule 2a–7(c)(4) (i) and (ii) require money market funds to limit their investment in the securities of any one issuer (other than certain specified securities) to 5% of fund assets with respect to either 100% or 75% of the fund's total assets. The SEC has interpreted rule 2a–7(c)(4) (i) and (ii) as applying to a money market fund's investment in another money market fund.[5] Accordingly, applicants seek relief from rule 2a–7(c)(4) (i) and (ii) to the extent necessary to permit the Participating Registered Funds that are money market funds to invest in a Central Fund that is a money market fund, to the same extent, and on the same basis, as Participating Funds that are not money market funds.

4. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. For the reasons provided below, applicants argue that the requested order meets the section 6(c) standards.

[5] See Investment Company Act Release No. 21837 (Mar. 21, 1996) (release adopting amendments to rule 2a–7).

5. Applicants state that it would be in the best interests of the Participating Funds and their shareholders to provide the widest possible range of investments for available cash. By adding shares of the Central Funds as another investment option, the applicants believe that the Participating Funds may reduce their aggregate exposure to counterparty risk in repurchase agreements and diversify the risk associated with direct purchases of short-term obligations while providing high current rates of return, ready liquidity, and increased diversity of holdings indirectly through investment in the Central Funds. Reducing the amount of uninvested cash held at custodian banks also would reduce the Participating Funds' credit exposure to such banks. These benefits would be particularly pronounced for any tax-exempt Participating Funds, which have fewer cash management options than taxable funds.

6. With respect to section 12(d)(1), applicants state that a fund's cash position fluctuates with shareholder and investment activity. Applicants believe that a maximum of 25% of a Participating Fund's assets will cover normal investment patterns and permit the majority of a fund's cash to be invested in a Central Fund (assuming that a fund's fundamental investment policy permits such investment).

7. In addition, applicants state that section 12(d)(1) is intended to protect an investment company's shareholders against (a) undue influence over portfolio management through the threat of large-scale redemptions, the threat of loss of advisory fees to the adviser, and the disruption of orderly management of the investment company through the maintenance of large cash balances to meet potential redemptions, (b) the acquisition of voting control of the company, and (c) the layering of sales charges, advisory fees, and administrative costs. Applicants state that because an Adviser will serve as investment adviser to both the Participating Funds and the Central Funds, it is not susceptible to undue influence regarding its management of the Central Funds due to threatened redemptions or loss of fees. In addition, applicants state that each of the Central Funds will be managed specifically to maintain a highly liquid portfolio and

that access to the Central Funds will enhance each Participating Fund's ability to manage and invest cash. Further, since no Central Fund will be publicly offered, only the Participating Funds will exercise voting control over the Central Funds and each Participating Fund will hold a *pro rata* share of a Central Fund's outstanding voting securities based on the amount of its investment. Additionally, since the Participating Funds will not incur many of the expenses associated with direct investment, these savings should significantly offset the affect of the remaining expenses incurred by the Central Funds. Therefore, applicants believe none of the perceived abuses meant to be addressed by section 12(d)(1) is created by the Cash Management Transactions.

8. Applicants state that rule 2a–7 is designed to minimize the risk that a money market fund will not be able to maintain a stable net asset value. A Central Fund that is a money market fund will seek to maintain a constant net asset value and will be as liquid as a publicly offered money market fund. Applicants state that the net asset value per share of a money market Participating Fund would be made no more volatile as a result of investing a portion of its assets in another money market fund. In addition, investment in a Central Fund would be as liquid as other investment alternatives.

Accordingly, applicants belief that the investment by a money market Participating Fund in a Central Fund that is a money market fund would be consistent with the risk-limiting objectives of rule 2a–7, as amended.

B. Sections 17(a) and 17(b).

1. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person that owns more than 5% of the outstanding voting securities of that company and any investment adviser of the investment company and any person directly or indirectly controlling, or under common control with, such investment adviser. Under section 2(a)(3), FMR, as investment adviser of each of the Funds, is an affiliated person of each Fund. Further, because the Funds either share a common investment adviser or have an investment adviser that is under common control with those of the other Funds, and most Registered Funds also share a common board of trustees, or other governing body, the Funds may be deemed to be under common control with all the other Funds and, therefore, each is an affiliated person of those Funds. In addition, it is likely that a Participating Fund would own more than 5% of the outstanding voting securities of the Central Fund. Thus, each Participating Fund and the Central Fund may be affiliated persons (or affiliates of affiliates) of each other Fund.

2. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of that company. The sale by the Central Funds of their shares to the Participating Registered Funds and the redemption of such shares by the Registered Funds could be deemed to be a principal transaction between affiliated persons that is prohibited under section 17(a). Therefore, applicants request an order to permit the Central Funds to sell their shares to the Registered Funds and to permit the Registered Funds to redeem such shares from the Central Funds. In addition, applicants request relief to permit the Participating and the Central Funds to engage in Interfund Transactions that otherwise would be effected in reliance on rule 17a–7 except for the affiliation created by the Cash Management Transactions.

3. Section 17(b) permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not invoke overreaching on the part of any person concerned. Section 17(b) could be interpreted to exempt only a single transaction. However, the Commission, under section 6(c) of the Act, may exempt a series of transactions that otherwise would be prohibited by section 17(a). For the reason stated below, applicants believe that the terms of the transactions meet the standards of section 6(c) and 17(b).

4. With respect to the relief requested from section 17(a) for the Cash Management Transactions, applicants state that the terms of the Cash Management Transactions are fair because the consideration paid and received for the sale and redemption of shares of the Central Funds will be based on the net asset value per share of the Central Funds. In addition, the purchase of shares of the Central Funds by the Participating Funds will be effected in accordance with each Participating Fund's investment restrictions and policies as set forth in its registration statement.

5. With respect to the relief requested from section 17(a) for the Interfund Transactions, applicants state that the Funds will comply with rule 17a–7 under the Act in all respects, other than the requirement that the registered investment company and the affiliated person thereof (or the affiliated person of such person) be affiliated persons of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers and/or common directors. Applicants state that the additional affiliation created by the Cash Management Transactions does not effect the other protections provided by rule 17a–7, including oversight by the board of trustees of each Fund.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants contend that because they are acting together to create the Central Funds as a private facility for their cash management needs, the Central Funds may be deemed a joint enterprise for the purposes of section 17(d) and rule 17d–1.

2. Rule 17d–1 permits the SEC to approve a proposed joint transaction. In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. For the reasons stated below, applicants believe that the requested relief meets these standards.

3. Applicants state the Cash Management Transactions are intended to provide substantial benefits to all Participating Funds and that the Central Funds will benefit from having as large an asset base as possible. Moreover, applicants state that the arrangement is not intended to increase the fees for the Adviser or any other non-investment company participant. Finally, each Participating Fund may purchase and redeem shares of each Central Fund, and would receive dividends and bear expenses on the same basis as each other Participating Fund that also invests in such Central Fund.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Registered Funds will not be subject to

a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' Rules of Conduct).[6]

2. If the Adviser to the Central Fund collects a fee from the Central Fund for acting as its investment adviser, before the next meeting of the board of trustees of a Registered Fund that invests in the Central Fund is held for the purpose of voting on an advisory contract under section 15, the Adviser to the Registered Funds will provide the board of trustees with specific information regarding the approximate cost to the Adviser for managing the assets of the Registered Fund that can be expected to be invested in such Central Funds. Before approving any advisory contract under section 15, the board of trustees of such Registered Fund, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19), shall consider to what extent, if any, the advisory fees charged to the Registered Fund by the Adviser should be reduced to account for the fee indirectly paid by the Registered Fund because of the advisory fee paid by the Central Fund. The minute books of the Registered Fund will record fully the trustees' consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Participating Fund, each Central Fund, and any future fund that may rely on the order shall be advised by or, in the case of a 3(c)(11) Entity, shall have as its trustee, FMR or a person controlling, controlled by, or under common control with FMR.

4. Investment in shares of the Central Funds will be in accordance with each Registered Fund's respective investment restrictions, if any, and will be consistent with each Registered Fund's policies as set forth in its prospectuses and statements of additional information.

5. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted by the SEC's prior interfund lending order issued to the Fidelity family of funds.[7]

6. A majority of the trustees of each Registered Fund will not be ''interested persons,'' as defined in section 2(a)(19) of the Act.

7. Each of the Registered Funds will invest uninvested cash in, and hold shares of, the Central Funds only to the extent that the Registered Fund's aggregate investment in the Central Funds at the time the investment is made does not exceed 25% of the Registered Fund's total net assets. For purposes of this limitation, each Registered Fund or series thereof will be treated as a separate investment company.

8. To engage in Interfund Transactions, the Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers, and/or common directors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24698 Filed 9–25–96; 8:45 am]

BILLING CODE 8010–01–M

[6] The staff notes that until recently rule 2830 of the NASD's Rules of Conduct was section 26 of Article III of the NASD Rules of Fair Practice.

[7] *See Daily Money Fund*, Investment Company Act Release No. 17303 (Jan. 11, 1990).

[Rel. No. IC–22234; 811–8832]

Harcourt-Symes, Ltd f/n/a First August Financial Corporation; Notice of Application

September 19, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Harcourt-Symes, Ltd.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on March 11, 1996 and amended on June 6, 1996 and September 9, 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 October 15, 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 5th Street NW., Washington, DC 20549. Applicant, 1550 SW. Allen Blvd., Beaverton, OR 97005.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, (202) 942–0552, or Alison E. Baur, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized as a business corporation in Oregon in 1984 under the name Brandenfels Industries, Inc. The original business of applicant was the manufacture and marketing of butcher tables, cutting blocks and refillable spice grinders. Applicant was not successful in its operations and was involuntarily dissolved on July 29, 1986. Applicant was inactive until July 19, 1988, when it was reinstated in the state of Oregon. After a number of name changes, applicant reorganized as a business development company under the name of First August Financial Corporation in August 1994.

2. On October 25, 1994, applicant filed a notification of registration on Form N–8A pursuant to section 8(a) of the Act to register as a closed-end management investment company. Applicant then filed a registration statement on Form 10 on January 23, 1995 pursuant to section 12 of the Securities Exchange Act of 1934 for the registration of applicant's common stock. SEC records indicate that the registration statement was declared effective on March 24, 1995.

3. On February 1, 1995, applicant filed its notification of election to be regulated as a business development company on Form N–54A pursuant to section 54(a) of the Act.

4. On January 15, 1996, the Board of Directors of applicant unanimously consented, without a meeting, to submit a proposed liquidation and reorganization to the shareholders for their approval. On February 16, 1996, at a special meeting of shareholders, the shareholders approved a plan for the cessation of the business of applicant and its liquidation.

5. On February 16, 1996, applicant changed its name to Mortgage Bankers Service Corporation, and pursuant to an agreement (''Agreement'') transferred all

of its assets to Executive Business Services, Inc. (''Executive'') in consideration for the assumption by Executive of all outstanding liabilities of applicant. The aggregate value of the outstanding liabilities of applicant. The aggregate value of the assets transferred was $54,000 and the liabilities assumed totaled approximately $184,000. Applicant was negotiating to acquire Mortgage Bankers Service Corp., a Pennsylvania Corporation. However the acquisition was abandoned. On April 26, 1996, applicant changed its name to Harcourt-Symes, Ltd.

6. Applicant had no assets or debts as of the time of the filing of the application and was not a party to any litigation or administrative proceeding. Applicant has approximately 317 shareholders.

Applicant's Legal Analysis

Applicant believes that an order declaring that it has ceased to be an investment company is appropriate. Applicant states that it mistakenly filed its notification of registration under section 8(a) because it believed that such registration was required in order for applicant to act as a business development company. Applicant states that (a) it is not engaged, does not hold itself out as being engaged, and does not propose to engage, in the business of investing, reinvesting or trading in securities as referred to in section 3(a)(1) of the Act; (b) it is not engaged and does not propose to engage in any of the activities described in section 3(a) (2) and (3) of the Act; and (c) it has withdrawn its election to be regulated as a business development company and is not seeking any assurances from the SEC as to its future status as an investment company under the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24649 Filed 9–25–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22235; 812–9982]

Morgan Stanley & Co. Incorporated; Notice of Application

September 20, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''ACT'').

APPLICANT: Morgan Stanley & Co. Incorporated (''Morgan Stanley'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 12(d)(1) and 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Morgan Stanley requests an order with respect to the AJL PEPS Trust (the ''AJL Trust'') and future trusts that are substantially similar to the AJL Trust and for which Morgan Stanley will serve as a principal underwriter (the ''New Trusts,'' and, together with the AJL Trust, the ''Trusts'') that would (a) permit other registered investment companies to own a greater percentage of the total outstanding voting stock (the ''PEPS'') [1] of any Trust than that permitted by section 12(d)(1), (b) exempt the New Trusts from the initial net worth requirements of section 14(a), and (c) permit the New Trusts to purchase U.S. government securities from Morgan Stanley at the time of a New Trust's initial issuance of PEPS.

FILING DATES: The application was filed on February 8, 1996 and amended on June 14, 1996 and September 18, 1996. By letter dated September 20, 1996, applicant's counsel stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 15, 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 writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1585 Broadway, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

[1] ''PEPS'' is an acronym for ''Premium Exchangeable Participating Shares.'' The voting stock of a Trust may have a different title, and acronym, reflecting the assets held by the Trust.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. Morgan Stanley will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the PEPS issued to the public by each Trust.

2. Each Trust will, at the time of its issuances of PEPS, (a) enter into one or more forward purchase contracts (the ''Contracts'') with a counterparty to purchase a formulaically-determined number of specified equity security or securities (the ''Shares'') of one specified issuer, and (b) in some cases, purchase certain U.S. Treasury securities (''Treasuries''), which may include interest-only or principal-only securities maturing at or prior to the Trust's termination. The Trusts have purchased or will purchase the Contracts from counterparties that are not affiliated with either the relevant Trust or applicant. The investment objective of each Trust will be to provide to each holder of PEPS (''Holder'') (a) current cash distributions from the proceeds of any Treasuries, and (b) limited participation in, and, in some cases, limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Share will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value thereof, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per PEPS issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each PEPS Holder receiving fewer Shares as the market value of such Shares increases, and more Shares as their market value decreases.[2] At the termination of each Trust, each Holder will receive the number of Shares per PEPS, or the value

[2] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holder will receive a yield greater than the ordinary divident yield on the Shares at the time of the issuance of the PEPS, which is intended to compensate Holders for the limit on the Holder's participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

thereof, as determinated by the terms of the Contracts, that is equal to the Holder's *pro rata* interest in the Shares or amount received by the Trust under the Contracts.

4. PEPS issued by the AJL Trust are listed on the New York Stock Exchange, Inc. PEPS issued by the New Trusts will be listed on a national securities exchange or traded on the National Association of Securities Dealers Automated Quotation System. Thus, the PEPS will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the PEPS are issued, the trading price of the PEPS is expected to vary from time to time based primarily upon the price of underlying Shares, interest rates, and other factors affecting conditions and prices and the debt and equity markets. Morgan Stanley currently intends, but will not be obligated, to make a market in the PEPS of each Trust.

5. Each Trust will be internally managed by three trustees and will not have any separate investment adviser. The trustees will have limited or no power to vary the investments held by each trust. The day-to-day administration of each Trust will be carried out by a bank qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended. Such bank, or another bank also meeting such requirements, also will act as custodian for each Trust's assets and as paying agent, registrar, and transfer agent with respect to the PEPS of each Trust. Such bank or banks will have no other affiliation with, and will not be engaged in any other transaction with, any Trust.

6. The trustees for the AJL Trust have the power, but not the obligation, to sell the Contracts only in the limited circumstances of (a) a 50% decline in the value of the Shares from the date of the original issuance of the PEPS or (b) the bankruptcy or insolvency of an issuer of the Shares. In the event of any such sale of the Contracts, any Treasuries remaining in the AJL Trust also will be liquidated, the proceeds from the sale of the Contracts and any Treasuries will be distributed *pro rata* to the Holders, and the Trust will be terminated. The New Trust will be structured so that the trustees either are not authorized to sell the Contracts or Treasuries under any circumstances, or are permitted to sell them under the same or more limited circumstances than is the case in connection with the AJL Trust. In the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, the obligations of such counterparty under that Contract will be accelerated and the available proceeds thereof will be distributed to the PEPS Holders.

7. The trustees of each Trust will be selected initially by Morgan Stanley, together with any other initial Holders, or by the grantors of such Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding PEPS of the Trust, to remove a trustee. Holders will be entitled to a full vote for each PEPS held on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a ''majority of the Trust's outstanding PEPS'' [3] or any greater number required by the Trust's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (Including voting rights or the right to receive any dividends or other distributions in respect thereof) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by Morgan Stanley, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the PEPS of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be Morgan Stanley).

Applicant's Legal Analysis

A. Sections 12(d)(1) and 14(a)

1. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, such 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.

2. Section 12(d)(1)(A) of the Act prohibits any registered investment company from owning more than 3% of the total outstanding voting stock of any other investment company. Section 12(d)(1)(C) of the ACt similarly prohibits any investment company and other investment companies having the same investment adviser from owning more than 10% of the total outstanding voting stock of any other closed-end investment company.

3. Applicant believes, in order for the Trusts to be marketed more successfully, and to be traded at a price that most accurately reflects their asset value, that it is necessary for the PEPS of each Trust to be offered to large investment companies and investment company complexes. Applicant states that large investment companies and investment company complexes seek to spread fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities that prove attractive. Conversely, it may not be economically rational for such investors, or their advisers, to take the time to review an investment opportunity if the amount that they would ultimately be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, applicant argues that, in order for the Trusts to be economically attractive to large investment companies and investment company complexes, such investors must be able to acquire PEPS in each Trust in excess of the limitations imposed by section 12(d)(1). Applicant requests that the SEC issue an order under section 6(c) exempting the Trusts from such limitations.

4. Section 12(d)(1) is intended to mitigate or eliminate actual or potential abuses which might arise when one investment company acquires shares of another investment company. These abuses include the ''pyramiding'' of control over portfolio funds by fund-holding companies and the layering of costs to investors.

5. The pyramiding concerns fall into two categories. One arises from the potential for undue influence resulting from the pyramiding of voting control of the acquired investment company. Applicant believes that this concern generally does not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts (except for the limited ability

[3] A ''majority of the Trust's outstanding PETS'' means the lesser of (a) 67% of the PEPS represented at a meeting at which more than 50% of the outstanding PEPS are represented, and (b) more than 50% of the outstanding PETS.

discussed previously that the trustees of the AJL Trust have, and the trustees of the New Trusts may have, to sell the assets of, and terminate, the Trusts). To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, applicant argues that any concerns regarding undue influence will be eliminated by the provision that, in the case of the New Trusts, the charter documents will require, and, in the case of the AJL Trust, the investment companies purchasing PEPS in reliance on this exemption will furnish an undertaking, in each case, that any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A) and 12(d)(1)(C) will vote their PEPS in proportion to the votes of all other Holders.

6. The second concern with respect to pyramiding is that an acquiring investment company might be able to influence unduly the persons operating the acquired investment fund. This undue influence could arise through a threat to redeem assets invested in the underlying fund at a time, or in a manner, which is disadvantageous to that fund, or to threaten to vote shares in that fund in a manner inconsistent with the best interests of that fund and its shareholders. Applicant believes that this concern does not arise in the case of the Trusts because the PEPS will not be redeemable and because the trustees' management control will be so limited.

7. The second major objective of section 12(d)(1) is to avoid imposing on investors the excessive costs and fees that may result from multiple layers of investments. Excessive costs can result from investors paying double sales charges when purchasing shares of a fund which, in turn, invests in other funds, or from duplicative expenses arising from the operation of two funds in place of one. Applicant believes that neither of these concerns arises in the case of the Trusts because of the limited on-going fees and expenses incurred by the Trusts and the fact that generally such fees and expenses will be borne, directly or indirectly, by Morgan Stanley or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organization expenses (including underwriting expenses) of the Trusts. Applicant asserts that such organization expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by Morgan Stanley, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase its investment in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

8. Applicant believes that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, applicant asserts that the PEPS are intended to provide Holders with a security having unique payment and risk characteristics, including an anticipated higher yield than the ordinary dividend yield on the Shares at the time of the issuance of the PEPS.

9. Applicant believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act.

10. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a-3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company.

11. Applicant argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts that are relevant to the rule 14a–3 exemption. Rule 14a–3 provides that a unit investment trust investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering. Investors in the Trusts, like investors in a traditional unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. Applicant believes that the make-up of each Trust's assets, therefore, will be ''locked-in'' for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

12. Applicant states that, in order to ensure that each Trust will become a going concern, the PEPS of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, and resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the PEPS of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the PEPS subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the PEPS of each Trust. Accordingly, applicant states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the PEPS. Applicant also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

13. Applicant requests that the SEC issue an order under section 6(c) exempting the New Trusts from any requirements of section 14(a). Applicant believes that such exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

B. Section 17(a)

1. Sections 17(a)(1) and 17(a)(2) of the Act generally prohibit the principal underwriter of any investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from Morgan Stanley.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicant requests an exemption from sections 17(a)(1) and 17(a)(2) to permit the New Trusts to purchase Treasuries from applicant at the time of the New Trusts' entry into Contracts and issuance of PEPS.

3. Applicant states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of such relationship, could cause an investment company to purchase securities of poor

quality from the affiliated person or to overpay for any securities. Applicant argues that it is unlikely that Morgan Stanley would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasuries market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. Applicant argues that because Morgan Stanley is one of a limited number of primary dealers in Treasuries, Morgan Stanley will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. Applicant states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an on-going course of business. Consequently, investors will know before they purchase a Trust's PEPS the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. Applicant also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid by the Contracts. Applicant argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. Applicant believes that the terms of the proposed transaction are reasonable and fair and to not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents, or will undertake, to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (a) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (b) will make and approve such changes as deemed necessary; and (c) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (a) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications thereto), and (b) will maintain and preserve for the longer of (x) the life of the Trusts and (y) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from applicant, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to PEPS Holders that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its PEPS.

5. The terms of the transactions will be reasonable and fair to the Holders of the PEPS issued by each Trust and will not involve overreaching of the Trust or the Holders of PEPS thereof on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by Morgan Stanley will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction is at least as favorable as that available from other sources. This shall include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24699 Filed 9–25–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: To Be Published.

CHANGE IN THE MEETING: Date Change/Time Change.

The closed meeting scheduled for Friday, September 27, 1996, at 9:30 a.m., has been changed to Thursday, September 26, 1996, at 4:30 p.m.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 24, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24893 Filed 9–24–96; 3:53 pm]

BILLING CODE 8010–01–M

[Release No. 34–37706; File No. SR–Amex–96–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., To Amend the Firm Facilitation Exemption

September 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

notice is hereby given that on September 10, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Amex, pursuant to Rule 19b–4 of the Act, proposes to amend Exchange Rules 904 and 904C to revise the firm facilitation exemption provisions from its position and exercise limit rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In May of this year, the Exchange received Commission approval to expand the firm facilitation exemption [3] from position and exercise limits to all non-multiply-listed Exchange option classes.[4] Currently, only a member firm who facilitates and executes an order for its own customers [5] may qualify for a firm facilitation exemption.

The Exchange is proposing to amend the firm facilitation exemption so that (a) a member firm who facilitates its own customer whose account it carries, whether the firm executes the order itself or gives the order to an independent broker for execution, and (b) a member firm who receives a customer order for execution only (and thus will not have the resulting position carried by the firm) may qualify for this exemption. The Exchange believes that the proposed rule change will better allow its member firms to meet the investing needs of their customers.

The Exchange also believes that the proposed amendment to the firm facilitation exemption should enhance the depth and liquidity of the market by allowing member firms an exemption from position limits to facilitate large customer orders, whether they are firms who accept customer orders for execution only, or are firms who carry their customers' accounts and positions.

2. Statutory Basis

Based upon the foregoing, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–32 and should be submitted by October 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24701 Filed 9–25–96; 8:45 am]

BILLING CODE 8010–01–M

[3] The Amex notes that a facilitation trade is a transaction that involves crossing an order of a member firm's public customer with an order from the member firm's proprietary account.

[4] *See* Securities Exchange Act Release No. 37179 (May 8, 1996), 61 FR 24520 (May 15, 1996) (approval order for File No. SR–Amex–96–11).

[5] The Amex defines customer order as one that is entered, cleared, in which the resulting position is carried with the firm.

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–37704; File No. SR–Amex–96–33]

Self-Regulatory Organizations; Notice of Filing of, and Order Granting Accelerated Approval to, Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Specialists' Liquidating Transactions

September 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 13, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing an extension, until November 15, 1996, of a pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick,[2] in the case of a ''long'' position, or a zero plus tick,[3] when covering a ''short'' position, without Floor Official approval. The pilot program also amended Rule 170 to set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 17, 1996, the Commission approved an extension until September 23, 1996 of a pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a ''long'' position, or a zero plus tick, when covering a ''short'' position, without Floor Official approval.[4] The amendments also set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

During the course of the pilot program, the Exchange has monitored compliance with the requirements of the Rule, and its findings in this regard have been forwarded to the Commission under separate cover. The Amex believes that the amendments have provided specialists with flexibility in liquidating specialty stock positions in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. In addition, the specialist's concomitant obligation to participate as dealer on the opposite side of the market after a liquidating transaction has been strengthened.

In order to permit the Exchange and Commission staff to review certain issues associated with the pilot program, the Exchange is proposing to extend the pilot program until November 15, 1996.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objections of Section 6(b)(5)[6] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 11(b) of the Act[7] which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–33 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval to the Proposed Rule Change

The Commission finds that the Exchange's proposal to extend its pilot program concerning the execution of specialists' liquidating transactions until November 15, 1996, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission also believes the proposal is consistent with Section 11(b) of the Act[9] and Rule 11b–1[10] thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

The Exchange originally proposed to amend Amex Rule 170 in File No. SR-Amex–92–26.[11] The proposed rule change, filed as a one-year pilot program, amended Amex Rule 170 to permit specialists to ''reliquify'' a dealer position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick, but only if such transactions are reasonably necessary for the maintenance of a fair and orderly

[2] A zero minus tick is a price equal to the last sale where the last preceding transaction at a different price was at a higher price.

[3] A zero plus tick is a price equal to the last sale where the last preceding transaction at a different price was at a lower price.

[4] Securities Exchange Act Release No. 37448 (July 17, 1996), 61 FR 38487 (''July 1996 Approval Order'') (approving File No. SR–Amex–96–16).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k(b).

[10] 17 CFR 240.11b–1.

[11] *See* Securities Exchange Act Release No. 33957 (Apr. 22, 2994), 59 FR 22188 (''1994 Approval Order'') (approving File No. SR-Amex–92–26). *See also* Securities Exchange Act Release No. 35635 (Apr. 21, 1995), 60 FR 20780 (''April 1995 Approval Order'') (approving File No. SR-Amex–95–11); Securities Exchange Act Release No. 36014 (July 21, 1995), 60 FR 3887 (''July 1995 Approval Order'') (approving File No. SR-Amex–95–19); July 1996 Approval Order, *supra* note 4.

market and only if the specialist has obtained the prior approval of a Floor Official. Under the pilot program, a specialist also may sell ''long'' on a zero minus tick, or by purchasing on a zero plus tick to cover a ''short'' position, without Floor Official approval. Although liquidations on a zero minus or on a zero plus tick can be effected under the pilot procedures without a Floor Official's prior approval, such liquidations are still subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, the specialist is required to reenter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In the 1994 Approval Order, the Commission requested that the Amex submit a report setting forth the criteria developed by the Exchange to determine whether any reliquifications by specialists were necessary and appropriate in connection with fair and orderly markets.[12] The Commission also asked, among other things, that the Exchange provide information regarding the Exchange's monitoring of liquidation transactions effected by specialists on any destabilizing tick. In both of the 1995 approval orders, the Commission requested that the Amex continue to monitor the pilot and update its report where appropriate.[13] In particular, the Commission asked the Amex to report any noncompliance with the Rule and the action the Amex took as a result of such noncompliance.

The Amex submitted its reports concerning the pilot program to the Commission in May 1995 and April 1996. As noted above, the Amex believes the pilot procedures appear to be working well in enabling specialists to reliquify appropriately to meet the needs of the market. After reviewing the data, the Commission agrees with the Exchange that the pilot program generally is working well. In particular, the Commission believes the report indicates that specialists generally are entering the aftermarket after effecting liquifying transactions when appropriate.

The Commission also agrees with the Exchange's assertion that certain issues concerning the pilot program need to be revisited before permanent approval can be granted. In this regard, the Exchange should continue to emphasize the requirements of Amex Rule 170, including the necessity for Floor Official approval of specialists' purchases and sales on direct plus or minus ticks and that such transactions can only be effected if reasonably necessary for the maintenance of fair and orderly markets. In addition, where proper procedures are not followed, the Amex should take appropriate disciplinary action.[14]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using the identical procedures contained in the pilot program. These procedures have been published in the Federal Register on several occasions for the full comment period,[15] and no comments have been received. Furthermore, the Commission approved a similar rule change for the NYSE also without receiving comments on the proposal.[16] For these reasons, the Commission finds that accelerating approval of the proposed rule change is consistent with Section 19(b)(2) of the Act.[17] Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot program also should include an update on the disciplinary actions taken for violations of these procedures.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–96–33) is approved for a pilot period ending on November 15, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24702 Filed 9–25–96; 8:45 am]

BILLING CODE 8010–01–M

[12] *See* 1994 Approval Order, *supra* note 11.

[13] *See* April 1995 Approval Order and July 1995 Approval Order, *supra* note 11.

[14] Failure to obtain the required Floor Official approval when establishing, increasing, or liquidating a position should be enforced by the Exchange through its Minor Rule Violation Fine System unless more serious action is warranted through full disciplinary proceedings. *See* Amex Rule 590.

[15] *See* 1994 Approval Order, *supra* note 11; April 1995 Approval Order, *supra* note 11; July 1995 Approval Order, *supra* note 11; July 1996 Approval Order, *supra* note 4.

[16] *See* Securities Exchange Act Release No. 31797 (Jan. 29, 1993), 58 FR 7277 (approving File No. SR–NYSE–92–20).

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[Release No. 34–37703; File No. SR–PSE–96–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Its Rules on Telephone Solicitations

September 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 27, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') proposes to adopt new Rule 9.20(b) and to add a commentary thereunder with respect to the meaning and administration of proposed Rule 9.20(b). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule 9

Conducting Business With the Public

[Conduct of Accounts]

* * * * *

¶ 5905 Transactions for Public Customers

Rule 9.20(*a*)—No change.

Telephone Solicitations

Rule 9.20(b). Each member and member organization shall make and maintain a centralized list of persons who have informed the member, member organization of any employee thereof, that they do not wish to receive telephone solicitations, and shall refrain from engaging in telephone solicitations of persons named on that list.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commentary:

.01 Members and member organizations that engage in telephone solicitation to market their products and services (''telemarketing'' or ''cold-calling'') are subject to the requirements of the rules of the Federal Communications Commission and the Securities and Exchange Commission relating to telemarketing practices and the rights of telephone users. This includes, but is not limited to, the requirement to make and maintain a list of persons who do not want to receive telephone solicitations (a ''do-not-call'' list).

II. Self-Regulatory Organization's Statement of, the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepare summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (i) Adopt Rule 9.20(b) requiring members and member organizations that engage in telephone solicitations to maintain a centralized list of persons who do not wish to receive telephone solicitations, and to refrain from making telephone solicitations to persons named on such list; and (ii) Set forth Commentary .01 concerning the meaning and administration of proposed Rule 9.20(b) with respect to compliance with Federal Communications Commission (''FCC'') and Commission rules relating to telemarketing practices.[3]

In 1994, an industry Task Force, comprised of representatives from industry regulatory and self-regulatory organizations, was formed to review broker-dealer telemarketing practices and compliance with the Telephone Consumer Protection Act of 1991 (''TCPA''), as well as with the FCC rules and regulations which implemented that law. The TCPA and FCC rules address telemarketing practices and the rights of telephone consumers. One of the TCPA's requirements is that businesses, including broker-dealers, that make telephone solicitations to residential telephone subscribers institute written policies and have procedures in place for maintaining ''do-not-call'' lists. As recommended by the Task Force, proposed Rule 9.20(b) implements this requirement by obligating PSE members to make and maintain a centralized list of person who have informed the member that they do not wish to receive telephone solicitations.

The proposed Interpretation to Rule 9.20(b) reminds members and member organizations that they are subject to compliance with the requirements of the relevant rules of the FCC and the Commission relating to telemarketing practices and the rights of telephone consumers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PSE–96–32 and should be submitted by October 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24700 Filed 9–25–96; 8:45 am]

BILLING CODE 8010–01–M

[3] The PSE notes that it intends to include this Commentary in a Circular that will be distributed to members and member organizations.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics; Agency Information Collection; Activity Under OMB Review; Submission of Audit Reports

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need and usefulness of BTS collecting independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, the Department will accept the annual report submitted to the stockholders. Comments are requested concerning whether the audited reports are needed by DOT as (a) a means to monitor an air carriers continuing fitness, (b) reference material used by analysts in examining foreign route cases, (c) reference material used by analysts in examining proposed acquisitions, mergers, and consolidations, (d) a means whereby the Department sends a copy of the report to International Civil Aviation Organization (ICAO) in fulfillment of a U.S. treaty obligation, (e) corroboration

of carriers' Form 41 filings. Commenters should address whether BTS accurately estimated the reporting burden and if there are other ways to enhance the quality, utility and clarity of the information collected.

DATES: Written comments should be submitted by November 25, 1996.

ADDRESSES: Comments should be directed to the Department of Transportation, Bureau of Transportation Statistics, Office of Airline Information, K–25, 400 Seventh Street, S.W., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0004.

Title: Submission of Audit Reports, 14 CFR part 248.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 90.

Estimated Time Per Response: 15 minutes.

Total Annual Burden: 22.5 hours.

Needs and Uses: The audit reports are used as follows: (a) a means of monitoring an air carrier's continuing fitness, (b) reference material by analysts in examining foreign route cases, (c) reference material by analysts in examining proposed acquisitions, mergers, and consolidations, (d) a means whereby the Department sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a U.S. treaty obligation, and (e) corroboration of carriers' Form 41 filings.

Timothy E. Carmody,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 96–24735 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–FE–P

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: 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 Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected cost and burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on July 3, 1996 [FR 61, page 34921–34922].

DATES: Comments must be submitted on or before October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. Title: FAA Airport Master Record.

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

OMB Control Number: 2120–0015.

Form Numbers: FAA Forms 5010–1; 5010–2; 5010–3; 5010–5.

Affected Public: 14,000 civil airports.

Abstract: The FAA Act of 1958 directs the FAA to collect and disseminate information about civil aeronautics. The information is required to carry out FAA missions related to safety, forecasting, and airport engineering. The data is the basic source of data for private, state, Federal and governmental aeronautical charts and publications.

Estimated Annual Burden: The estimated total annual burden is 4,450 hours.

2. Title: General Aviation and Air Taxi Activity and Avionics Survey.

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

OMB Control Number: 2120–0060.

Form Number: 1800.54.

Affected Public: 19,000 commuter air carriers.

Abstract: The survey is to collect information on the use and the characteristics of general aviation and air taxi aircraft. The data is used by the FAA in safety study, regulatory changes and formulating long-term programs and policies.

Estimated Annual Burden: The estimated total annual burden is 5,250 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention OST Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 20, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–24640 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–62–P

[Dockets OST–96–1298 and OST–96–1299]

Applications of Gemini Air Cargo, L.L.C. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 96–9–30).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Gemini Air Cargo, L.L.C., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign scheduled air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than October 8,1996.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–96–1298 and OST–96–1299 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2343.

Dated: September 23, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–24736 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Boise Air Terminal 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 The City of Boise, Idaho. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Boise Air Terminal were in compliance with applicable requirements effective June 30, 1995. The proposed noise compatibility program will be approved or disapproved on or before March 17, 1997.

EFFECTIVE DATE: The effective date of the FAA's review of the noise compatibility program is September 18, 1996. The public comment period ends November 20, 1996.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM–611, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056. 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 Boise Air Terminal which will be approved or disapproved on or before March 17, 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 has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (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 proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Boise Air Terminal effective on September 18, 1996. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act. 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 March 17, 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 the local land use authorities, will be considered by the FAA to the extend practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, S.W., Washington, DC

Federal Aviation Administration, Airports Division, ANM–600, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056

Boise Air Terminal, Boise, Idaho

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, September 18, 1996.

David A. Field,

Acting Manager, Airports Division, ANM–600, Northwest Mountain Region.

[FR Doc. 96–24740 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Availability of a Written Reevaluation/Technical Report on Changes to the Proposed JFK Airport Access Program, New York, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to the notice of availability of a written reevaluation/technical report and request for comments.

SUMMARY: This amendment revises the date that comments must be received by the FAA and/or the NYSDOT regarding the Written Reevaluation/Technical Report.

In notice document 96–20007 beginning of page 40877 in the issue of Tuesday, August 6, 1996, on the second column under **DATES**, replace sentence regarding ''Comments must be received on or before September 20, 1996'' to ''Comments must be received on or before October 10, 1996''.

FOR FURTHER INFORMATION CONTACT:

Mr. Laurence Schaefer, Federal Aviation Administration, AEA–620, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430 (718) 553–3340 Fax (718) 995–9219

or

Mr. Charles Andreski, New York State Department of Transportation, Region II, Hunters Point Plaza, 47–40 21st Street, Long Island City, NY 11101, (18) 482–4631; Fax (718(482–4660.

Issued in Jamaica, New York State on September 19, 1996.

William Degraaff,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 96–24739 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#96–03–C–00–COS) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Colorado Springs Airport, Submitted by the Colorado Springs Airport, Colorado Springs, Colorado

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 PFC revenue at Colorado Springs Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before October 28, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary W. Green, A.A.E., Director of Aviation, at the following address: Colorado Springs Airport, 7770 Drennan Road, Colorado Springs, CO 80916.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Colorado Springs Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026. 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 (#96–03–C–00–COS) to impose and use PFC revenue at Colorado Springs Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 13, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Colorado Springs Airport, Colorado Springs, Colorado, 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 December 13, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: February 1, 1997

Proposed Charge expiration date: June 1, 1997

Total Requested for use approval: $1,591,600.00

Brief description of proposed project: Construct Taxiway ''N''.

Class of classes of air carriers which the public agency has requested not be required to collect PFC's: Part 135 on demand air taxi operators.

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, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Colorado Springs Airport.

Issued in Renton, Washington on September 16, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–24644 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–13–M

Aircraft Flight Recorder and Cockpit Voice Recorder

AGENCY: Federal Aviation Administration, DOT.

ACTION: Cancellation of Technical Standard Order (TSO's) C123 and C124; request for comments.

SUMMARY: This is a cancellation of TSO–C123, Cockpit Voice Recorder System, and TSO–C124, Flight Data Recorder Systems. TSO–C123 prescribes the minimum performance standard that cockpit voice recorder were required to be identified with marking ''TSO–C123,'' dated 5/3/91. TSO–C124 prescribes the minimum performance standards that flight data recorder systems were required to be identified with marking ''TSO–C124,'' dated 2/21/92. This cancellation will ensure that future cockpit voice recorder systems, and flight data recorders are produced under TSO–C123a, Cockpit Voice Recorder System, and TSO–C124a, Flight Data Recorder Systems.

EFFECTIVE DATE: August 2, 1998. Comments for inclusion in the TSO's Docket Files must be received on or before November 25, 1996.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), Technical Programs and Continued Airworthiness Branch (AIR–120), Attention: File No. TSO–C123 and TSO–C124, 800 Independence Avenue, SW., Washington, DC 20591

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Program and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546, and FAX Number 202–267–5340.

SUPPLEMENTARY INFORMATION:

Background

This notice cancels TSO–C123, Cockpit Voice Recorder System, and TSO–C124, Flight Data Recorder Systems. TSO–C123 prescribes the minimum performance standard that cockpit voice recorder were required to be identified with marking ''TSO–C123,'' dated 5/3/91. TSO–C124 prescribes the minimum performance standards that flight data recorder systems were required to be identified with marking ''TSO–C124,'' dated 2/21/92. This cancellation will ensure that future cockpit voice recorder systems, and flight data recorders are produced under TSO–C123a, Cockpit Voice Recorder System, dated 8/2/96, and TSO–C124a, Flight Data Recorder Systems, dated 8/1/96.

The National Transportation Safety Board reported that seven flight recorder media destroyed by postimpact fire in six accidents prompted concern about the adequacy of the performance standards for flight recorders. Minimum performance standards for impact and fire protection are outlined in four Technical Standard Orders (TSO's): TSO–C84 and TSO–C123 address CVR's and TSO–C51a and TSO–C124 address FDR's. TSO–C84 and TSO–C51a were canceled May 18, 1996.

The FAA Technical Center released a report on its study of flight recorder fire test requirements. The study determined that the high intensity, 30-minute fire test specified in the European Organization for Civil Aviation Equipment (EUROCAE), ED–56A, ''Minimum Operational Requirements for Cockpit Voice Recorder System,'' and European Organization for Civil Aviation Electronics (EUROCAE), ED–55, ''Minimum Operation Specification for Flight Data Recorder Systems,'' (and TSO–C124) is not as severe as a 30-minute jet fuel pool fire the test is intended to replicate,. The Technical Center found that doubling the exposure time from 30 to 60 minutes on the fire test produced a total heat that is equivalent to the heat experienced in a 30-minute postimpact jet fuel pool fire. The study also determined that flight recorders meeting the 10-hour low-intensity fire test conditions described in ED–56A would survive postimpact smoldering fires involving natural materials.

The Safety Board recommended that the FAA should revise TSO–C123 and TSO–C124 to reflect the findings of the FAA fire test study by (a) incorporating the long-term, low-intensity fire test requirements described in ED–56A, and (b) incorporating the high-intensity fire test requirements described in ED–55 and ED–56A, with the exception of extending the duration of the high-intensity fire test from 30 minutes, as specified in the EUROCAE documents, to 60 minutes. to improve the fire requirements for flight recorder certification and to upgrade the standards in the TSO's, the Board recommended that the FAA cancel the

original TSO–C123 and TSO–C124 within 2 years after issuing the revised versions.

Based on the findings of the NTSB and the FAA Technical Center study, TSO–C123 and TSO–C124 are canceled August 2, 1998. TSO–C123a, Cockpit Voice Recorder Systems, and TSO–C124a, Flight Data Recorder Systems were issued 8/2/96, and 8/1/96, respectively. TSO–C123a and TSO–C124a, incorporate the long-term, low-intensity fire test requirements, with the exception of extending the duration of the high-intensity fire test from 30 minutes, as specified in the EUROCAE documents, to 60 minutes.

The Cancellation Procedure

The FAA anticipates that this cancellation will not result in adverse or negative comments, and therefore is issuing it without prior opportunity to comment. The revised TSO–C123a and TSO–C124a have been issued and the majority of manufacturers are producing units under the new standards. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will published a document in the Federal Register indicating that no adverse or negative comments were received and confirming that date on which the cancellation become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the cancellation will be published in the Federal Register.

Comments Invited

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

Issued in Washington, DC., on September 18, 1996.

Abbas A. Rizvi,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 96–24643 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Transit Administration

Major Investment Study/Draft Environmental Impact Statement for the Cross County Corridor, Bucks, Chester and Montgomery Counties, Pennsylvania and Mercer County, New Jersey

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent (NOI) to prepare a Major Investment Study (MIS)/Draft Environmental Impact Statement (DEIS).

SUMMARY: The Federal Transit Administration (FTA) and the Southeastern Pennsylvania Transportation Authority (SEPTA) intend to undertake a MIS/DEIS in accordance with the Intermodal Surface Transportation Efficiency Act (ISTEA) and the National Environmental Policy Act (NEPA). A key supporting agency is the Delaware Valley Regional Planning Commission (DVRPC), the Metropolitan Planning Organization (MPO) for the region.

The MIS/DEIS will consider transportation improvements along an east-west corridor from the vicinity of Glenloch, Chester County, to Morrisville, Bucks County, Pennsylvania. In particular, the focus will be on CONRAIL's Morrisville Line, also known as the Trenton Cut-Off, which runs from Downingtown, Chester County to Morrisville, Bucks County, traversing Montgomery County. In addition, the MIS/DEIS could consider possible extensions to Parkesburg, Chester County (to the west), and Trenton, New Jersey (to the east).

Both termini are under consideration because the shorter Glenloch to Morrisville, Pennsylvania segment has logical terminus, independent utility and can be built without prejudice to possible future consideration of the extension into New Jersey. Financial issues and other factors possibly resulting from the MIS may result in a DEIS focusing on the Pennsylvania segment. For these reasons, SEPTA is soliciting public and agency input from both Pennsylvania and New Jersey regarding modal alternatives to be considered, including alternative termini and related issues.

In addition to modal alternatives, the MIS/DEIS will evaluate the No-Build and Transportation System Management (TSM) alternatives, as well as any reasonable alternatives generated through the scoping process and public involvement activities. Scoping will be accomplished through correspondence with appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed or who are known to have an interest in this proposal. In accordance with the intent and requirements of the MIS/DEIS process, a proactive public involvement program will be undertaken in conjunction with the proposed study, including public meetings. A public hearing will also be held at the appropriate stage of the DEIS process. Public notice will be given of the time and place of the meetings and hearing. The DEIS will be available for public and agency review and comment prior to the public hearing. See **SUPPLEMENTARY INFORMATION** below for details.

DATES: *Comment Due Date:* Written comments of the scope of alternatives and impacts to be considered should be sent to SEPTA by November 14, 1996. See **ADDRESSES** below.

Scoping Meeting

The Public Scoping Meeting will be held on Thursday, October 24, 1996, between 5:00 p.m. and 9:00 p.m. (EDST) in the Montgomery Room on the second floor of One Montgomery Plaza, Swede and Airy Streets, Norristown, PA. See **ADDRESSES** below. A sign-language interpreter will be present at the meeting. People with special needs should call Ms. Frances M. Jones, Manager of Community Relations at the SEPTA address below or by calling (215) 580–7334. The building is accessible to people with disabilities. It is located two blocks north of the Norristown Transportation Center which is served by the SEPTA's R6 Norristown Regional Rail Line R6, SEPTA Route 100 (Norristown High Speed Line) and the 91, 93, 96, 97, 98 and 99 SEPTA Frontier bus lines. The southbound 96, 97 and 98 SEPTA bus lines also have stops on Swede Street near the meeting location.

The meeting will be held in an ''open-house'' format and project representatives will be available to discuss the project throughout the time period given. Informational displays and written materials will also be available throughout the time period given. A record of written and oral comments made at the meeting will be prepared.

ADDRESSES: To ensure that a full range of issues related to the proposed study

are addressed and all significant issued identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the MIS/DEIS should be directed to SEPTA or the FTA at the addresses provided below:

Mr. Richard G. Bickel, AICP, Director, Long Range Planning, Southeastern Pennsylvania Transportation Authority, 1234 Market Street, 9th Floor, Philadelphia, PA 19107 (215) 580–7238.

The Scoping Meeting will be held at the following location:

The Montgomery Room, 2nd Floor, One Montgomery Plaza, Swede and Airy Streets, Norristown, PA 19404.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Garrity, Jr., Senior Transportation Representative, Federal Transit Administration, Region III, 1760 Market Street, Suite 500, Philadelphia, PA 19107 (215) 656–6900.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and SEPTA invite interested individuals, organizations, and federal, state, and local agencies to participate in defining the alternatives to be evaluated in the MIS/DEIS and identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments may be made at the public scoping meeting or in writing. See **DATES** and **ADDRESSES** sections above for the meeting locations and time, and comment period. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives which are more cost effective or have less environmental impact while achieving similar transportation objectives.

Scoping materials will be available at the meeting or in advance of the meeting. Mr. Richard G. Bickel (SEPTA) should be contacted for information on local project issues. Mr. John T. Garrity (FTA) should be contacted for information on procedural issues.

II. Description of Study Area and Project Need

The proposed Cross County Corridor would examine the potential for circumferential transit service for 48 miles from the vicinity of Morrisville, Bucks County to Glenloch, Chester County, traversing Montgomery County. This proposed route was determined as a result of the Cross County Metro Feasibility Assessment Final Report completed in May 1994. A segment of the proposed new route would share the right-of-way of CONRAIL'S existing Morrisville freight line (also known as the Trenton Cut-Off).

The proposed Cross County Corridor is intended to fill a key missing link in the provision of public transportation service in southeastern Pennsylvania by providing for inter- and intra-suburban trips to shopping, industrial/office and residential concentrations in Bucks, Montgomery and Chester Counties. An alternative to automobile travel could be provided, which would help to alleviate congestion, reduce travel time and improve air quality. At the same time, the Cross County Corridor could facilitate intermodal connections to SEPTA's existing, radial commuter rail and transit services; potential park and ride lots located along the Pennsylvania Turnpike and U.S. Route 202; as well as feeder bus service between the proposed stations and nearby development concentrations. These connections and intermodal opportunities would also enhance the regional mobility choices of Delaware County and City of Philadelphia residents, particularly those city residents seeking suburban jobs, and would better serve SEPTA's growing reverse commute market. SEPTA is seeking comment from people and agencies on both sides of the Delaware River in Pennsylvania and New Jersey regarding the alternatives to be considered, including alternative termini and related issues.

III. Alternatives

The alternatives proposed for evaluation include: No-Build which involves no change to transportation services or facilities in the corridor beyond those improvements currently programmed; the TSM alternative which focuses on operational and low-cost capital improvements to transit routes and services in the corridor; electric regional rail in trunk line service; electric light rail with branches or diversions; fixed route bus service operating along a busway on the corridor (busways) or on local roads off the corridor (improved bus with TSM improvements). Through the scoping process and public involvement, additional reasonable alternatives will be identified, including variations in mode, alignment (trunk or branch operations), length, number of stations and similar characteristics.

IV. Probable Effects

FTA and SEPTA plan to evaluate in the MIS/DEIS all significant social, economic, and environmental impacts of the alternatives. Among the primary issues are the expected increase in transit ridership, the expected increase in mobility for the corridor's transit dependent, the support of the region's air quality goals, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding agencies. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, health and safety impacts, impacts on wetland and parkland areas, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, and air and water quality, will also be covered. The impacts will be evaluated both for the construction period and for the longer term period of operations. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

In accordance with federal transportation planning regulations (23 CFR Part 450), the DEIS will be prepared in conjunction with a MIS and document the results of that study, including an evaluation of the social, economic, and environmental impacts of the alternatives. Upon completion of the MIS/DEIS, and on the basis of the comments received, the General Manger of SEPTA in consultation with the participating agencies, including the DVRPC, will select a locally preferred alternative, with its associated facilities and supporting services (i.e., stations, park and ride lots, feeder bus service, pedestrian and vehicular access, etc.). Then SEPTA, as lead agency, will seek to continue with further preliminary engineering and preparation of the Final EIS.

(Catalog of Federal Domestic Assistance Program Number 20.205)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.

Issued on: September 20, 1996.

Sheldon A. Kinbar,

Regional Administrator.

[FR Doc. 96–24645 Filed 9–25–96; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 96–69]

Announcement of Collection of Special Tonnage Taxes and Light Money Upon Entry Into the United States of Vessels of Ukraine

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

ACTION: General notice.

SUMMARY: This notice announces that the United States has determined that the Government of Ukraine is discriminating against vessels of the United States in the collection of certain fees and taxes from such vessels which enter that country. As a consequence, it has become necessary to discontinue the exemption from the collection of special tonnage taxes and light money enjoyed by vessels of Ukraine upon entering United States ports.

EFFECTIVE DATE: The change established by this notice will commence September 26, 1996.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton, Office of Regulations and Rulings (202) 482–7040.

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton denominated ''light money'', on all foreign vessels which enter United States ports (46 U.S.C. App. 121 and 128). Vessels of a foreign nation may, however, be exempted from the payment of such special tonnage taxes and light money upon presentation of satisfactory proof that no discriminatory duties of tonnage or impost are imposed by that foreign nation on United States vessels or their cargoes (46 U.S.C. App. 141). The list of nations whose vessels have been found to be reciprocally exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money is found at § 4.22, Customs Regulations (19 CFR 4.22). Nations granted these commercial privileges that subsequently impose discriminatory duties are subject to retaliatory suspension of the commercial privileges (46 U.S.C. App. 141 and 142).

The list of countries in 19 CFR 4.22 is compiled as the result of international agreements between the United States and the governments of those nations listed. Customs either adds or deletes the names of countries only upon the request of the Department of State. The present list includes the former Union of Soviet Socialist Republics (USSR) and, following the dissolution of that country, Customs was guided by a policy determination of the Department of State which holds that absent a separate agreement to the contrary, the states emerging from the break-up of the USSR take the same rights and obligations as existed for the USSR.

By a letter received on September 16, 1996, Customs was informed by the Department of State that the Government of Ukraine is presently assessing discriminatory tonnage fees against vessels of the United States which enter at Ukrainian ports. As a consequence, the Department of State has requested that action be taken to end the exemption from the assessment of special tonnage taxes and light money presently extended to Ukrainian vessels entering United States ports. Normally, Customs would be supplied with the names of countries to add to or delete from the regulatory list, but since discussion with other former Soviet states is on-going, it has been determined to issue this non-amendatory notice at this time to limit the exemption privilege by excluding Ukraine. The Department of State informs Customs that upon the conclusion of present discussions, Customs will be formally requested to add the names of certain countries to 19 CFR 4.22, and to delete the USSR from the regulation.

Therefore, effective immediately upon publication of this General Notice, vessels of Ukraine entering ports of the United States are no longer exempted from the assessment of special tonnage taxes and light money. Special tonnage taxes and light money in the amounts authorized under law will be collected on all such vessels.

Dated: September 20, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96–24658 Filed 9–25–96; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 61, No. 188
Thursday, September 26, 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 DEFENSE

48 CFR Part 219

[Defense Acquisition Circular (DAC) 91-9]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

Correction

In rule document 95–29187 beginning on page 61586 in the issue of Thursday, November 30, 1995, make the following correction:

§219.703 [Corrected]

On page 61596, in the third column, in amendatory instruction 43. for section 219.703(a), in the second line, ''Pub. L. 103-277'' should read ''Pub. L. 103-377''.

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-528, STN 50-529, and STN 50-530]

Arizona Public Service Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

Correction

In notice document 96–23194, beginning on page 47962, in the issue of Wednesday, September 11, 1996, make the following correction:

On page 47962, in the third column, in the first line of the last paragraph, ''October 11, 1996'' should be inserted.

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 530, et al.

RIN 3206-AH09

Pay Under the General Schedule; Termination of Intermin Geographic Adjustments

Correction

In rule document 96–1835, beginning on page 3539, in the issue of Thursday, February 1, 1996, make the following correction:

§550.106 [Corrected]

On page 3542, in the second column, in the amendment to § 550.106(c)(1), the revised paragraph ''(a)'' should read paragraph ''(1)''.

BILLING CODE 1505–01–D

federal register

Thursday
September 26, 1996

Part II

Department of Commerce

National Institute of Standards and Technology

15 CFR Part 280

Fastener Quality Act Implementation Procedures; Final Rule; Accreditation Body Evaluation and NIST Fastener Laboratory Accreditation Programs and Consensus Standards Organization Under the Fastener Quality Act; Notices

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 280

[Docket No: 960726209–6209–01]

RIN 0693–AA90

Procedures for Implementation of the Fastener Quality Act

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards and Technology (NIST) is today issuing a final rule to implement the Fastener Quality Act (the Act). The Act protects the public safety by: Requiring that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured, providing for accreditation of laboratories engaged in fastener testing; and requiring inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act.

The Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST), is implementing the Act by establishing these procedures, under which: Laboratories in compliance with the Act may be listed; laboratories may apply to NIST for accreditation; private laboratory accreditation entities (bodies) may apply to NIST for approval to accredit laboratories; and foreign laboratories accredited by their governments or by organizations recognized by the NIST Director under section 6(a)(1)(C) of the Act can be deemed to satisfy the laboratory accreditation requirements of the Act. The regulation also establishes, within the Patent and Trademark Office (PTO), a recordation system to identify the manufacturers or distributors of covered fasteners to ensure that the fasteners may be traced to their manufacturers or private label distributors. In addition, the regulations contain provisions on enforcement, civil penalties, and hearing and appeal procedures.

DATES: This rule is effective November 25, 1996.

FOR FURTHER INFORMATION CONTACT: For subpart A: Dr. Subhas Malghan, FQA Program Manager, Technology Services, National Institute of Standards and Technology, Building 820, Room 311, Gaithersburg, MD 20899, telephone number (301) 975–4510; for subparts B and C: James L. Cigler, Chief, National Voluntary Laboratory Accreditation Program, NIST, (301) 975–4171; for subparts D, E, and F: Robert L. Gladhill, Global Standards Policy Program, NIST, (301) 975–4273; for subpart G: William H. Arvin, Special Assistant to the Assistant Secretary for Export Enforcement, (202) 482–1564; and for subpart H: Lizbeth Kulick, Trademark Legal Administrator, Patent and Trademark Office, (703) 308–8900.

SUPPLEMENTARY INFORMATION:

As required by section 13 of the Fastener Quality Act (the Act), the National Institute of Standards and Technology (NIST) is today issuing a final rule to implement that Act. The Act protects the public safety by: (1) Requiring that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured, (2) providing for accreditation of laboratories engaged in fastener testing; and (3) requiring inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act.

The Secretary of Commerce, acting through NIST, is implementing the Act by establishing these procedures, under which: (1) Laboratories in compliance with the Act may be listed; (2) laboratories may apply to NIST for accreditation; (3) private laboratory accreditation entities (bodies) may apply to NIST for approval to accredit laboratories; and (4) foreign laboratories accredited by their governments or by organizations recognized by the NIST Director under section 6(a)(1)(C) of the Act can be deemed to satisfy the laboratory accreditation requirements of the Act. The regulation also establishes, within the Patent and Trademark Office (PTO), a recordation system to identify the manufacturers or distributors of covered fasteners to ensure that the fasteners may be traced to their manufacturers or private label distributors. In addition, the regulations contain provisions on enforcement, civil penalties, and hearing and appeal procedures which are administered by the Bureau of Export Administration.

Subpart A—''General'' sets out the purpose of the rule, and presents a general description of the rule. It also contains definitions that apply throughout the rule and establishes specific requirements with respect to applicable provisions of the Act.

Subpart B—''Laboratory Accreditation'' provides that all laboratories that desire to engage in fastener testing covered by the Act and its implementing regulations must be listed by NIST in the ''Accredited Laboratory List'' established by this subpart. NIST will prepare and maintain the List, which shall be composed of all laboratories currently accredited under subparts C, D, and E of these regulations. Only laboratory test reports prepared by an accredited laboratory currently listed in the Accredited Laboratory List shall be deemed to meet the requirements of the Act. Procedures for removing a fastener testing laboratory from listing and for appeals of listing decisions are also included.

Subpart C—''NIST Fastener Laboratory Accreditation Procedures,'' sets out the procedures and technical requirements of the National Voluntary Laboratory Accreditation Program (NVLAP) Fasteners Testing Program. These procedures are in conformance with ISO/IEC Guide 25–1990, ''General Requirements for the Competence of Calibration and Testing Laboratories.''

Subpart D—''NIST Approval of Private Accreditation Programs'' governs NIST approval of accreditation programs operated by private entities. All private accreditation entities that seek to accredit fastener testing laboratories must receive recognition under this subpart. Revocation procedures of such approval are also covered in subpart D.

Subpart E—''Recognition of Accreditation Programs,'' in accordance with section 6(a)(1)(C) of the Act, sets forth the conditions under which the accreditation of foreign laboratories by their governments or by organizations recognized by the Director shall be deemed to meet the requirements of section 7 of the Act.

Subpart F—''Requirements for Fastener Laboratory Accreditation Bodies'' sets out requirements that must be met by all accreditation bodies approved by NIST under subpart D and recognized under subpart E. These requirements, based on ISO/IEC Guide 58, are intended to assure that the approved laboratory accreditation body has the administrative and technical capability to conduct a fastener accreditation program which meets all the requirements of the Act. Subpart F also sets out the requirements against which an approved accreditation body assesses the technical competence of an applicant's testing laboratory. These requirements are consistent with those contained in subpart C of the regulations and all technical requirements established under that subpart.

Subpart G—''Enforcement'' sets forth the procedures governing the Commerce Department's administrative procedures for assessment of civil penalties and remedies.

Subpart H—''Recordal of Insignia'' contains the conditions and procedures for manufacturers'' insignias to be recorded by the Patent and Trademark Office (PTO). The purpose of Section 8 of the Act is to ensure that fasteners may be traced. The Act effects this purpose by requiring manufacturers, private label distributors, and persons who significantly alter fasteners, as defined by the Act, to inscribe any fastener, required by the standards and specifications to which it was manufactured to bear a raised or depressed insignia identifying its manufacturer, private label distributor, or alterer, with insignias that can be used to trace the fastener to its original manufacturer, private label distributor, or person who significantly altered the fastener. However, the Act does not establish any particular recordation system to effect that purpose. The PTO was charged with establishing such a system.

Background—Part 1: Summary of the Comment Process from August 1992 Issuance of the Draft Rule and Discussion of the Subsequent Actions That Lead to the Amendment of the Fastener Quality Act (Pub. L. 101–592)

On August 17, 1992, NIST published a proposed rule to implement the Fastener Quality Act in the Federal Register (57 FR 37032). In response to its request for public comments on the proposed regulation, NIST received 308 letters. An even 50 percent of the comments, 154, were submitted by representatives of businesses that distribute fasteners, and another 69 comments, or 22.4 percent, were submitted by fastener manufacturers. The remainder of the comments were distributed among representatives of trade associations: 22 comments received, or 7.1 percent of the total; commenters who identified themselves as users of fasteners covered by the Act: 16 comments received, or 5.1 percent of the total; members of the NIST Fastener Advisory Committee: 8 comments received, or 2.5 percent of the total; representatives of fastener testing laboratories: 7 comments received, or 2.2 percent of the total; and 8 letters, or 2.5 percent, were from governmental officials, including one United States Senator, four agencies of the United States Government, one state government, and two foreign governments. The remaining 24 letters, or 8.2 percent, were from individuals or were not otherwise identifiable as belonging to any group.

The subjects raised by the comments touched on a number of topics, including some 225 letters that supported legislative changes to the Fastener Quality Act that had been recommended by a NIST advisory committee to reduce the cost to the fastener industry of implementing the Act. In addition, NIST received letters on many topics directly involving the language of the regulation, such as the need to refine certain definitions, suggested changes to the procedures governing the NIST Fastener Laboratory Accreditation Program, suggested changes to sections of the regulation pertaining to the approval and recognition by NIST of third parties for the purpose of accrediting fastener testing laboratories, and other matters. Finally, NIST received a number of comments on the draft Regulatory Impact Analysis.

The legislative changes recommended by the advisory committee and supported by the public comments included the following five changes to the Fastener Quality Act:

* To permit tests of either chemical composition of fasteners to be carried out upon raw materials or finished fasteners. The effect of this proposed change would be to greatly reduce the number of tests needed to verify the chemical composition of fasteners, since many lots of fasteners are usually manufactured from one ''mill heat.''

* To permit the sale of fasteners which, upon testing under the Act, are found to have ''minor'' flaws resulting in the fastener not conforming to the tolerances stated in the standards and specifications to which they were manufactured. Section 5(a) of the Act expressly prohibited the sale of fasteners which (1) do not conform to the standards and specifications to which they were manufactured, and (2) have not been inspected, tested and certified as provided under the Act. The Committee felt that many lots of fasteners that could not be sold under the Act as presently written could be sold, were this amendment enacted, thus reducing manufacturer costs.

* To permit distributors to commingle fasteners from more than one lot in the same container, thus reducing warehouse costs for the distributors, despite the provisions of section 7(e) of the Act.

* To require that any person who significantly alters a fastener be responsible for retesting that fastener, despite the provisions of section 7(d) of the Act. And,

* To restrict the availability of test reports to the original purchaser despite the requirements of section 10 of the Act that such reports be made available to all subsequent purchasers.

A Hearing before the Subcommittee on Science, Technology, and Space of the Committee on Commerce, Science, and Transportation, United States Senate, was held in July 1993 to receive testimony from NIST and from the fastener industry on the need for amendments to the 1990 Act. Amendments addressing the issues raised by NIST and the Committee were introduced in the 102nd Congress and were passed by the U.S. House of Representatives as part of the National Competitiveness Act of 1994 (H.R. 820). The U.S. Senate passed a slightly different version of the same bill (S.4). However, the bills did not emerge from the House/Senate Conference before the 102nd Congress adjourned.

In October 1994 the Industrial Fasteners Institute (IFI), the National Fastener Distributors Association (NFDA), and the Fastener Industry Coalition (FIC) formed a bipartisan task force composed of nine members, nominated from the three organizations, to forge an industry strategy regarding amendments to the Fastener Quality Act. In January 1995, the Public Law Task Force (PLTF) submitted its report and recommendations to Senator Conrad Burns, Chairman, Subcommittee on Science, Technology and Space, U.S. Senate, and to Congressman Robert Walker, Chairman, Science Committee, U.S. House of Representatives. At the request of Senator Burns and Congressman Walker, the Advisory Committee reviewed the Task Force's report and recommendations and found them to be consistent with the Committee's recommendations for amending the Act that were transmitted to NIST and to Congress in 1993. The Task Force submitted recommendations to Congress for further simplification and clarification of the Act in early June 1995. Joint recommendations for amendments from the Fastener Advisory Committee and the Public Law Task Force were included in legislation introduced as HR 2196 in the U.S. House of Representatives and as S.1164 in the U.S. Senate. A compromise version was passed in February 1996 as the National Technology Transfer and Advancement Act, and signed into law by President Clinton in March 1996 as Pub L. 104–113.

Background—Part 2: Summary of the Fastener Quality Act and Amendments to the Act as Part of Pub L. 104–113

The Fastener Quality Act requires that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured; provides for accreditation of laboratories engaged in

fastener testing; and requires the inspection, testing and certification (in accordance with standardized methods) of fasteners covered by the Act.

Section 2 of the Act sets out the findings of Congress with respect to the Act. Section (a)(4) was deleted, and in section(b) the references to fasteners used in ''critical applications'' were deleted. These changes are consistent with the deletion of section 4 of the Act, assigning the Secretary of Commerce responsibility to determine categories of fasteners used in ''critical applications'' for purposes of adding or deleting them from coverage under the Act. The term ''by lot number'' was deleted from (a)(7) to be consistent with proposed changes in section 7(e), which allow distributors to voluntarily commingle two or more certified lots of like fasteners.

Section 3 of the Act provides definitions of terms used in the Act and in the proposed rule. The following definitions were amended in the Act:

- Definition (1) ''alter'' was amended by deleting the reference to a minimum tensile strength of 150,000 pounds per square inch (psi). It was felt that this type of technical requirement did not belong in the Act and should be covered in implementing regulations. Accordingly, the issue is dealt with under § 280.2 of this proposed rule.
- Definition (2) ''consensus standards organization'' was amended by adding the word ''consensus'' in the third line to emphasize the reliance upon ''consensus standards'' for fasteners covered by the Act.
- Definition (5) ''fastener'' was amended by deleting item (D) to be consistent with the deletion of section 4 which assigns the Secretary of Commerce responsibility to add or delete fasteners from coverage under the Act based upon their use in ''critical applications.'' In addition, fasteners produced in accordance with ASTM F432 are exempt from coverage under the Act. ASTM F432 covers rock and roof bolts and accessories used in the mining industry. This action was the result of a petition by the American Mining Congress that such products do not meet the intent of the Act and that they are strictly regulated by the Mine Safety and Health Administration.
- Definition (6) ''grade identification marking'' was amended by deleting the term ''other person'' and replacing it with ''government agency.'' This change was necessary to be consistent with the revision of the definition of ''standards and specifications.''
- Definition (8) ''Institute'' was amended to correct the spelling of ''Standards'' in NIST' name.
- Definition (11) ''original equipment manufacturer'' was deleted from the Act to be consistent with the change to section 7(f) which deletes any reference to OEMs.
- Definition (13) ''standards and specifications'' was amended to resolve two major problems. First, the wording in the original definition was interpreted by NIST and Commerce attorneys as prohibiting the sale of any fastener not fully meeting the requirements of the standards or specifications to which it was manufactured. Such interpretation does not recognize long-standing industry practice of disposing of non-conforming fasteners in accordance with defined procedures contained in consensus standards. The objectionable language was removed from the definition. Second, the definition as now constructed makes it clear that for the purposes of the Act only fasteners which are covered by standards and specifications published by a consensus standards organization or by a government agency are subject to the Act.
- Definition (14) ''through-harden'' was amended by adding ''* * * for the purpose of achieving a uniform hardness'' to improve its meaning.

Section 4 of the Act was completely deleted. NIST, with the assistance of the Fastener Advisory Committee, attempted but was unsuccessful in establishing guidelines under which the Secretary of Commerce would add or exempt categories of fasteners from coverage under the Act. Originally, Congressional intent was that the Act would cover only ''high strength'' fasteners used in ''critical applications.'' A figure of 1% of fasteners meeting these categories was used throughout early Congressional discussions of the Act. However, upon passage of the Act and further study and interpretation of its requirements by the Department of Commerce, the Fastener Advisory Committee, and various industry groups, it became apparent that the Act applied to a majority of fasteners in the industry. Further, while it was possible to come to an agreement that a ''critical application'' of a fastener was any application for which it was reasonably foreseeable that a failure of the fastener would result in serious personal injury or death, significant property damage, or significant repair costs, it was not possible to come to agreement a priori as to which fasteners were used in critical applications. The problem is that a single type or category of fasteners might be used in many different applications, some may be critical in terms of having the potential for causing death or injury if the fastener(s) fails, and others not. The ultimate user of the fastener determines how fasteners will be used, and there were many instances cited where ''low strength'' fasteners were being used in critical applications. Thus, NIST and the Fastener Advisory Committee concluded that there was no systematic way in which the Secretary of Commerce could add or exempt whole categories of fasteners from coverage under the Act, and that to attempt to do so could be costly in terms of potential litigation, with no resulting benefit to anyone. Such conclusion was based on evidence that there is no instance within the industry where one can make a clear-cut case that a particular fastener category, not currently covered by the Act, is always used in ''critical applications'' or vice versa.

Section 5 of the Act prohibits selling (or offering for sale) any fastener unless it is part of a lot which: (1) Conforms to the standards and specifications to which the manufacturer represents it has been manufactured; and (2) has been inspected, tested, and certified as provided by the Act. An exception to this pre-sale requirement is provided for certain small lots. These small lots must be tested as soon as practicable after delivery to the purchaser. Section 5 also provides that fastener inspection and testing be performed by a laboratory accredited in accordance with procedures and conditions specified by the Secretary of Commerce. Sections 5(a)(1)(B) and 5(a)(2)(B) were amended to add reference to the new section (d) covering alternative procedures for chemical testing. Section 5(c)(2) was amended to make it clear that the laboratory report of testing must include a reference to the standards and specifications the manufacturer claims the fasteners have been manufactured to. Section 5(c)(3) was amended to remove the examples of fastener markings and characteristics to be tested. The examples are incomplete and could be misleading. Section 5(c)(4) was amended to allow the manufacturer to follow section 5(d) regarding alternative procedures for testing chemical characteristics of fasteners. A new section 5(d) providing for an alternative procedure for determining the chemical characteristics of fasteners was added. This new section recognizes a long-standing industry practice of manufacturers relying on certificates from the raw material supplier for assuring that the chemical characteristics of a mill heat of material conform to specified standards. The section requires that testing be carried

out in a laboratory accredited in accordance with the Act.

Section 6 requires the Secretary of Commerce, acting through the Director of NIST, to issue regulations including: (1) Procedures and conditions for NIST accreditation of fastener testing laboratories; (2) conditions (consistent to the extent practicable with requirements of national or international consensus documents) under which private entities may apply for approval to directly accredit laboratories in accordance with the requirements of the Act; and (3) conditions under which the accreditation of foreign laboratories by their governments or organizations recognized by the NIST Director will be deemed to satisfy the requirements of the Act. The Act leaves to the discretion of the Director the procedures NIST will use to determine the competency of foreign governments'' (or other organizations') laboratory accreditation programs. Section 6(a)(1) was amended to delete the reference to the Secretary's issuance of regulations within 180 days of enactment of the Act, because that time period is no longer relevant.

Section 7 of the Act covers sales of fasteners subsequent to their manufacture and establishes requirements which manufacturers, importers, and private label distributors must meet in the sale of fasteners. It also requires that any person who significantly alters a fastener so that it no longer conforms to the description in the relevant certificate of conformance and offers such fastener for subsequent sale is to be treated as a manufacturer for purposes of the Act. Section 7 also governs the commingling of fasteners from different lots in the same container.

There were several significant amendments to section 7 of the Act. Section 7(a) was amended to delete reference to section 4 of the Act, which was deleted. Section 7(a) was also amended to remove the responsibility from the manufacturer of domestically produced fasteners of supplying to the purchaser, at the time of delivery, a written certificate attesting that the fasteners have been manufactured according to applicable standards and specifications and have been inspected and tested by an accredited laboratory. Instead, the new requirement is that the manufacturer maintain on file a manufacturer's certificate of conformance covering fasteners and that the certificate be available for inspection. The requirement that the original laboratory report of test be maintained on file by the manufacturer remains unchanged. Copies of the manufacturers certificate of conformance and original test report for a given lot of fasteners may be requested by purchasers of such fasteners, under an amendment to section 10 of the Act. This change was made to reduce paperwork burdens under the Act and to reduce the possibility of fraudulent use of certificates of conformance or laboratory test reports. It is not the intent of these changes to deny access to such information to any person who can demonstrate a legitimate need for the information.

Section 7(b) remains unchanged in terms of requiring delivery of fasteners of foreign origin to be accompanied by a manufacturer's certificate of conformance and an original laboratory testing report for each lot of imported fasteners. Exemptions to these requirements are provided for products manufactured within a nation which is a party to a congressionally-approved free trade agreement with the United States or for Canadian-origin products under the United States-Canada Automobile Pact for use as original equipment in the manufacture of motor vehicles. Also, importers or private label distributors may take delivery of imported fasteners without the original copy of the laboratory test report if the manufacturer provides a certificate of conformance indicating that the fasteners have been manufactured according to the requirements of the applicable standards and specifications and the importer or private label distributor assumes responsibility in writing for the inspection and testing of the fasteners in accordance with the Act.

Section 7(c)(2) was amended by adding several words to improve its meaning. In section 7(d) the word ''certificate'' was replaced with ''test report'' to make it clear that it is the test report and not the manufacturer's certificate of conformance that should be referred to in determining whether or not significant alterations have been made to a fastener. Section 7(e) on Commingling was amended to permit voluntary commingling of two or more tested and certified lots by fastener distributors. There is still a restriction on commingling of more than two tested and certified lots by manufacturers, importers, or private label distributors. Section 7(f) on subsequent purchaser was amended to indicate that any person who purchases fasteners for any reason has the right to request and receive containers of fasteners with the lot number from which they were taken conspicuously marked on the container. Section 7(g) was deleted because the Secretary of Commerce is provided authority to issue regulations pursuant to the Act in section 13.

Section 8 prohibits offering fasteners for sale that are required by an applicable standard or specification to bear a raised or depressed insignia identifying the manufacturer or distributor unless the manufacturer or distributor has complied with the requirements of a program to be established by the Secretary of Commerce for the registration of such insignias to ensure that the fasteners may be traced to their manufacturers or private label distributors. However, the Act does not establish any particular recordation system to effect that purpose. The Patent and Trademark Office (PTO) was charged with establishing such a system. These requirements are proposed as subpart H of this rule.

Section 9(a) of the Act authorizes the Attorney General to bring an action in U.S. district courts for declaratory and injunctive relief against persons who violate the Act or implementing regulations. Section 9(b) requires the Secretary of Commerce to establish ''notice and opportunity for hearing'' procedures for the assessment of civil penalties not to exceed $25,000 for each violation of the Act or implementing regulations, authorizes penalty recovery actions by the Attorney General, and authorizes the Secretary to issue subpoenas of witnesses or documents. A ''substantial evidence'' standard of judicial review is provided. Section 9(c) of the Act provides for criminal penalties, which are enforced by the Department of Justice. A new section 9(d) dealing with enforcement was added as an amendment to the Act at the request of the Bureau of Export Administration within the Department of Commerce. The Bureau of Export Administration has been delegated responsibility for enforcement of the Act by the Secretary of Commerce. This new language provides authority for agents and investigators from the Bureau of Export Administration to also use authorities conferred upon them by other laws of the U.S., subject to policies and procedures approved by the Attorney General to enforce this Act. Proposed regulations implementing section 9 are contained in subpart G of this rule.

Section 10 of the Act deals with record keeping requirements. This section was amended to reduce from 10 years to 5 years, the period during which records must be kept by persons subject to the Act. In section 10(b) the word ''any'' has been replaced by the word ''the'' to limit the responsibility of manufacturers, importers, private label

distributors, and persons who make significant alterations under the Act, to supply copies of applicable laboratory testing reports or manufacturers' certificates only to their purchasers of fasteners. The intent of the change is to reduce paperwork burdens and to protect against fraudulent use of test reports and certificates of conformance.

Section 13 provides authority to the Secretary of Commerce to issue regulations pursuant to the Act. The reference to issuance of regulations within 180 days of enactment of the Act was deleted because the time frame is no longer relevant.

Section 14 requires the establishment of an advisory committee to assist in implementation of the Act. This section was deleted. The requirements of the section have been met by NIST.

Background—Part 3: Summary of Public Comments Received by NIST in Response to the 1992 Request for Public Comments, and NIST's Response to the Comments

As was noted above, on August 17, 1992, NIST published a proposed rule to implement the Fastener Quality Act in the Federal Register (57 FR 37032). A detailed analysis of the comments follows.

Comments Requesting NIST To Issue Another Proposed Rule

Several commenters requested that in light of amendments made to the Fastener Quality Act under Pub. L. 104–113, NIST should issue another proposed rule for public comment. NIST asserts that this final rule is the logical outgrowth of the 1992 proposed rule and the public comment process. A majority of the public comments received on the 1992 proposed rule suggested the need for particular amendments to the FQA. The suggested amendments were enacted as part of Pub. L. 104–113. This rule contains regulations making final the 1992 proposed rule, as well as regulations to implement expressly the FQA as amended pursuant to specific public comments received regarding the 1992 proposed rule. Therefore, under the Administrative Procedures Act, 5 U.S.C. 553, and relevant case law, see *International Harvester Co.* v. *Ruckelshaus*, 478 F.2d 615 (D.C. CIR. 1973), *South Terminal Corp.* v. *Environmental Protection Agency*, 504 F.2d 646 (1st CIR. 1974), and *United Steel Workers* v. *Marshall*, 647 F.2d 1189 (D.C. CIR. 1980), denied, 101 S.Ct. 3148 (1981), NIST has determined that it has the authority to issue this final rule without the necessity for issuing another proposed rule.

Comments Urging Changes to the Regulations Requiring Amendments to the Fastener Quality Act

NIST received 225 letters (146 from fastener distributors, 50 from fastener manufacturers, 13 from trade associations, and 13 from fastener users or importers, and other sources) supporting recommendations of the Fastener Advisory Committee (the ''Committee''), which proposed that the following amendments be made to the Fastener Quality Act:

- *Comment:* Permit tests of the chemical composition of fasteners to be carried out upon raw materials, rather than upon finished lots of fasteners as required by the Act.

NIST Response: This legislative change was made in Pub. L. 104–113, which added a new section 5(d) ''Alternative Procedure for Chemical Characteristics'' to the Act. New section 5(d) of the Act is implemented in section 280.15 of the regulations being published today.

- *Comment:* Permit the sale of fasteners which, upon testing under the Act, are found to have ''minor'' flaws resulting in the fastener not conforming to the tolerances stated in the standards and specifications to which they were manufactured. Section 5(a) of the Act expressly prohibits the sale of fasteners which (1) do not conform to the standards and specifications to which they were manufactured, and (2) have not been inspected, tested and certified as provided under the Act.

NIST Response: This legislative change was made in Pub. L. 104–113, which amended the definition of ''standards and specifications'' found in subsection 3(13) of the Fastener Quality Act. The legislative change recognizes the provisions of numerous commercial and military documents which provide for a cost effective disposition system for nonconforming products when a minor nonconformance does not adversely affect the health and safety, performance, interchangeability, reliability, maintainability or effective use or operation. The changed definition, which will permit the sale of fasteners with minor nonconformances is found in § 280.2 of the regulations being published today.

- *Comment:* Permit distributors to commingle fasteners from more than one lot in the same container, thus reducing warehouse costs for the distributors, despite the provisions of section 7(e) of the Act.

NIST Response: This legislative change was made in Pub. L. 104–113, which amended section 7(e) of the Fastener Quality Act to permit commingling of no more than two lots of fasteners under specified circumstances. The change is implemented in § 280.4 of the regulations being published today.

Comment: Require that any person who significantly alters a fastener be responsible for retesting that fastener, despite the provisions of section 7(d) of the Act.

NIST Response: No legislative changes have been made in response to this comment. Accordingly, no changes have been made to the regulation.

- *Comment:* Restrict the availability of test reports to the original purchaser despite the requirements of section 10 of the Act that such reports be made available to all subsequent purchasers.

NIST Response: In section 10(b) of the Act, the word ''any'' has been replaced by the word ''the'' to limit the responsibility of manufacturers, importers, private label distributors, and persons who make significant alterations under the Act, to supply copies of applicable laboratory testing reports or manufacturers' certificates only to their purchasers of fasteners. The intent of the change is to reduce paperwork burdens and to protect against fraudulent use of test reports and certificates of conformance.

Subpart A—General

Comments received by NIST pertaining to this subpart are addressed section by section. If no comments were received pertaining to a particular section, there is no corresponding entry in this analysis.

Section 280.2 Definitions

As a result of changes made to subparts C and E of these regulations based on comments described in the relevant sections of this analysis, several changes have been made to definitions. A definition has been added for the term ''*Accreditation Body*,'' to refer to the National Voluntary Laboratory Accreditation Program, and to those private entities currently approved by NIST under subpart D of these regulations and those foreign governments or organizations currently recognized by NIST under subpart E of these regulations. A definition has also been added for ''*Approved signatory*'' to mean an individual employed by a laboratory accredited under the Act and these regulations who is recognized by an accreditation body as competent to sign accredited laboratory test reports. Finally, the definition of ''*Certificate of Accreditation*'' has been expanded so that it now refers to a document issued by an accreditation body to a laboratory that has met the criteria and conditions

of accreditation, that, together with the assigned code number and scope of accreditation issued by the accreditation body, may be used as proof of accredited status.

Various comments suggested that three interrelated definitions, for ''*alter*,'' ''*critical application*,'' and ''*significantly alter*'' should be revised. These comments came from the Fastener Advisory Committee, four trade associations, two users, three manufacturers, and one foreign government. The Fastener Advisory Committee recommended that the definition of ''*alter*'' be slightly amended to make clear that alter pertains to electroplating of fasteners that are ''specified'' as having a minimum tensile strength of 150,000 psi or greater, otherwise the requirement could be misinterpreted to mean that electroplated fasteners that are ''tested'' and found to be greater than 150,000 psi would have been considered significantly altered even though they were specified with a minimum tensile strength lower than 150,000 psi.

Definition of Significantly Alter

The Fastener Advisory Committee devoted a great deal of study to the term ''*Significantly Alter*'' through its Alteration Working Group. Public comments stressed the need to be clear about what is or is not a significant alteration; who is responsible as the alterer of the fastener; and what tests and markings are required. Consistent with language found in the Act, the Committee felt it is important to define a significant alteration as an action which could weaken or otherwise materially affect the performance or capabilities of the fastener as it was originally manufactured, grade or property class marked, and tested. Alterations not considered significant include the application of adhesives or sealants, locking elements, cutting off, provisions for lock wires, or coatings and platings of parts below a certain hardness level to be discussed later in this part. The practice of cutting threads off a finished fastener is not defined as a significant alteration. Similarly, the cutting of finished threaded studs, rods, and bars to produce individual smaller length threaded studs for resale is not considered a significant alteration. However, the individual fasteners cut from threaded studs, rods, and bars and offered for resale shall be individually marked with the grade or property class identification marking appearing on or accompanying the original threaded studs, rods, and bars from which the fasteners were cut. Commenters also asked for clarification on who is responsible as the alterer of a fastener. NIST and the Committee agree that the person who owned the fastener at the time the alterations were carried out is responsible for assuring adherence to the regulations. Accordingly, a definition of ''Alterer'' has been added to § 280.2, per the Committee's wishes.

With respect to questions concerning marking and testing of significantly altered fasteners, the significant alterer will be responsible for applying a registered insignia to the altered fastener if so required by the original standards and specifications, and for assigning a new lot number. A new § 280.11 has been added to the regulations to spell out these requirements. The significant alterer will also be responsible for causing the altered fasteners to be inspected and tested as required under section 5 of the Act, unless the fastener is delivered to a purchaser accompanied by a written statement noting the original lot number and the new lot number assigned by the alterer, disclosing the subsequent alteration, and warning that such alteration may affect the dimensional or physical characteristics of the fastener.

If the alteration is not a significant alteration, a new headmark and new lot number are not required and the only testing requirements which apply are those required by the specification to which the minor alteration was performed, such as prevailing torque or salt spray. If the significant alteration is only electroplating of fasteners above a certain hardness level or strength level, the requirement for a new headmark is waived, but a new lot number must be assigned and testing for hydrogen embrittlement must be performed in addition to those tests required by the plating specification.

Based upon subsequent input from the Public Law Task Force on the issue of alteration and significant alteration of fasteners, the Task Force recommended to Congress that the definition of ''alter'' should be amended by deleting the reference to a minimum tensile strength of 150,000 pounds per square inch (psi). It was felt that this type of technical requirement did not belong in the Act and should be covered in implementing regulations. Pub. L. 104–113 amended section 3(1)(B) of the Act to remove this requirement.

The Public Law Task Force recommended to the Department that the Rockwell C Hardness Scale be used in the regulations in lieu of tensile strength for purposes of determining which fasteners have been significantly altered through electroplating. It is widely held within the fastener industry that the process of electroplating fasteners, particularly high strength fasteners, increases their susceptibility to hydrogen embrittlement. The intent of the Act and the regulations is to require that electroplating of high strength fasteners be considered a significant alteration, and to further require that the manufacturer or person responsible for the alteration assign a new lot number to the fasteners and test them in accordance with the plating specification. A specified Rockwell C value of 32 has been selected as the threshold hardness for determining when electroplating is a significant alteration of fasteners. This value has been selected for the following reasons: (1) It is roughly equivalent to the original threshold of 150,000 psi contained in the 1990 Act (ASTM A370, which provides approximate hardness conversion numbers for nonaustenitic steels, indicates that Rockwell C 32 is approximately equivalent to a tensile strength of 146,000 psi and Rockwell C 33 is approximately equivalent to a tensile strength of 149,000 psi), thereby covering the same types and grades of fasteners; and (2) setting the threshold Rockwell C hardness value at 32 rather than 33 would treat Grade 8 fasteners and metric 10.9 fasteners (which are substantially equivalent) equally for purposes of determining when electroplating is a significant alteration.

Definition of Critical Application

A large number of comments were received on the definition of ''*critical application*.'' Some of the commenters felt that the definition did not offer guidance in determining what is meant by ''significant property damage'' or ''significant repair costs.'' Other commenters felt that the definition should be changed to indicate that fasteners having minimum tensile strengths of 150,000 psi or greater should be considered as critical and those below 150,000 psi should be exempt from coverage under the Act because they are not generally used in critical applications. The Fastener Advisory Committee and the Public Law Task Force devoted much time and effort to studying this issue and recommended to Congress that section 4 of the Act be deleted in its entirety which would also mean deleting the definition of ''critical application'' as it applies only to section 4. Section 4 of the Act was repealed by Pub. L. 104–113, and accordingly, the definition of ''critical application'' has been removed from the regulations being published today.

NIST, with the assistance of the Fastener Advisory Committee, attempted but was unsuccessful in

establishing guidelines under which the Secretary of Commerce would add or exempt categories of fasteners from coverage under the Act under the now-repealed section 4 of the Act. Originally, Congressional intent was that the Act would cover only ''high strength'' fasteners used in ''critical applications.'' A figure of 1% of fasteners meeting these categories was used throughout early Congressional discussions of the Act. However, upon passage of the Act and further study and interpretation of its requirements by the Department of Commerce, the Fastener Advisory Committee, and various industry groups, it became apparent that the Act applied to a majority of fasteners in the industry. Further, while it was possible to come to agreement that a ''critical application'' of a fastener was any application for which it was reasonably foreseeable that a failure of the fastener would result in serious personal injury or death, significant property damage, or significant repair costs, it was not possible to come to agreement a priori as to which fasteners were used in critical applications. The problem is that a single type or category of fasteners might be used in many different applications, some may be critical in terms of having the potential for causing death or injury if the fastener(s) fails, others not. The ultimate user of the fastener determines how fasteners will be used, and there were many instances cited where ''low strength'' fasteners were being used in critical applications. Thus, NIST and the Fastener Advisory Committee concluded that there was no systematic way in which the Secretary of Commerce could add or exempt whole categories of fasteners from coverage under the Act, and that to attempt to do so could be costly in terms of potential litigation, with no resulting benefit to anyone. Such conclusion was based on evidence that there is no instance within the industry where one can make a clear-cut case that a particular fastener category, not currently covered by the Act, is always used in ''critical applications'' or vice versa.

Definition of Commingling

The Fastener Advisory Committee felt it was important to define commingling because it is used in the Act. Accordingly, the regulation has been revised to define ''*Commingling*'' as meaning the mixing of fasteners from different lots in the same container.

Definition of Fastener—Washers Subject to the Act

During the joint meeting of the Fastener Advisory Committee and the Public Law Task Force, held May 15–16, 1996 at the National Institute of Standards and Technology (NIST), washer manufacturers present at the meeting commented that there was confusion about which washers were ''*fasteners*'' under the Act. In particular, they pointed to confusion among their customers, many of whom were interpreting the Act as covering any washer that was to be used with a bolt or screw that itself was covered by the Act.

Congressional intent on this issue is clearly stated in page 10 of Senate Report 101–388, dated July 23, 1990, which accompanied the original H.R. 3000 (Fastener Bill). It states as follows: ''Subparagraph (C) of section 3(5), which defines 'fastener,' is intended to cover those washers which standards indicate are associated with particular fasteners and must be used in order for those fasteners to conform to those standards. A washer whose use with a particular fastener is permitted but not required is not covered by this definition.''

The Advisory Committee and the Task Force concluded that there were only two U.S. standards and specifications which specifically call out requirements for washers used in association with covered fasteners under the Act, and that the regulations should identify such standards and specifications to make it clear what washers were fasteners within the meaning of the Act. The standards and specifications are ASTM F959 or F959M pertaining to load indicating washers, and ASTM F436 or F436M which pertain to washers specified for use with structural bolts or equivalent high strength bolts. The Advisory Committee and the Task Force also pointed out that there may be foreign or international equivalents to these standards and specifications.

The Department believes that the conclusion of the Advisory Committee and the Task Force, as stated above, is consistent with the stated Congressional intent of the Act, but feels that it would be inappropriate to include a specific determination within the regulations that only washers manufactured to or held out as being manufactured to the above-mentioned standards and specifications are fasteners within the meaning of the Act. To do so would unnecessarily restrict the freedom of consensus standards bodies to significantly change these standards and specifications in the future, or to propose new standards and specifications which would have the effect of including additional washers as ''fasteners'' within the meaning of the Act. In addition, doing so could exclude washers held out as meeting a foreign or international standard or specification that requires certain washers to be used with particular fasteners in order to conform to that standard or specification.

Definition of ''Fastener''—Referencing of Consensus Standards

During the joint meeting of the Fastener Advisory Committee and the Public Law Task Force, held May 15–16, 1996 at the National Institute of Standards and Technology (NIST), comments were received from a member of the Advisory Committee on that part of the definition of ''fastener'' in § 280.2 of the regulations, which includes the requirement that: ''A screw, nut, bolt, stud, or washer held out as being produced according to the requirements of a document other than a document published by a consensus standards organization is a fastener within the meaning of the Act and this part if that document incorporates or references (directly or indirectly) standards and specifications published by a consensus standards organization or government agency for purposes of delineating performance or materials characteristics of the fastener.''

In the view of this Committee member the Congressional intent was to amend the definition of ''standards and specifications'' in section 3(14) of the Act to remove from coverage under the Act fasteners produced to standards and specifications published by ''major end-users,'' and therefore the language proposed in § 280.2 of the regulations as noted above was not consistent with Congressional intent. The Committee member proposed an amendment to the definition of ''standards and specifications'' which would have the effect of exempting from coverage under the Act and regulations fasteners produced to standards and specifications published by ''major end-users'' who then purchase such fasteners and install them into a structure or assembly. The Department agreed to study this matter and no action was taken on the proposal by the Advisory Committee and the Task Force.

The Department has studied this issue and concludes that the definition of fastener as provided in § 280.2 of the regulations meets Congressional intent. Therefore, the proposal to exempt fasteners produced to standards and specifications published by ''major end-users'' is rejected. The reasons are as follows. In the 1990 version of the Fastener Quality Act, ''standards and specifications'' were defined as

documents published by ''consensus standards organizations,'' ''government agencies,'' and ''major end-users.'' The Act further defined ''consensus standards organization'' but did not define ''major end-user'' of fasteners. NIST, with the assistance of the Fastener Advisory Committee, defined ''major end-user'' in the draft implementing regulations issued for public comment in 1992 as ''a recognized developer and publisher of standards bearing such user's identification which have characteristics similar to national consensus standards and which have been developed or modified to fit the specific needs of such user.''

During the 1992 public comment period, comments were received from the Fastener Advisory Committee that there are manufacturers and private label distributors who modify existing standards and specifications to produce unique fasteners either for marketing purposes or to satisfy a particular market niche, and that such manufacturers or private label distributors might not be considered ''major end-users'' for purposes of this definition. The result could be that fasteners produced this way might be considered ''blueprint specials'' and, therefore, not subject to the Act. Based upon such comments, the Department proposed a change to the definition of ''standards and specifications'' to have it read: ''* * * the provisions of a document published by a consensus standards organization, a government agency, a manufacturer, a private label distributor, or a major end-user of fasteners.'' The net effect of the proposed change would have been to include a much broader population of fasteners under the Act. For example, fasteners produced to a company's proprietary standard would have been included under the Act provided the fastener met all other requirements pertaining to the definition of a ''fastener.''

In 1995 industry formed the Public Law Task Force to forge a unified industry position on needed amendments to the Act. The Task Force was invited by Congress to propose clarifying and substantive amendments to the Act. NIST was asked to cooperate with the Task Force in developing such recommendations. The definition of ''standards and specifications'' was an issue raised by the Task Force, who felt that the definition was confusing and needed to be simplified. In reviewing the definition, NIST concluded that the 1992 proposed change had the effect of including within the meaning of the Act fasteners produced to standards and specifications published by manufacturers and private label distributors, and that such extension of the Act was not supportable after a review of Congressional history of the Act. Additionally, the definition of ''major end user'' as proposed in the 1992 draft of the regulations was confusing in terms of deciding which standards of which organizations would apply.

A review of legislative history indicates that the intent was to cover fasteners produced for use by original equipment manufacturers (OEMs) in ''aircraft, the space shuttle, motor vehicles of all kinds, military equipment, highway bridges, and buildings'' (page 2, Senate Report 101–388, dated July 23, 1990). Additional evidence is contained in the Act itself by virtue of the definition of OEMs contained in section 3(11) of the 1990 Act and in examples cited in pp 18–19, of the Senate Report cited above. Further, in discussions within the Task Force it was clear that industry practice among companies like General Motors, Ford, and Chrysler was to reference standards from ASTM, SAE, and other consensus standards bodies in their standards.

Accordingly, the Task Force proposed an amendment to the definition of ''standards and specifications'' in section 3(14), which was adopted by Congress and which bases the Act's coverage of fasteners on those produced to standards and specifications of consensus standards bodies and government agencies. Such amendment was proposed with the understanding that NIST would further specify by regulation that fasteners produced to documents other than those of consensus standards organizations or government agencies would be fasteners within the meaning of the Act if those documents incorporate or reference (directly or indirectly) standards and specifications published by a consensus standards organization or a government agency for purposes of delineating performance or materials characteristics of the fastener. Therefore, fasteners produced to standards and specifications published by major end-users are covered by the Act and Regulations, if those standards and specifications incorporate or reference, directly or indirectly, standards and specifications published by a consensus standards organization or a government agency.

Definition of Grade or Property Class Identification Marking

Several comments were received that the definition of ''*Grade or Property Class Identification Marking*'' should be clarified to distinguish between grade or property class marks and ''raw material marks.'' A grade mark is placed on a fastener to indicate that the material, strength properties, or performance capabilities of the fastener conform to a specific standard. A raw material mark indicates the base material used and is not considered a grade identification mark for purposes of the Act and Regulations, unless the mark is required by the fastener standards and specifications to identify specific conformance.

Definition of Lot Traceability

The Fastener Advisory Committee recommended that ''*lot traceability*'' be defined as it is an important term used in the Act and regulations. A definition has been provided in the regulations. As part of the definition, it is necessary to make it clear that the fastener part number, manufacturer's identity, and lot number are critical elements of information needed to assure lot traceability. Accordingly, a definition has also been added for ''*lot-specific identification information*,'' as meaning information applicable to a fastener consisting of, at a minimum, (i) the part number (or a part description if there is no applicable part number), (ii) the identity of the manufacturer, and (iii) the lot number. A definition has also been provided for ''*Lot number*'' as meaning a number assigned by a manufacturer to the lot.

Definitions Related to ''OEMS''

Eight commenters, five manufacturers and users of fasteners, and three trade associations suggested that changes should be made in the definitions contained in the regulations to clarify the meaning of the terms ''*original equipment manufacturer*'' (OEM) and ''*authorized dealer*.'' Some of the commenters suggested that a definition should be provided for the term ''authorized dealer'' in order to clarify that the term ''original equipment manufacturer'' is not limited to the automobile industry. Other commenters expressed confusion about the application of the regulation in the context of original equipment manufacturers who are also importers. Two amendments to the Act have taken care of this issue. First, section 7(e), commingling was amended to permit voluntary commingling of fasteners by distributors and the reference to original equipment manufacturer was removed. Second, the definition of ''original equipment manufacturer'' in section 3(11) was deleted.

Definition of Original Laboratory Testing Report

During the May 1996 joint meeting of the Fastener Advisory Committee and the Public Law Task Force there was discussion about the requirement in § 280.5 of the regulations that an ''*original laboratory testing report*'' was required to be maintained on file with the manufacturer, importer, or private label distributor. Questions arose as to what constituted an original test report. In order to clarify the intent of the regulations a definition of ''original laboratory testing report'' has been added which states that it is ''a laboratory testing report which is originally-signed by an approved signatory or a copy thereof, certified by the laboratory that conducted the test''.

Definition of Standards and Specifications

Comments were received from the Fastener Advisory Committee concerning the definition of ''*Standards and Specifications*.'' The Committee noted that there are manufacturers and private label distributors who modify existing standards and specifications to produce unique fasteners either for marketing purposes or to satisfy a particular market niche, and that such manufacturers or private label distributors might not be considered ''major end-users'' for purposes of this definition. The definition of ''standards and specifications'' has been amended in the Act to make it clear that for purposes of the Act only fasteners covered by standards and specifications published by a consensus standards organization or by a government agency are subject to the Act.

Definition of Traceability

Four commenters, three manufacturers and one trade association, suggested that the term ''*traceability*'' should be revised to distinguish between traceability of fasteners and traceability as defined in the context of the standards arena. In response to this comment, the definition of ''traceability'' contained in the draft regulations has been replaced by two definitions. The first, ''Lot traceability,'' defines traceability in the context of fasteners as meaning the recording and maintenance of lot-specific identification information sufficient to trace fasteners from a single lot throughout (i) the manufacturer's fabrication or alteration process, (ii) all inspection and testing operations, and (iii) the subsequent chain of distribution in commerce. The second, ''Traceability of Measurements,'' defines measurement traceability as meaning a documented chain of comparisons connecting the accuracy of a measuring instrument to other measuring instruments of higher accuracy and, ultimately, to a primary standard.

In response to a series of comments on laboratory test reports which are described below in the narrative relevant to that section, a definition of ''*Tamper-resistant system*'' has been added to § 280.2. The phrase is defined to mean the use of special paper, embossing stamps, or other controls which discourage, prevent, or minimize alteration of test reports subsequent to manufacturing, inspection, and testing.

Old § 280.4: Waiver Requirement and Old § 280.5: Inclusion of New Fasteners

Pub. L. 104–113 repealed section 4 of the Act, rendering these sections obsolete. Accordingly, they have been removed from the regulation being published today.

New § 280.4: Commingling

Pub. L. 104–113 amended section 7(e) of the Fastener Quality Act to permit voluntary commingling of no more than two tested and certified lots by fastener distributors. There is still a restriction on commingling of more than two tested and certified lots by manufacturers, importers, or private label distributors. The change is implemented in § 280.4 of the regulations being published today.

New § 280.5: Certification of Fasteners

One commenter asked whether the regulation requires distributors to furnish to their customers a manufacturer's certificate when they make their sale. NIST notes that distributors are not required to provide copies of the certificates. A new § 280.5 of the regulation has been added which specifies information that must appear in the ''certificate of conformance'' and the responsibility of the manufacturer to maintain the certificate on file available for inspection. The sale of fasteners by parties other than the manufacturer without an accompanying certification is not prohibited.

Section 280.6: Laboratory Test Reports

A wide range of comments were received by NIST on the general topic of the requirements for laboratory test reports set out in § 280.6 of the regulations. For ease of analysis, those comments are discussed under the following general categories:

* General Observations and Comments;
* Authorized Signatories;
* Tamper Proof Paper; and
* Test Report Contents.

Each of these topics is discussed below.

General Observations and Comments

NIST received eight general comments on the requirements set out in § 280.6 for the content of laboratory test reports. Four commenters (three manufacturers and one importer) stated that the reports were either burdensome, clumsy, irrelevant or otherwise unpleasant, and suggested that revisions be made to ''clean up'' § 280.6. NIST's response to these comments is contained in the following paragraphs. Another commenter suggested that NIST require that all test reports include the words ''Certified Fastener Test Report'' in a clear and prominent position. No change to the regulation has been made based upon this comment. Three manufacturers and a trade association suggested that NIST delete the requirement to report on ''test conditions, test set up'' found in § 280.6(a). This deletion has been made.

NIST has made a number of changes to the regulation in an effort to simplify and clarify the required contents of laboratory test reports. In addition, some of the required elements of laboratory test reports have been grouped into logical units that NIST hopes will make the test reports more logical and orderly in presentation. Old §§ 280.6(a) (6), (7) and (8) from the proposed regulation have been grouped under the category ''Sampling Information'' in a renumbered § 280.6(a)(5), and have been assigned the numbers 280.6(a)(5) (i), (ii) and (iii). In addition, old §§ 280.6(a) (9), (10), (12), (14) and (15) from the proposed regulation have been grouped under the category ''Test Results'' in a renumbered § 280.6(a)(6), and have been assigned the numbers 280.6(a)(6) (i), (ii), (iii), (iv), (v) and (vi).

Approved Signatories

NIST received three comments on the requirement contained in § 280.6(a)of the regulation that all laboratory test reports be signed by an approved signatory. All three comments were from manufacturers, and suggested either that the requirement for a signature be removed completely, or that copies of signatures be permitted. No changes have been made by NIST to the regulation. An original test report containing an ''original signature of an approved signatory'' of the laboratory must be provided to the manufacturer, and under section 7(a)(2) of the Act the original test report must be maintained on file with the manufacturer and be available for inspection. However, copies of such report provided by the manufacturer on a request basis to

customers do not have to bear original signatures. A definition of ''approved signatory,'' has been added to § 280.2 of the regulation to clarify which individuals are empowered to sign test reports on behalf of accredited laboratories.

Tamper Proof Paper

NIST received twelve comments pertaining to the requirement found in § 280.6(a) that all laboratory test reports use tamper proof paper. Seven of the comments urged that the requirement for tamper proof paper be deleted; these comments came from three manufacturers, two trade associations and two users of fasteners.

The remaining five comments urged that the requirement for tamper-proof paper be replaced by a requirement for a system which discourages tampering, perhaps embossing, because tamper-proof paper is not generally available. These comments came from four manufacturers and one trade association. As a result of these comments, NIST has revised § 280.6(a) of the regulations to provide for the use of a ''tamper-resistant system'' in the preparation of laboratory test reports. In addition, a definition has been added to § 280.2 as follows ''Tamper-resistant system'' means the use of special paper or embossing stamps or other controls which discourage, prevent or minimize alteration of test reports subsequent to manufacturing, inspection and testing.

Test Report Contents

NIST received numerous comments pertaining to the specific contents of laboratory test reports required by § 280.6 of the regulations. In the following paragraphs these comments are described along with NIST's response to them.

One comment from an importer stated that § 280.6(a)(3) should be revised so that ''Name of client'' should apply only to independent laboratories, and not to in-house laboratories. In order to avoid creating confusion for parties that may review the laboratory test report at a later date the regulation has not been changed.

NIST received eleven comments on the provisions of old § 280.6(a)(5) (now § 280.6(a)(4)), which pertains to the description of the fastener required in laboratory test reports. Comments from a manufacturer and an importer raised concern about the requirement for describing head markings found in old § 280.6(a)(4)(iii) (now § 280.6(a)(4)(iv)). One commenter suggested that the requirement should be deleted, and another suggested that the requirement was too burdensome. NIST has determined that the requirements of this section are essential to the report, and have clarified its wording that both the manufacturer's recorded insignia and grade markings must be reported. Three comments were received about old § 280.6(a)(4)(iv) (now § 280.6(a)(4)(v)), an importer observing that the requirement for a listing of thread tolerance on laboratory test reports was not needed because this information was specified by a standard; a distributor stated that the section should refer to ''Nominal Diameter'' instead of ''Diameter''; and an agency of the United States Government suggested that ''class of fit'' be replaced with ''dimensional tolerance class'' and add ''thread application category (safety critical thread, other thread etc.), or conformance requirements, and the dimensional standard under which the threads were manufactured.'' The section has been revised to refer to ''nominal dimensions'' as suggested.

Continuing the discussion on old § 280.6(a)(5) (now § 280.6(a)(4)), one manufacturer suggested that the section be revised to require inclusion in the test report of information on the revision level of applicable drawing or standard at the time of manufacture. Also, a trade association suggested that the same section be revised to add part numbers. No changes have been made to the regulation based upon these comments since NIST believes that adequate information on these matters is already required. Another manufacturer suggested that old § 280.6(a)(5)(viii) (now § 280.6(a)(4)(viii)) be revised by changing ''specification and grade of material'' to ''grade of material.'' No change was made to the regulation based upon this comment. A user and a manufacturer each suggested that old § 280.6(a)(4)(ix) be revised to eliminate ''heat treated to the requirements of the following specification'' and this change has been made. The last comment on old § 280.6(a)(5)(now § 280.6(a)(4)) was a suggestion by a user who suggested that it be revised not to require thickness, baking, and so on. The coating material must be specified, but the regulation has been changed in the now § 280.6(a)(4)(ix) to drop any reference to thickness of coating or baking of fasteners.

Three manufacturers and a trade association suggested that original § 280.6(a)(8) (now § 280.6(a)(5)(iii)) be revised to delete the name and affiliation of the person performing lot sampling, and two manufacturers, a user and an importer suggested that § 280.6(a)(9) was redundant. NIST has determined that these elements are essential to the report; accordingly no changes have been made. Five comments were received pertaining to original § 280.6(a)(10) (now § 280.6(a)(6)(ii)) of the regulations, divided among two manufacturers, a user, an importer, and a trade association. The commenters noted that a clarification was needed of the meaning of ''test results''; that is, whether the results should be given as pass/fail, as maximum and minimum results, or within the context of actual specification limits. The ''test results'' to be recorded in the test report are those specified in the applicable standard, specification, or test method cited by the manufacturer and/or used by the laboratory. Hence, no change to the regulation was made based upon these comments.

Three comments from manufacturers questioned the provisions of original § 280.6(a)(12) (now § 280.6(a)(6)(iii)) pertaining to reporting on all deviations from the test method, asking whether deviations from the test method would result in flawed testing/erroneous test results. Two commenters, a manufacturer and an importer, suggested that original § 280.6(a)(14) (now § 280.6(a)(6)(iv)) should be revised by deleting ''all other items required by the test method'' as ambiguous or expanding the section to define that which is required. No changes have been made to the regulation based upon this comment. One manufacturer commented that the wording of original § 280.6(a)(15) (now § 280.6(a)(6)(vi)) appears to suggest nonconforming products can be sold.

Two manufacturers recommended that old § 280.6(a)(17) (now § 280.6(a)(8)) be deleted, thus removing the requirement that the test report relate only to the item(s) tested, and two manufacturers suggested deleting the requirement found in § 280.6(a)(18) (now § 280.6(a)(10)) for reporting the name of the body which accredited the laboratory for the specific tests performed which are the subject of the report and the current period of accreditation. NIST has determined that this information is essential to the report, and the requirements of these two sections have not been removed.

One user commented that current § 280.6(c) should be revised to require numbering for supplemental reports amending previously issued reports. No change has been made to the regulation based upon this comment because the regulation already provides that supplementary information must be reported on a ''suitably marked'' document.

Section 280.7: Recordkeeping Requirements

The Department received comments on a variety of issues raised by § 280.7 of the regulations. A paragraph is devoted below to each of these issues.

NIST received four comments, two from manufacturers and two from trade associations, stating that test reports should only be available to the original purchaser. An amendment to section 10 of the Act provides for this.

NIST received ten comments suggesting that § 280.7(a) be revised to permit electronic record storage, five from manufacturers, three from trade associations, one from a university professor and one from a consultant. This final rule provides that records may be kept in the form (whether paper, photographic, electronic or some other form) in which they are created or received by the regulated person. In addition, § 280.7 of this final rule permits reproductions (including paper, photographic, magnetic, or some other form) to be kept in lieu of originals for all records except for test reports (for which the Act requires originals). However, it establishes specific requirements of retrievability and legibility that must be met if the person required to keep records elects to destroy originals and keep reproductions in lieu thereof. It also makes clear that the regulated person must make the records available to NIST or BXA upon request.

A testing laboratory and a government agency noted that the law has no provisions for the protection of records should a manufacturer or test laboratory file bankruptcy, be dissolved, or be destroyed by fire and/or by an act of God. The commenters recommended that this problem be addressed, and that it be documented as either a waiver to the law or a requirement to the law as how to protect records for ten years in the event of a misfortune to the manufacturer and/or test facility. In response, NIST notes that the Act contains no provision for waiving the record retention requirement under any circumstance and that 1996 amendments to the Act reduced the record retention requirement to five years.

Three commenters, two manufacturers and a trade association, suggested that the wording in § 280.7(a) requiring that the records be sufficiently detailed to permit duplication of the ''exact test conditions'' at a later date be relaxed, perhaps to simply require sufficient information to ''allow the test results to be verified by a retest if necessary.'' Section 280.7 of this final rule adopts this change.

Section 280.8: Ownership of Laboratories by Manufacturers

NIST received three comments concerning § 280.8 of the regulations, one from a user, one from a trade association, and one from the category ''other.'' One commenter suggested that NIST ban all ownership of testing laboratories by manufacturers; another commenter urged that NIST impose no ban on the ownership of testing laboratories by manufacturers; and the third stated that it was unclear what conditions might be imposed on accredited laboratories affiliated with a manufacturer.

Section 280.8 of the regulations repeats the provisions of section 5(b) of the Act, essentially verbatim. As written, § 280.8 creates a procedural mechanism under which decisions may be made by the Director of NIST as to whether the public health and safety would be increased by a ban on the ownership of testing laboratories by manufacturers for specific types of fasteners and tests. Specifically, any ban would be the subject of a notice and comment process before taking effect. NIST believes that its discretion in proposing a particular ban intended to protect the public health and safety should not be limited in advance by regulation. Accordingly, no change has been made to this section of the regulations.

Section 280.9: Subcontracting of Testing

Several commenters appeared to be confused as to whether tests carried out by subcontractor laboratories under the provisions of § 280.9 of the regulations would meet the requirements of the Act. Some expressed confusion as to what entities qualified as subcontractors. One manufacturer, for example, suggested that suppliers and manufacturers be permitted to be subcontractors. Two other manufacturers expressed similar confusion. One distributor suggested revising § 280.9(b)(2) to eliminate confusion by adding the word ''accredited'' to references to the subcontractor.

NIST believes the regulation is clear as written and no changes are made to it based upon these comments. However, in order to avoid any possibility of further confusion, NIST wishes to stress that any and all subcontracting of testing under the Fastener Quality Act must be to a laboratory that is accredited under the Act and these regulations. Any party that meets the conditions set out in this regulation may apply for such accreditation, regardless of their affiliation with a manufacturer, distributor or other entity.

In addition to the comments described above, NIST received six comments, three from trade associations, two from manufacturers and one from a distributor, urging that the regulations be revised to delete the requirement found in § 280.9(b)(2) for notification of the client before the fact that the tests will be subcontracted by the accredited laboratory to another laboratory. NIST does not agree with these comments, and takes the view that notification of the client before the fact is important to allow them to decide if they wish for all testing to be done in-house.

Section 280.10: Sampling

NIST received six comments, from four manufacturers and two trade associations, suggesting that the emphasis of the regulations on final inspection is misplaced and that the industry practice is statistical process control. These commenters suggested the use of statistical process control rather than lot sampling in the regulation. They further suggested that the regulation be revised to include the use of ANSI/ASME B18.18.3M, and ANSI/ASME B18.18.4M, in addition to ANSI/ASME B18.18.2M already referenced in § 280.10, for purposes of sample selection when the standard being used by the fastener manufacturer does not include a sampling plan. In addition to the above comments, submitted in response to the August 1992 comment period on the proposed regulations, the automobile industry submitted comments in August 1996 on the same issue of statistical process control. As part of their comments, the automobile industry projected costs of between $140 million and $209 million annually if its suppliers of automotive fasteners are required by the Act and regulations to conduct final inspection of finished fasteners. The costs projected by the industry were apparently predicated on two assumptions: (1) That the Act and regulations require final inspection of finished fasteners in lieu of in-process inspection and controls; and (2) that the Act and regulations require the use of ASME B.18 quality assurance standards for inspection and testing of fasteners in lieu of QS9000 quality assurance standards, which are currently in-use within the automobile industry. NIST has concluded that neither of these assumptions are valid for the following reasons. First, there is nothing in the Act or implementing regulations that prohibits the in-process inspection and

testing of a given lot of fasteners based upon quality assurance programs such as QS9000, so long as the requirements of sections 5 (a), (b), and (c) of the Act are met. That is: (1) The tests called out by the applicable fastener standards and specifications have been carried out; (2) the tests have been carried out by a laboratory accredited in accordance with section 6 of the Act; and (3) the data are reported on a test report in accordance with § 280.6 of the implementing regulations. NIST recognizes that some product standards from the Society of Automotive Engineers (SAE) and from the American Society of Testing and Materials (ASTM) used in the automotive industry require final inspection of fasteners, and that under statistical control procedures, fastener manufacturers may control influence factors (e.g., temperature, pressure, etc. in heating treating operations) as a means of assuring that a particular physical property such as hardness is within the stated values of the standard rather than conduct final inspection. Under these circumstances, supporting data for a test that may be required by the SAE or ASTM standard, indicating that the fastener lot had been tested for hardness and providing the test results would not be available. Hence, the manufacturer may not be able to meet the requirements of sections 5 (a), (b), and (c) of the Act because there would be no specific evidence that a hardness test had been conducted if it is required by the standard. Under the Act this problem can be easily resolved by having the automobile industry request that SAE or ASTM change the affected fastener standards so that the manufacturer has the choice in satisfying the standard, and thus the Act and regulations, by either providing data that the influence factors affecting hardness are in control for that lot of fasteners, or providing data that a discreet hardness test has been conducted. The Act, in relying on standards and specifications from consensus standards organizations and from government agencies as the basis for technical requirements to be met by manufacturers, provides significant flexibility to these standards developers to determine the inspection and testing requirements for certification of fasteners under the Act and regulations. Second, as to the automobile industry's assumption that the Act requires the use of ASME B18 quality assurance standards, the Act does not mandate the use of any standard or specification. Under authority provided by section 5(b)(2)(B) of the Act, and at the request of the Fastener Advisory Committee, NIST has included references to ANSI/ASME B18.18.2M, B18.18.3M and B18.18.4M, for sample selection in the event the standard or specification used by the manufacturer does not provide for the size, selection, or integrity of the sample to be selected. NIST does not have the authority to mandate the use of the ANSI/ASME B18.18.2M, 3M, or 4M standards for all inspection and testing carried out under section 5 of the Act.

Old Section 280.11: Surplus Fasteners

This section was deleted.

New Section 280.11: Significant Alteration of Fasteners

With respect to questions concerning marking and testing of significantly altered fasteners, the significant alteror will be responsible for applying a registered insignia to the altered fastener if so required by the original standards and specifications, and for assigning a new lot number. A new § 280.11 has been added to the regulations to spell out these requirements. The significant alteror will also be responsible for causing the altered fasteners to be inspected and tested as required under section 5 of the Act, unless the fastener is delivered to a purchaser accompanied by a written statement noting the original lot number and the new lot number assigned by the alteror, disclosing the subsequent alteration, and warning that such alteration may affect the dimensional or physical characteristics of the fastener.

If the alteration is not a significant alteration, a new headmark and new lot number are not required and the only testing requirements which apply are those required by the specification to which the minor alteration was performed, such as prevailing torque or salt spray. If the significant alteration is only electroplating of fasteners above a certain hardness level or strength level, the requirement for a new headmark is waived, but a new lot number must be assigned and testing for hydrogen embrittlement must be performed in addition to those tests required by the plating specification. If the alteration involves cutting of threaded studs, rods, or bars into studs, these cut fasteners must be marked with the grade or property class identification marking appearing on the original threaded studs, rods, and bars.

New Section 280.12: Applicability

Seven commenters expressed concern during the 1992 comment process that the requirement for the use of accredited laboratories not take effect until a sufficient number of foreign accreditation bodies and laboratories have been recognized and accredited. The commenters also expressed concern as to how NIST would know when the number of accredited laboratories is sufficient. These comments were received from two trade associations, two importers, one distributor, one representative of a foreign government, and one individual.

Except as provided in this section, the regulation will become effective on November 25, 1996. However, NIST notes that section 15 of the Act makes the regulation applicable only to fasteners manufactured 180 days after the regulation becomes effective, i.e., May 27, 1997 and also provides that the Director of NIST may delay the applicability of the regulations to fasteners manufactured beyond that date if at that time an insufficient number of laboratories have been accredited to perform the volume of inspection and testing required. A new § 280.12 of the regulations has been added in order to clarify this point.

NIST intends to closely monitor the accreditation of laboratories under these regulations, and will defer the applicability of the regulations should circumstances warrant.

Status of Inventory

One commenter during the 1992 comment process asked whether existing inventories of fasteners will be covered when the regulations take effect.

NIST notes that section 15 of the Act requires only that the regulations be applicable to fasteners manufactured 180 days or more after the regulations become effective (herein after referred to as implementation date). This issue of applicability of fasteners has been discussed several times since the 1992 comment process. In its January 10, 1995, report and recommendations for amending the Act, the Public Law Task Force recommended that fasteners manufactured before the implementation date not be allowed to be certified as conforming fasteners under the Act. This recommendation was endorsed by the Fastener Advisory Committee in letters to Congress dated February 9, 1995. During the joint meeting of the Fastener Advisory Committee and the Public Law Task Force, held May 15–16, 1996, at the National Institute of Standards and Technology (NIST), this issue was raised again. In addition, the Advisory Committee and the Task Force recommended that language be added to the regulations which would permit the use of metal manufactured before the implementation date to be used to manufacture fasteners after that date.

In order to clarify these points, a new § 280.12 has been added to the regulations, stating that the requirements of the Fastener Quality Act and these regulations shall be applicable only to fasteners fabricated 180 days or more after the effective date of the regulations. This Act and these regulations do not restrict the sale of fasteners manufactured prior to the implementation date. Fasteners manufactured prior to the implementation date may be sold in U.S. commerce for an indefinite period of time, provided such fasteners are not offered for sale or sold as being in conformance with the Act and these regulations. The section also specifies that metal manufactured prior to the implementation date may not be used to manufacture fasteners covered by the Act and these regulations after such date, unless the metal has been tested for chemistry pursuant to § 280.15 of these regulations by a laboratory accredited under the Act and these regulations.

The Director of NIST may delay the applicability of the regulations beyond the 180-day time period upon making a determination that an insufficient number of laboratories have been accredited to perform the volume of inspection and testing required.

New Section 280.13: Imports of Fasteners and New Section 280.14: Option for Importers and Private Label Distributors

One commenter questioned whether the draft regulation was consistent with the Act's treatment of importers. After reviewing the regulations, NIST has decided to add a new § 280.13 of the regulations dealing with imports of fasteners, and also a new § 280.14 dealing with options for importers and private label distributors. New § 280.13 sets out the rule contained in section 7(b) of the Act that it shall be unlawful for any person to sell to an importer, and for any importer to purchase any shipment of fasteners or fastener sets manufactured outside the United States unless such shipment to an importer is accompanied by a manufacturer's certificate, an original laboratory testing report with respect to each lot from which the fasteners are taken, and any other relevant lot identification information. It then sets out the statutory exceptions to the general rule, which require that delivery of fasteners to any importer must be accompanied by an original laboratory testing report shall not apply:

(1) In the case of fasteners imported into the United States as products manufactured within a nation which is party to a congressionally approved free trade agreement with the United States that is in effect, provided that the Director has published in the Federal Register a certification that satisfactory arrangements have been reached by which purchasers within the United States can readily gain access to an original laboratory test report for such fasteners. Or,

(2) In the case of fasteners imported into the United States as Canadian-origin products under the United States-Canada Automobile Pact for use as original equipment in the manufacture of motor vehicles.

At the present time, no Federal Register notice is planned by NIST under exemption (1); accordingly, this exemption is not now available.

New § 280.14 sets out the statutory provisions of section 7(c) of the Act. Entitled ''Option for Importers and Private Label Distributors,'' § 280.14 states that notwithstanding the provisions of § 280.13, delivery of a lot, or portion of a lot, of fasteners may be made by a manufacturer to an importer or private label distributor without the required original copy of the laboratory testing report if the manufacturer provides to the importer or private label distributor a manufacturer's certificate certifying that the fasteners have been manufactured according to the requirements of the applicable standards and specifications; and the importer or private label distributor assumes responsibility in writing for the inspection and testing of such lot or portion by an accredited laboratory. The section also provides that the provisions of section 5(a) and sections 7(a) and 7(b) of the Act shall apply to the importer or private label distributor in the same manner and extent as to a manufacturer.

New Section 280.15: Alternative Procedure for Chemical Characteristics

Pub. L. 104–113 enacted a new subsection 5(d) of the Fastener Quality Act entitled ''Alternative Procedure for Chemical Characteristics.'' The new procedure is implemented in § 280.15 of the regulations being published today.

New Section 280.16: Subsequent Purchaser

This section reflects changes made to section 7(f) of the Act by Pub. L. 104–113.

Subpart B—Laboratory Accreditation

NIST received no specific comments on subpart B of the regulations.

Subpart C—NIST Fastener Laboratory Accreditation Procedures

To meet the requests of many commenters that the criteria for accreditation follow ISO/IEC Guide 25 ''General Requirements for the Competence of Calibration and Testing Laboratories,'' section 280.201 establishes that the criteria for accrediting laboratories under the Act will be part 285, title 15, Code of Federal Regulations, which are NVLAP procedures that conform with the requirements of ISO/IEC Guide 25. Furthermore, since ISO/IEC Guide 25 is the document used internationally by accreditation bodies to assess the competence of laboratories, the revised procedures should facilitate interpretation of the NVLAP criteria at the international level.

Section 280.200—Introduction

One commenter, an agency of the United States Government, requested that a requirement be added stating ''Standards with similar scopes, but with different requirements *shall not* have the same: (a) Title, (b) standard designation number, (c) product labeling system, or (d) conformance requirements labeling system.'' The standards organizations are responsible for controlling these concerns. The regulation has not been changed. However, the Director of NIST will work with the standards organizations to resolve any problems of this nature.

A representative for foreign manufacturers requested that laboratories should be allowed to perform the same kind of test to comply with standards from different countries. Since the Act provides that the manufacturer of fasteners certify that the fasteners meet the requirements of the standards and specifications, the regulation was not changed.

A laboratory requested the addition of a ''Code of Ethics.'' Many specific requirements and conditions are mandated for accredited laboratories and no change was made to this section.

A laboratory accreditation body asked for a clarification as to whether a laboratory's quality assurance program must assure a required degree of accuracy and precision beyond that required by standard test methods used. NVLAP procedures cited in § 280.201 address measurement traceability and calibration requirements.

A trade association requested a retest be required for foreign sources at the receiving end. Since this is contrary to the Act's treatment of foreign products this section was not changed. The trade association also requested that the regulation ''should include requirements and methods for notifying customers/users of lots with latent defects discovered after delivery.'' Existing mechanisms for notification of users of fasteners with latent defects are

not preempted by the requirements in this regulation. However, procedures cited in § 280.201 do require laboratories to notify clients promptly, in writing, of any event, such as the identification of defective measuring or test equipment, that casts doubt on the validity of results.

New Section 280.203—Adding to or modifying the Program

A new § 280.203 was added to reflect the Act's intent that the program reflect the changing requirements placed upon laboratories by the industry. This section allows the program to be added to, modified, or realigned based on either a written request or a need identified by NIST. Subsequent sections in this subpart have been renumbered accordingly.

Old Section 280.203 New Section 280.204—NVLAP Program Handbook

A domestic manufacturer, a distributor and a consultant requested that the handbook follow ISO/IEC Guide 25–1990. This did not require a change to the regulation, however, the draft handbook is compatible with the ISO/IEC Guide 25 and contains a general operations checklist which follows the ISO/IEC Guide 25 technical requirements. The NVLAP Handbook will supplement this Subpart.

A consultant, an accreditation body, a foreign manufacturer and two foreign aerospace associations requested distribution of the NVLAP handbook. This did not require a change to the regulation. However, in preparation for the February 1993 workshop, over 600 copies of the draft NVLAP handbook were distributed for public comment.

A foreign manufacturer commented that there were too many test methods with not enough details, and no instructions for testing core hardness of ¼″ diameter bolts. Since the standards and specifications determine how fasteners are to be tested, no change in the regulation was made to address this comment. The commenter should contact relevant standards organizations with specific concerns.

Old Section 280.204 New Section 280.205—Applying for Accreditation

Additional requirements were added to this section for foreign laboratories. These requirements were necessary to enable NVLAP to assess properly foreign laboratories and establish fees to maintain self-sufficiency. The following language was added. Foreign laboratories may require:

(1) Translation of laboratory documentation into English; and

(2) Payment of additional traveling expenses for on-site assessments and proficiency testing.

Old Section 208.206 New Section 280.207—Granting and Renewing Accreditation

On-site Assessment Interval

A fastener manufacturer and a college professor commented that the on-site assessment interval was not specified. No change to the regulation was made. This information is provided in the NVLAP handbook.

Accreditation by Discipline Rather than by Test Method

Two laboratories suggested that accreditation be offered by discipline rather than by test method. No change in the regulation was made. The handbook explains the approach which NVLAP will use to group together like test methods and accredit laboratories for the entire group.

Accreditation Period

Six technical societies/trade associations, 7 fastener manufacturers and 2 consultants requested that accreditation be changed from 1 year to 3 years. Comments received from an agency of the United States Government and 3 manufacturers requested a 2-year accreditation. One automotive manufacturer requested the period be extended beyond one year. The reference to a one-year accreditation period has been deleted from this section. However, the NVLAP handbook will provide for a three-year accreditation period. If experience proves positive, the 3-year accreditation period will be maintained, otherwise, it will be reduced to a shorter period. The on-site assessment will be conducted on a 2-year cycle with additional monitoring visits at random or to address specific problems called to NVLAP's attention.

Old Section 280.207 New Section 280.214—Conditions for Accreditation

A fastener manufacturer, an automobile manufacturer, and a consultant requested the accreditation period be extended beyond one year. The accreditation period will be the same as for all other NVLAP accreditation programs.

A fastener manufacturer requested removal of the requirement that a laboratory demonstrate, upon request by NVLAP, that it is able to perform tests representative of those for which it is seeking accreditation. This requirement has been maintained.

A laboratory requested a limitation to the cost of accreditation. No change in the regulation was made. The Act specifies that sufficient fees be collected to cover the cost of the accreditation process.

A fastener company requested that a laboratory must ''be capable of performing all tests for which it is accredited according to the latest version of the test method'' and delete an allowance of up to one year after publication, or another time limit specified by NVLAP. No change was made to the regulation.

A laboratory requested that accredited laboratories be permitted to add tests without additional inspections and audits. No change in the regulation was made. The handbook describes the process for changing a laboratory's scope of accreditation. Specific circumstances will dictate the need for an additional on-site visit.

A fastener manufacturer requested removal of the requirement to keep ''records of all actions taken in response to testing complaints,'' because § 280.6 requires 5-year retention of all records. No change was made to this requirement.

Old Section 280.208 New Section 280.215—Criteria for Accreditation

Eight commenters (an agency of the United States Government, an automobile manufacturer, a distributor, a consultant, 2 fastener manufacturers, a laboratory accreditation body and a law firm representing foreign manufacturers) requested that the criteria for accreditation follow ISO/IEC Guide 25 ''General Requirements for the Competence of Calibration and Testing Laboratories.'' NVLAP procedures cited in § 280.201 are in full accordance with ISO/IEC Guide 25.

A law firm representing foreign companies suggested this section conform to ISO/IEC Guides 54 and 55. These ISO/IEC documents pertain to accreditation bodies, not laboratories. Since this section provides criteria for laboratories and not accreditation bodies, no changes were made to the regulation.

Several comments dealt with the requirements for a laboratory quality manual. A fastener manufacturer suggested that old § 280.208(a)(1)(now § 280.215(c)(1)) be changed to ''the Quality Manual in conjunction with other approved procedures must include as appropriate.'' This suggestion is taken care of in the existing NVLAP procedures.

A laboratory accreditation body requested deletion in old § 280.208(a) (now § 280.215(c)) of the requirements that the quality manual contain provisions for meeting NVLAP

conditions for accreditation, provisions of the Fastener Quality Act, and quality assurance practices for test methods. This suggestion is taken care of in the existing NVLAP procedures.

A laboratory accreditation organization requested that old § 280.208(d)'s requirement (now § 280.215(h)) for a calibration manual be replaced with section 9 of ISO/IEC Guide 25 and 280.208(e)'s requirement for a test plan be replaced with section 10 of ISO/IEC Guide 25. This suggestion is taken care of in the existing NVLAP procedures.

A trade association requested that old § 280.208(b)(6)(i)'s statement (now § 280.215(b)(2)(ii)) that staff members are not to be subjected to undue pressure be deleted. The existing NVLAP procedures which follow ISO/IEC Guide 25 contain this requirement. ISO/IEC Guide 25 also provides that the laboratory shall have policies to ensure that its personnel are free from any commercial, financial and other pressures which might adversely affect the quality and integrity of their work.

A commenter from an agency of the United States Government requested that old § 280.208(c) (now § 280.215(f)) on facilities and equipment be modified to add a statement that: ''Equipment shall be of contemporary design and capability. The equipment shall be modern enough to require the minimum amount of operator interpretation or skill in determining the difference between a pass and fail condition of the product being tested.'' Existing NVLAP procedures require that the laboratory shall be furnished with all items of equipment (including reference materials) required for the correct performance of tests.

A college professor requested that old § 280.208(c) (3)(vi)'s requirements (now § 280.215(f)(4)) for equipment records report variation between working and traceable instruments, and also report differences due to adjustments of working instrument. Existing NVLAP procedures require that equipment records be maintained to include dates and results of calibrations and/or verifications.

A fastener manufacturer requested that old § 280.208(d)(2) (now § 280.215(h)) be changed to ''have a Calibration Manual, or equivalent.'' Existing NVLAP procedures require that the quality manual and related documentation shall contain reference to procedures for calibration, verification and maintenance of equipment.

A fastener manufacturer requested deletion of provision in old § 280.208(e)(1) and (2) (now § 280.215(h)) to allow departure from test methods and procedures when necessary for technical reasons. This change has not been accepted.

A consultant requested removal of the requirement to retain all original observations, calculations and derived data. Stating that it ''is an unnecessary burden and serves no useful purpose. The final test report should stand on its own. If a laboratory has demonstrated proficiency in its various test procedures, there is no need for the above requirement.'' Existing NVLAP procedures follow the ISO/IEC Guide 25 requirements on records which requires retention of original data.

A trade association requested old § 280.208(f)(2)'s reference (now § 280.215(j)) to a ten-year record retention requirement for all records pertaining to tests, inspections and certifications be deleted, since it is already specified. This is covered in existing NVLAP procedures.

A consultant requested that old § 280.208(g)(3) (now § 280.215(j)) pertaining to retention of supplemental information collected by a laboratory be deleted. This language has been removed from the regulation.

Old Section 280.209 New Section 280.208—Denying, Suspending and Revoking Accreditation

A trade association requested that a specific provision be added to permit users to notify NVLAP of complaints, failures, etc. Users can report problems with a laboratory directly to NVLAP.

NVLAP will follow-up with the laboratory to resolve such complaints.

Section 280.212—Approved Signatory

Two fastener manufacturers and a trade association requested that authorized reproductions of the original signature of an Approved Signatory be permitted. The NVLAP handbook will provide guidance in use of an ''authorized'' signature of an Approved Signatory.

Subpart D—NIST Approval of Private Accreditation Programs

NIST received nine comments stating that the proposed approval period for accreditation bodies of one year was too short, with suggested periods ranging from between two to six years or indefinite. The commenters included four manufacturers, one distributor, one testing laboratory, and two trade associations, and one individual. NIST agrees with this recommendation and the Program Handbook on Private Accreditation Programs now reflects this change. Accordingly, approvals will now be indefinite and old § 280.305 has been deleted since renewals are no longer required. Subsequent sections in this subpart have been renumbered accordingly.

NIST received a comment from a laboratory accreditation body that the requirement contained in § 280.301(c)(17) was not in accordance with language contained in ISO/IEC Guide 58 with respect to assuring that accreditation bodies have formal rules and structures that will assure that senior executives, staff, and committees are free from any financial and other pressures which might influence the results of the accreditation process. NIST has changed the language to be in accordance with applicable provisions of ISO/IEC Guide 58. The new language is contained in §§ 280.501(b)(1)(I) and (J).

In addition, one government agency suggested that other Federal government agencies should be authorized to accredit laboratories for the purposes of the act. NIST notes that the Act does not provide for that authorization.

Subpart E—Recognition of Accreditation Programs

NIST received thirteen comments on the procedures for the recognition of foreign accreditation bodies for testing under the Fastener Quality Act. The commenters consisted of five manufacturers, one user, three trade associations, two testing laboratories, one importer and one government agency. The common thread throughout the comments was the concern that foreign entities recognized by NIST should be held to the same standards demanded of U.S. laboratories and accreditors, and should not be subsidized by fees paid by domestic organizations. The suggestion was also made that international recognition agreements should be published in the Federal Register for public comment.

In response to these comments, revisions have been made to subpart E to make clear that the principle of national treatment will apply; that is, all parties, regardless of country of origin will satisfy the same requirements and pay equivalent fees. NIST has, however, determined that publication of proposed international recognition agreements for comment is neither required by law nor appropriate.

Subpart F—Requirements for Fastener Laboratory Accreditation Bodies

NIST received seven comments, one from a manufacturer, two from testing laboratories, one from a government agency, one from a foreign government, one from a trade association and one from an individual, stating that the

procedures and criteria contained in this subpart should be based on the most currently available international guides. In part, the regulations are based on ISO/IEC guides 54 and 55 which have been superseded by ISO/IEC Guide 58. In response to these comments, subpart F has been rewritten and is now based upon ISO/IEC Guide 25 and 58.

Subpart G—Enforcement

This final rule consolidates the provisions of the proposed rule, subparts G, H and I, into a subpart G. As in the proposed rule, this final rule defines the conduct that constitutes violations of the Act and the regulations. However, instead of enumerating an exclusive list of acts prohibited by the Act and the regulations (as in subpart G of the proposed rule), this final rule provides that any conduct prohibited by the Act and regulations would be a violation of the Act and the regulations. Subpart G of this final rule also sets forth certain specific and general actions by persons subject to the Act and the regulations that can give rise to a charge that a violation has been committed.

As in the proposed rule, this final rule provides an administrative process by which a person charged with violating the Act and the regulations is given notice and opportunity for a hearing before a civil penalty may be imposed. This final rule provides that the Office of Export Enforcement will initiate administrative enforcement proceedings and the Office of Chief Counsel for Export Administration will represent the Department in such proceedings before an administrative law judge.

In response to the publication of the proposed rule, one commenter pointed out possible inconsistencies between the Act and the list of prohibited acts set out in § 280.602 of the proposed rule.

This commenter stated that language in § 280.602(a), (b), (c), (g), (i) & (m) of the proposed rule would prohibit conduct beyond that intended by the Act. Language in those paragraphs would have prohibited the ''introduction (into commerce), delivery for introduction (into commerce), transportation or causing to be transported in commerce for the purpose of sale or delivery'' of fasteners that did not meet the requirements of Sections 5 or 7 of the Act. The commenter pointed out that, by such language, the regulations could apply to fasteners that a manufacturer of an end product produced in-house and shipped to a contractor for fabrication into a subassembly which the contractor then returned to the manufacturer for incorporation into a finished end product.

We agree that the Act was not intended to cover such transactions. Subpart A of the final rule is consistent with sections 5 and 7 of the Act by making it a violation to do anything prohibited by the Act and this final rule. (*See* § 280.602 of the final rule.) However, this does not mean, that, in all instances, the ''delivery * * * transportation or causing to be transported in commerce for the purpose of sale or delivery'' would be permissible. If any of these actions caused, aided, abetted a violation of the Act or regulations, or constituted solicitation, attempt or conspiracy to violate the Act or regulations, such conduct would be prohibited. (*See* § 280.602(b), (c) and (d) of the final rule.)

The same commenter pointed out that the language of § 280.602(i) of the proposed rule omitted a condition required by section 7(b) of the Act. Section 280.602(i) of the proposed rule excepted imports from countries with which the United States has a free trade agreement from the requirement that imports be accompanied by a laboratory test report. However, § 280.602(i) of the proposed rule failed to include the following condition contained in section 7(b) of the Act, namely:

> (That) the Secretary certif[y] that satisfactory arrangements have been reached by which purchasers within the United States can readily gain access to an original laboratory test report * * *.

Section 280.13 of the final rule has corrected this omission by including the following requirement in paragraph (b)(1):

> (That) the Director has published in the Federal Register a certification that satisfactory arrangements have been reached by which purchasers within the United States can readily gain access to an original laboratory test report for such fasteners.

Moreover, § 280.602 of the final rule prohibits conduct that refrains from doing anything required by the Act and regulations. Therefore, a failure to provide the proper certificate of conformance to accompany imports, as required by section 7(b) of the Act and § 280.13 and 280.602 of the regulations, would be a violation of the Act and regulations.

The same commenter noted that the proposed rule provided specific time-periods within which responses to discovery requests must be made. That commenter recommended adopting the time-periods established in the Federal Rules of Civil Procedure, rather than the shorter time-periods set forth in the proposed rule.

This final rule generally does not establish time periods for responses to discovery requests; rather, this final rule encourages the parties to engage in voluntary discovery and provides discretion to the administrative law judge in setting a time-period for responses to discovery, if formal discovery is requested. This final rule does require that the service of discovery requests be made at least 20 days prior to the scheduled date of the hearing, unless the administrative law judge specifies a shorter time period. This final rule also provides a minimum of 10 days for responses to requests for admissions of fact or law, although the administrative law judge may provide additional time for such responses. The Department believes that the flexibility for dealing with discovery provided by the final rule is preferable to the rigid response dates set forth in the Federal Rules of Civil Procedure.

Old Subpart H—Civil Penalties

This subpart has been revised and consolidated into the new subpart G. NIST received no specific comments on subpart H of the regulations.

Old Subpart I—Hearing and Appeals Procedures

This subpart has been revised and consolidated into the new subpart G. NIST received no specific comments on subpart I of the regulations.

Old Subpart J—Recordal of Insignia

Subpart J has been redesignated as subpart H.

New Subpart H—Recordal of Insignia

Two manufacturers suggested that any type of permanent marking, rather than just a raised or depressed insignia, as required by § 280.900, be permitted for applying the recorded insignia on the fastener. Section 8 of the Act applies only to fasteners which by their standards and specifications must bear the manufacturer's or private label distributor's mark as a raised or depressed insignia. In those cases, the Act itself requires use of a raised or depressed insignia.

Six comments were received on § 280.700(b) of the proposed regulation. Two of these comments were from large end users of fasteners, one was from a manufacturer's association, one was from a government agency, and two were from manufacturers. These comments suggested that there is a conflict between §§ 280.700(a) and 280.700(b). Subsection 280.700(a) states that ''any fastener which is required by

the standards and specifications which it is manufactured to bear a raised or depressed insignia'' must bear a raised or depressed insignia identifying its manufacturer. Subsection 280.700(b) states that ''The manufacturer's, or private label distributor's, insignia must be applied to * * * any fastener which is sold or offered for sale.'' Thus the language in § 280.700(b) encompasses a broader class of fasteners. In response to this comment, the language in § 280.700(a), which tracks the statutory language, was added to § 280.700(b).

One professional organization suggested that § 280.700(c) be amended to state that all insignia required by the Act be readable without magnification. In response, inasmuch as the Act covers fasteners which are ¼ inch in diameter, the PTO felt it was necessary to permit markings small enough to require magnification.

One fastener organization, one manufacturer and one distributor suggested that the time periods for filing the maintenance document for the certificate of recordal set out in § 280.720(a) be harmonized with the period for filing the renewal of the registration. In the view of the Patent and Trademark Office (PTO), a regulation which ensures that the renewal of the certificate of recordal and the trademark registration occur at the same time would be unduly complex. PTO would need to set out three renewal periods for fastener recordals, one for renewals of recordals based on trademark applications, one for renewals based on trademark registrations, and one for alphanumeric designations. In addition, the PTO would need to update its recordals to show the registration date of applications which mature into registrations. Accordingly, no change has been made to the regulation based upon these comments.

The members of the Fastener Advisory Committee suggested that § 280.723(d) be amended to permit the assignment of alphanumeric designations. In response, the section was rewritten to permit the assignment of alphanumeric designations upon notification to the Commissioner and re-application for the alphanumeric designation. The inability to assign alphanumeric designation would have created serious problems with unusable inventory if an ongoing business was purchased. The requirement that the Commissioner be notified of the assignment of the alphanumeric designation, and that a new application be filed in the name of the entity which purchases rights in the alphanumeric designation, will ensure that the traceability requirement of section 8 of the Act is met.

Two manufacturers and one professional organization suggested that the PTO recognize the fastener markings in MIL Handbook 57, NATO or CAGE codes, or the fastener markings listed with ASME, DISC or IFI. In response, PTO notes that the suggested listings contain identical marks used by different manufacturers. Therefore these listings do not meet the traceability requirements of section 8(b) of the Act.

One government agency suggested that recordal of fastener insignia be permitted only to manufacturers not to private label distributors. Since the Act requires recordal of insignia both for manufacturers and private label distributors, no change to the regulation was made based upon this comment.

One manufacturer suggested that the regulations be amended to permit sale of nonconforming fasteners, manufactured before the Act becomes effective, for a period of 5–10 years, to reduce the burden of imprinting a raised or depressed insignia on the fastener. Section 15 of the Act makes the provisions of the Act applicable only to fasteners manufactured 180 days after final regulations are issued.

One government agency suggested that the PTO add language to its regulations to clarify that a manufacturer may have an unlimited number of insignia recorded with the PTO. Another government department suggested that the regulations be amended to limit the number of insignia any private label distributor be allowed to have. The regulations, as presently written, do not limit the number of recorded insignia or alphanumeric designations a manufacturer or private label distributor may have. The PTO felt that each business should make its own determination as to how many recorded insignias it needed. The PTO did not feel it had sufficient expertise to determine a limit on the number of recorded insignias each business should be permitted.

One writer suggested that, when a transfer or assignment includes the liabilities from previously manufactured products, the regulations permit the assignee to use the unaltered insignia of the assignor. In response, PTO notes that the regulations as presently written would permit the assignee to use the mark of the previous manufacturer or private label distributor, although the assignee would need a new certificate of recordal.

Comments on the Regulatory Impact Analysis

NIST received comments on a wide array of issues concerning the draft Regulatory Impact Analysis (RIA) prepared in 1992, including comments on the percentage of fasteners that might be covered by the law, observations on the costs of laboratory testing, recordkeeping costs, nonconforming product costs, distributor costs, and so on. Each of these topics is treated in a separate section below. Additionally, NIST has prepared a final Regulatory Impact Analysis/Regulatory Flexibility Analysis that takes into account the 1996 amendments to the Act. Comments received as a result of the 1992 public comment process on the draft implementing regulations and as a result of subsequent Fastener Advisory Committee meetings have been taken into account in the preparation of the final Regulatory Impact Analysis.

Percentage of Fasteners Covered by the Law

All comments received on the percentage of fasteners covered by the law indicated that coverage would exceed the congressional estimate of 1 percent. One United States Senator, six distributors, three manufacturers, and two trade associations provided estimates ranging from 15 to 60 percent coverage with aerospace fastener industry estimates at the upper end of the range. Results from the Fastener Industry Coalition (FIC) Survey of distributors estimated the range of coverage from 5 percent to 100 percent, with an average of 54 percent.

Laboratory Accreditation/Testing Costs

Several commenters suggested that some costs of testing have been omitted from the analysis. Four manufacturers noted that the economic impact analysis did not include the purchase cost or continued calibration cost of spectrographs ($100,000 to $200,000 per unit) or other equipment needed by many manufacturers who operate their own laboratories. Two manufacturers indicated that the cost of not allowing mill heat certifications had to be increased to include increased inventory costs and delivery/pickup costs to the nearest accredited lab. One distributor and one manufacturer noted that the cost of providing original copies of certifications (estimated at $15 to $35 per certificate) should be included in the analysis. One distributor noted that foreign manufacturers may find it impossible to provide full certification for small lots of unusual items rushed into the U.S. by air, forcing companies

to set up testing laboratories in the United States to certify items.

While two manufacturers agreed with the $35 per lot estimated spectrochemical testing cost, three manufacturers, one distributor, and one academician noted that the cost impact for spectrochemical analysis reflected the cost of only one element. Industry practice is to provide 5 to 13 elements in a chemical analysis to more accurately reflect the material composition. Cost may therefore be 5 to 13 times higher than estimated. One distributor, while agreeing with the $35 estimate, noted that with very large lots, several tests may be required. One manufacturer estimated that testing costs (excluding spectrochemical testing) would be ten times the NIST estimate. Section 5 of the Act has been amended to permit fastener manufacturers to use mill heat certifications of chemistry supplied by metal producers instead of testing samples of finished fasteners for chemistry. Before the amendment to section 5, NIST estimated that it would cost the fastener industry $100.6 million annually in additional costs to conduct chemical tests of finished fasteners assuming 25% fastener coverage under the Act. The Fastener Advisory Committee, through its Cost Effectiveness Task Group, estimated a maximum range of between $28 million to $1.9 billion in additional annual costs, with a more probable range of between $100 million to $286 million. With the amendment to section 5 of the Act, NIST projects that the increased tests costs to industry under the Act will remain at the $6 million level as indicated in the Summary of Adjusted Industry Costs provided below.

One manufacturer estimated that the number of laboratories at the lower bound of the RIA estimate was too low. An estimate of 298–300 manufacturers laboratories plus an additional 152–200 independent laboratories for offshore production and to cover manufacturers without laboratories would result in the need for a minimum of 450–500 accredited laboratories. One manufacturer noted that most modern processing techniques, such as Just-in-Time, KanBan, etc., heavily influence the lot size downward, and the number of lots may be understated.

Production Delay Costs

Four distributors/manufacturers and one auto maker indicated that because each lot must be tested and some tests are lengthy, ''just-in-time'' production practices will have to be altered and very costly lot-by-lot product storage will be required which would increase the basic production cycle. Under a just-in-time inventory management policy, assembly operations may have to shutdown pending completion of testing. NIST has discussed this issue with the fastener industry. It relates to certain types of testing such as salt spray tests where the amount of time to conduct the test involves days or weeks. These types of tests are generally not required by the standards and specifications to be carried out on every lot of fasteners. Moreover, NIST feels that prudent inventory control and efficient scheduling of tests by manufacturers and distributors will alleviate shutdowns in assembly operations.

Recordkeeping Costs

One manufacturer indicated that the recordkeeping requirements of the proposed regulations may go beyond what laboratories presently keep. If records of each inspection, calculations made in the laboratory, etc., must be maintained in addition to the test certificate there will be a major increase in costs. The Fastener Advisory Committee has indicated to NIST that laboratories currently involved in testing fasteners keep records that are very close to those required by the regulations.

One manufacturer, one distributor, and one foreign trade association noted that the time required for signing a test report should include time for report review. Estimated time ranged from 2–20 minutes. Additional review time will be required if test reports are reviewed more thoroughly after the regulation is implemented.

Training/Education Costs

Two distributors noted that increased training and supervision of personnel will be required to insure compliance and that training/information on the requirements of the Act would also have to be provided to foreign suppliers. NIST has been working with the fastener industry to organize a series of public workshops both in the U.S. and abroad to provide training on the Act and regulations, once the regulations are issued. Eight such workshops have been planned, and most will coincide with already planned meetings and conferences within the fastener industry so as to minimize costs. NIST does not feel that the cost of training and education needed to assure compliance with the Act and regulations will be significant.

Imported Assemblies Containing Fasteners

Two manufacturers and one manufacturer/distributor noted the Act allows foreign competitors to produce fasteners without additional costs imposed by the Act and put them into automotive and other products which are then imported by U.S. based firms as final products or subassemblies. This will put U.S. firms producing similar items at a competitive disadvantage. NIST accepts the comments that imported assemblies or final products containing fasteners might have a slight competitive advantage over U.S. assemblies or final products containing fasteners manufactured in compliance with the Act and regulations. However, NIST feels that there are many other influence factors such as cost of materials, labor, and currency fluctuations that could mitigate any competitive advantage and that it is not realistic to claim that the cost of fasteners alone will result in a competitive disadvantage to U.S. firms.

Nonconforming Product Costs

Eleven manufacturers, four distributors, and one importer commented on the major economic impact of not allowing minor nonconformances that do not affect the form, fit or function of a fastener. While no cost estimates were provided, comments indicated that total manufacturing cost will be significantly affected and may result in shutdown of a substantial number of firms. ''Just-in-time'' production practices and worldwide parts sourcing will also be affected and could cause temporary plant shutdowns.

The Fastener Advisory Committee at its meeting of December 2, 1992 requested its Subcommittee on Cost Effectiveness to prepare a ''white paper'' projecting the probable economic consequence of implementing final regulations without amending the Act per the Committee's recommendations. The report focused on three issues: (1) Permitting the sale of fasteners tested and found to contain minor nonconformances from standards which do not affect form, fit, or function; (2) permitting the acceptance of mill heat certificates from raw material suppliers rather than post manufacturing testing of finished fasteners; and (3) permitting the commingling of like fasteners by distributors. A report was produced by the Subcommittee and adopted by the full Committee at its meeting March 3–4, 1993. On the issue of nonconforming product costs, the Report estimates that fastener lot rejection costs will range

from $89 million to $285 million annually unless nonconformances now recognized in existing standards prevail. The Report further noted that such rejection costs will double when parts are plated because of the wide swings in coating thickness present in the existing process.

Section 3 of the Act was amended to permit the sale of fasteners with minor non-conformances following guidelines established in applicable standards and specifications. The amendment resolves the non-conforming fasteners issue and will eliminate the $285 million worst case projected costs to industry, as estimated above.

Distributor Costs

One distributor noted that there can be no standard cost of impact developed that would safely apply to each and every distributor. Factors affecting impact include the size of the distributorship and whether it's mostly a bulk operation, a prepackaged operation, a repackaging operation or a combination of the above. Smaller distributors would probably be harder hit because they tend to be more combination operations with a lesser quantity but wider variety of products and with much smaller unit sales, which includes broken kegs, carton or package sales. Cost impact estimates provided by individual distributors on their operations ranged from no or minimal additional cost to increases of several hundred thousand dollars the first year. The Fastener Industry Coalition (FIC) Cost Survey indicated wide variations in costs likely to be incurred by specific companies. The survey noted that 50 percent of respondents will require additional warehouse space and that first year costs would range from $1,500 to $500,000 and average=$50,966 with subsequent annual costs ranging from $1,000 to $78,000 and averaging $16,604. The survey noted that 85 percent of respondents would require additional personnel. Estimated cost ranged from $4,000 to $170,000 and averaged $36,444. Eighty-one percent of respondents would require additional computer hardware/software. Estimated first year cost ranged from $500 to $175,000 and averaged $24,821. Seventy four percent would require additional machinery, equipment, pallet racking, shelving, or supplies. Estimated first year cost ranged from $500 to $150,000 and averaged $15,326. The FIC Survey also noted other costs including: Labels for boxes; probable loss of old uncertified stock or certification costs to recertify it; maintenance and certification of quality control equipment and purchase of additional equipment and quality control personnel; additional recordkeeping and storage requiring cabinets and personnel; reduced efficiency in receiving, shipping, materials handling, etc.; cost of providing test reports to customers; increased inventory costs; transportation cost to test lab; test costs; changing vendors because some will drop out; cost of goods that must be scrapped; loss of stock due to non-commingling; cost of test reports from vendor ($5–$100 per lot); and additional attorney fees/insurance premiums.

Section 7(e) of the Act was amended to permit voluntary commingling of fasteners by distributors only. NIST estimates that approximately 10% of distributors will continue to provide lot traceability at an estimated annual cost to the industry of $6.5 million instead of the projected $373.3 million annual cost if all distributors were required to maintain lot traceability for 25% of their inventory. Note that the $6.5 million does not necessarily represent new costs since some distributors had been providing this service prior to the passage of the Fastener Quality Act.

Reduced Competition

Six distributors, seven manufacturers and two laboratories noted that compliance/accreditation costs and liability issues are likely to drive firms out of the market thus reducing competition. NIST's assessment of economic impact has shown no evidence of burdensome compliance/accreditation, and liability issue-related costs.

Loss of Good Will

Five distributors and one manufacturer noted that one of the most important costs will be loss of customer goodwill resulting from firms not being able to accept customer returns and from customers having to purchase more product than they actually need because breaking packages will not be cost effective. This problem can be minimized using normal industry practice of inventory control. The Act does not prevent the current practice of return of unused, unbroken boxes of fasteners.

Lack of Enforcement

Three distributors, three manufacturers, and one trade association indicated that those producing/distributing poor quality fasteners will continue to do so to the extent that lack of enforcement makes that risk attractive. Several noted that there were already laws in effect to deal with the mismarked or counterfeit fasteners, but that they were not being sufficiently enforced. The Bureau of Export Administration (BXA) of the Commerce Department has 140 experienced field investigators who will actively enforce this Act.

Miscellaneous Comments

One distributor noted that the regulatory impact is a non-issue since costs of product failures are so large. Primarily, this Act addresses the issue of improving the quality and traceability of fasteners, thereby decreasing fastener-related failures.

One manufacturer stated that if commingling is allowed what is to stop someone from mixing good certified product with bogus, uncertified product in the same container? The Act specifically addresses who can commingle fasteners and how to label commingled fasteners. See subpart A, § 280.4 of the regulations.

One distributor noted that if a manufacturer can create bogus fasteners, creating bogus test reports will not be a problem either. The Act imposes severe criminal penalties for creating either bogus fasteners or bogus test reports. See Subpart G, § 280.603 of the regulations.

One manufacturer noted that expected potential benefit resulting from decreased buyer inspection and testing cost is not anticipated in the aerospace industry. The Act is not intended to change the current practice of buyer inspection and testing in the aerospace industry.

Classification

Administrative Procedure Act

This final rule is the logical outgrowth of the proposed rule and the public comment process. A majority of the public comment received on the 1992 proposed rule suggested the need for particular amendments to the FQA. The suggested amendments were enacted as part of Pub.L. 104–113. This rule contains regulations making final the 1992 proposed rule, as well as regulations to implement expressly the FQA as amended pursuant to specific public comment received regarding the 1992 proposed rule.

Executive Order 12866

This rule has been determined to be significant under section 3(f) of Executive Order 12866. However, it has been determined that this rule is not an economically significant rule within the meaning of section 3(f)(1) of Executive Order 12866, or a major rule as defined by section 804 of Pub.L. 104–121, based upon the adjusted costs to industry of

complying with the Fastener Quality Act as amended by Pub.L. 104–113 (Technology Transfer and Advancement Act of 1995). The projected $18.9 million annual costs to industry summarized below are based upon NIST's estimate that 25% of currently produced fasteners would be covered under the Act. Assuming that 55% of currently produced fasteners would be covered under the Act, as is projected in industry studies, the estimated annual industry costs adjusted by amendments to the Act would be approximately $38.7 million. NIST has prepared a final Regulatory Impact Analysis on the expected costs that will be incurred by both government and industry to implement these regulations, as well as on the expected benefits to be derived from the rule's implementation. NIST has transmitted this Analysis to the Office of Management and Budget.

Summary of Adjusted Industry Costs

The following table summarizes the annual costs to industry for complying with the Fastener Quality Act, as originally estimated in the 1993 NIST Impact Analysis, and as adjusted based upon the recent amendments to the Act that were contained in Pub.L. 104–113 (Technology Transfer and Advancement Act of 1995).

ESTIMATED INDUSTRY COSTS

[In millions]

Activity	With no amendments to act	Adjusted by amendments to act
Lab Accreditation Costs	$6.4	$6.4
Increased Test Costs	6.0	6.0
Nonconforming Fastener Costs*	N/A	0.0
Spectrochemical Test Costs	100.6	0.0
Distributor Costs	373.7	** 6.5
Total Annual Industry Cost	486.7	18.9

*NIST was not able to estimate these costs. However, a task force of the Fastener Advisory Committee estimated lot rejection costs based upon not being able to sell fasteners with minor nonconformances as permitted by standards and specifications at $285 million annually, worst case.

**The $6.5 million does not necessarily represent all new costs since some distributors had been providing this service prior to the passage of the Fastener Quality Act.

Summary of Benefits of the Regulation

The economic costs associated with faulty or substandard fasteners entering the marketplace are difficult to measure. In the legislative history of the Act, numerous examples were cited of faulty or substandard fasteners. The one example that was quantified—the NASA space shuttle equipment example—included an estimated $11 million price tag associated with the discovery and removal of substandard fasteners. It is also clear from the other examples included in the legislative history, that many (if not most) of them resulted in economic losses well into the millions of dollars—losses that will be substantially reduced through implementation of this Act. In addition to economic losses, the injuries and deaths associated with product failures resulting from the use of faulty or counterfeit fasteners will be reduced. Another benefit will be a potential reduction in the inspection and testing costs incurred by purchasers associated with the quality control of incoming critical fastener procurements. Similarly, another benefit, although not quantifiable, is associated with customer perception of improved product quality for U.S. made fasteners resulting from the Act. Because the Act applies equally to all enterprises in the United States, be they domestic or foreign, implementation of the Act will also help to ''level the playing field'' in domestic sales by making it more difficult for unethical manufacturers and distributors to substitute substandard or counterfeit fasteners at ''reduced prices'' thereby being able to undercut the prices of their competitors. Finally, the Act uses voluntary standards developed by the private sector to set appropriate fastener specifications and test methods. This approach, which complies with the requirements of the Technology Transfer and Advancement Act of 1995, reduces the degree of regulatory involvement in and control over the marketplace and leaves the determination of fastener requirements to those most familiar with fastener technology and use.

Regulatory Flexibility Act

The Department has conducted a final Regulatory Flexibility Analysis for this final rule. Laboratories, most of which are small entities, desiring to test fasteners in accordance with the provisions of the Act will incur costs related to accreditation and recordkeeping. These costs have been discussed in Section IV of the Regulatory Impact Analysis under LABORATORY COSTS. Based on estimates provided by the Fastener Advisory Committee, between 328 and 457 laboratories will require accreditation to implement Pub. L. 101–592, as amended. Using the 1 to 25 percent range, between 26 and 639 laboratories will require accreditation. Accreditation cost per laboratory will vary with the scope of accreditation sought (the number of test methods for which the laboratory seeks accreditation); however, the annual accreditation cost (based on NVLAP's experience) is expected to average $10,000 per laboratory.

Manufacturers who sell grade-marked fasteners covered by the Act will incur additional testing and recordkeeping costs. Most of the approximately 350 U.S. fastener manufacturers are not small entities. No data is available on how many (if any) small U.S. fastener manufacturers produce fasteners covered by the Act. Manufacturer costs for all manufacturers are discussed in Section IV of the Regulatory Impact Analysis under MANUFACTURER COSTS and in the June 1996 update to the Analysis.

Distributors that sell grade-marked fasteners covered by the Act will also incur additional costs in supplying lot traceable fasteners to those purchasers who request them. These costs are discussed in the June 1996 update to the original 1993 Regulatory Impact Analysis.

As noted above, to the extent that the Act permitted some flexibility in the development of the implementing regulations, the Department has sought and incorporated advice from its Fastener Advisory Committee, chartered pursuant to the Act, to maximize the cost effectiveness of the regulations.

Responses to comments are contained elsewhere in this rule and this is thought to minimize the significant impact of this rulemaking through enactment of amendments to the Act, as described above.

Paperwork Reduction Act

This rule contains three information collection requirements subject to the Paperwork Reduction Act. Two collections of information have been approved by the Office of Management and Budget under Control Numbers 0693–0003, and 0693–0015. The public reporting burden for collecting information dealing with the accreditation of fastener testing laboratories (0651–0003) is estimated to average 1 hour per response, and an estimated total annual burden of 2400 hours. The public reporting burden for collecting information dealing with approving laboratory accreditation bodies (0651–0015) is estimated to average 4 hours per response, with an estimated total annual burden of 20 hours.

The final rule contains one information collection provision that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection requirements are shown below with the estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Fastener Quality Act Insignia Recordal Process.

Description: This collection of information is required by section 8 of the Fastener Quality Act. Under section 8, each manufacturer or private label distributor must apply to PTO for recordal of an insignia on the Fastener Insignia Register. The PTO has drafted a suggested application form for use by the public.

Description of Respondents: Fastener manufacturers and private label distributors.

Estimate of Annual Reporting and Recordkeeping Burden: The estimated total annual burden of hours is calculated at 100 hours. PTO estimates that there will be between 300 and 900 respondents, or an average of 600 respondents per year. The Office estimates that it will take the applicant 10 minutes to collect the data and complete the application/renewal form.

Notwithstanding any other provisions of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 15 CFR Part 280

Business and industry, Fastener industry, Imports.

Dated: September 13, 1996.

Samuel Kramer,

Associate Director.

For reasons set forth in the preamble, title 15 of the Code of Federal Regulations is amended by adding part 280 to read as follows:

PART 280—FASTENER QUALITY

Subpart A—General

Sec.

280.1 Purpose/description of rule.
280.2 Definitions.
280.3 Relationship to State laws.
280.4 Commingling of fasteners.
280.5 Certification of fasteners.
280.6 Laboratory test reports.
280.7 Recordkeeping requirements.
280.8 Ownership of laboratories by manufacturers.
280.9 Subcontracting of testing.
280.10 Sampling.
280.11 Significant alterations of fasteners.
280.12 Applicability.
280.13 Imports of fasteners.
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Authority: Sec. 13 of the Fastener Quality Act (Pub.L. 101–592, as amended by Pub. L. 104–113).

Subpart A—General

§ 280.1 Purpose/description of rule.

The Fastener Quality Act (the Act) (Pub.L. 101–592, as amended by Pub. L. 104–113) is intended to protect the public safety, to deter the introduction of nonconforming fasteners into commerce, to improve the ability to trace fasteners covered by the Act, and generate greater assurance that fasteners meet stated specifications. The Act:

(a) Requires that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured,

(b) Provides for accreditation of laboratories engaged in fastener testing; and

(c) Requires inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act.

§ 280.2 Definitions.

Unless the context requires otherwise or unless specifically stated the terms in this part have the meanings prescribed in the statute. In addition the following definitions apply.

Accreditation means laboratory accreditation.

Accreditation Body refers to the National Voluntary Laboratory Accreditation Program and those private entities currently approved by NIST under subpart D of this part and those foreign governments or organizations currently recognized by NIST under subpart E of this part.

Accreditation criteria means a set of requirements used by an accreditation body which a laboratory must meet to be accredited.

The Act means the Fastener Quality Act (Pub.L. 101–592, as amended by Pub.L. 104–113).

Alter means to alter by through hardening; by electroplating of fasteners; or by machining.

Alteror means a person who owns a fastener and causes it to be altered.

Approved signatory is an individual employed by a laboratory accredited under the Act and these regulations who is recognized by an accreditation body as competent to sign accredited laboratory test reports.

Bureau of Export Administration or (*BXA*) means the Bureau of Export Administration of the United States Department of Commerce, including the Office of Export Enforcement.

Certificate of Accreditation is a document issued by an accreditation body to a laboratory that has met the criteria and conditions of accreditation. The certificate, together with the assigned code number, and scope of accreditation issued by the accreditation body may be used as proof of accredited status.

Commingling means the mixing of fasteners from different lots in the same container.

Commissioner means the Commissioner of Patents and Trademarks.

Consensus standards organization means the American Society for Testing and Materials (ASTM), American National Standards Institute (ANSI), American Society of Mechanical Engineers (ASME), Society of Automotive Engineers (SAE), or any other consensus standards setting organization (domestic or foreign) determined by the Secretary to have comparable knowledge, expertise, and concern for the health and safety in the field for which such organization purports to set standards.

Container means any package of fasteners traded in commerce.

Date of manufacture means that date upon which the initial conversion of material into a fastener takes place.

Director means the Director of the National Institute of Standards and Technology (NIST).

Fastener means any screw, nut, bolt or stud, washer or other item included within the definition for fastener contained in section 3(5) of the Fastener Quality Act. The term ''fastener'' does not include a screw, nut, bolt, or stud:

(1) That is produced and marked as ASTM A307 Grade A;

(2) That is produced in accordance with ASTM F432; or

(3) That is held out as being produced to other than the provisions of standards and specifications published by a consensus standards organization, or a government agency.

A screw, nut, bolt, stud or washer held out as being produced according to requirements of a document other than a document published by a consensus standards organization is a fastener within the meaning of the Act and this part if that document incorporates or references (directly or indirectly) standards and specifications published by a consensus standards organization or government agency for purposes of delineating performance or materials characteristics of the fastener.

Fastener insignia register means the register established at the U.S. Patent and Trademark Office for the recordal of fastener insignia to identify the manufacturer or private label distributor.

Fastener set means a collection of small quantities of products, including fasteners, of varying sizes, collected together and sold as a package.

Grade or property class identification marking means any symbol appearing on a fastener purporting to indicate that the fastener's base material, strength properties, or performance capabilities conform to a specific standard of a consensus standards organization or government agency. A raw material mark is not considered as a grade identification mark for purposes of these regulations unless this mark is required by the fastener standards and specifications to identify specific conformance.

Importer means a person located within the United States who contracts for the initial purchase of fasteners manufactured outside the United States for resale or such person's use within the United States.

Laboratory accreditation is the formal recognition that a testing laboratory is competent to carry out specific test(s) or specific type(s) of tests.

Laboratory accreditation body means a legal or administrative entity that accredits laboratories.

Laboratory assessment means the on-site examination of a testing laboratory to evaluate its compliance with specified criteria.

Laboratory test report means a report prepared by an accredited laboratory in accord with § 280.6.

Lot means a quantity of fasteners of one part number fabricated by the same production process from the same coil or heat number of metal as provided by the metal manufacturer and submitted for inspection and testing at one time.

Lot number means a number assigned by a manufacturer to the lot.

Lot-specific identification information means information applicable to a fastener consisting of, at a minimum:

(1) The part number (or a part description if there is no applicable part number),

(2) The identity of the manufacturer, and

(3) The lot number.

Lot traceability means the recording and maintenance of lot-specific identification information sufficient to trace fasteners from a single lot throughout:

(1) The manufacturer's fabrication or alteration process,

(2) All inspection and testing operations, and

(3) The subsequent chain of distribution in commerce.

Manufacturer means a person who fabricates fasteners, who significantly alters fasteners, or who alters any item so that it becomes a fastener.

NIST means the National Institute of Standards and Technology, U.S. Department of Commerce.

NVLAP means the National Voluntary Laboratory Accreditation Program operated by the National Institute of Standards and Technology.

Original laboratory testing report means a laboratory testing report which is originally signed by an approved signatory or is a copy thereof, certified by the laboratory that conducted the test.

Person means any individual, partnership, limited partnership or corporate entity and/or a representative, agent or designee.

Private label distributor means a person who contracts with a

manufacturer for the fabrication of fasteners bearing the distributor's distinguishing insignia.

Product includes any type or category of manufactured goods, constructions, installations, or natural or processed materials.

Proficiency testing means the determination of laboratory testing performance by means of comparing and evaluating tests on the same or similar items or materials in accordance with predetermined conditions.

Scope of Accreditation is a document issued by an accreditation body to an accredited laboratory which lists the test methods, standards or specifications for which the laboratory is accredited.

Secretary means the Secretary of Commerce.

Significantly Alter means to alter in a manner which could weaken or otherwise materially affect the performance or capabilities of the fastener as it was originally manufactured, grade or property class marked, tested, or represented. The term does not include the application of adhesives or sealants, locking elements, provisions for lock wires, coatings and platings of parts having a specified Rockwell C hardness of less than 32, or cutting off of fasteners. The cutting of finished threaded rods, bars or studs to produce individual smaller length threaded studs for resale is not a significant alteration. However, cut threaded studs, rods, and bars offered for sale shall be individually marked with the grade or property class identification marking appearing on or accompanying the original threaded studs, rods, and bars from which the fasteners were cut.

Standards and specifications means the provisions of a document published by a consensus standards organization, or a government agency.

Tamper-resistant system means the use of special paper or embossing stamps or other controls which discourage, prevent or minimize alteration of test reports subsequent to manufacturing, inspection and testing.

Testing laboratory is a laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of products.

Through-harden means heating above the transformation temperature followed by quenching and tempering for the purpose of achieving a uniform hardness.

Traceability of Measurements means a documented chain of comparisons connecting the accuracy of a measuring instrument to other measuring instruments of higher accuracy and, ultimately, to a primary standard.

§ 280.3 Relationship to State laws.

Nothing in the Act or these regulations shall be construed to preempt any rights or causes of action that any buyer may have with respect to any seller of fasteners under the law of any State, except to the extent that the provisions of the Act or these regulations are in conflict with such State law.

§ 280.4 Commingling of fasteners.

(a) No manufacturer, importer, or private label distributor may commingle fasteners of the same type, grade, and dimension from different lots in the same container; except that such manufacturer, importer, or private label distributor may commingle fasteners of the same type, grade, and dimension from not more than two tested and certified lots in the same container during repackaging and plating operations: Provided, that any container which contains the fasteners from two lots shall be conspicuously marked with the lot identification numbers of both lots.

(b) Fastener distributors, and persons who purchase fasteners for sale at wholesale or retail, may commingle fasteners of the same type, grade, and dimension from different lots in the same container.

§ 280.5 Certification of fasteners.

(a) No fastener shall be offered for sale or sold in commerce unless it is part of a lot which has been inspected, tested, and certified in accordance with Section 5 of the Act and this part, and found to conform to the standards and specifications to which the manufacturer represents it has been manufactured.

(b) (1) the requirements of paragraph (a) of this section shall not apply to fasteners which are part of a lot of 50 fasteners or less if within 10 working days after delivery of such fasteners, or as soon as practicable thereafter—

(i) Inspection, testing, and certification as provided in subsections 5 (b), (c), and (d) of the Act and this part is carried out; and

(ii) Written notice detailing the results of such inspection, testing, and certification is sent:

(A) To all purchasers of such fasteners, except retail sellers and retail consumers, and

(B) To any retail seller or retail consumer who, prior to delivery, requests such written notice.

(2) If a fastener is sold under paragraph (b) of this section, each purchaser of such fastener, except for retail sellers and retail consumers unless such retail sellers and retail consumers request such notice in advance, shall be provided, contemporaneously with each sale and delivery, written notice stating that such fastener has not yet been inspected, tested, and certified as required by the Act and this part.

(c) Each manufacturer, importer, private label distributor, or alteror who significantly alters any fastener shall keep on file and make available for inspection in accordance with the recordkeeping requirements of § 280.7 an original laboratory testing report described in section 5(c) of the Act and § 280.6 of this part and a manufacturer's certificate of conformance for each lot of fasteners subject to the Act and this part which that manufacturer, importer, private label distributor, or alteror who significantly alters any fastener offers for sale or sells in commerce. Such certificate shall, as a minimum, include:
Fastener description information contained in § 280.6(a)(4) of this part;
the date of issue and serial number of the laboratory testing report; and
A statement certifying that the fasteners have been manufactured according to the requirements of the applicable standards and specifications and found to conform with its requirements. The requirements of this paragraph shall not apply to an alteror who significantly alters fasteners and who delivers to the purchaser the written statement provided for by § 280.11(a)(3) of this part.

§ 280.6 Laboratory test reports.

(a) When performing tests for which they are accredited under this part, each laboratory accredited under subparts C, D, or E of this part and currently listed in the Accredited Laboratory List shall issue test reports of its work which accurately, clearly, and unambiguously present the test conditions, test set-up, test results, and all information required by this section. All reports must be in English or be translated into English, must be signed by an approved signatory, must be protected by a tamper resistant system, and contain the following information:

(1) Name and address of the laboratory;

(2) Unique identification of the test report including date of issue and serial number, or other appropriate means;

(3) Name and address of client;

(4) Fastener Description, including:

(i) Manufacturer (name and address);

(ii) Product family (screw, nut, bolt, washer, or stud), drive and/or head configurations as applicable;

(iii) Date of manufacture;

(iv) Head markings (describe or draw manufacturer's recorded insignia and grade identification or property class symbols);

(v) Nominal dimensions (diameter; length of bolt, screw or stud; thickness of load bearing washer); thread form and class of fit;

(vi) Product standards and specifications related to the laboratory in writing by the manufacturer, importer or distributor;

(vii) Lot number;

(viii) Specification and grade of material;

(ix) Coating material and standard and specification as applicable;

(5) Sampling information:

(i) Standards and specifications or reference for sampling scheme;

(ii) Production lot size and the number sampled and tested;

(iii) Name and affiliation of person performing the lot sampling;

(6) Test results:

(i) Actual tests required by the standard and specification;

(ii) Test results for each sample;

(iii) All deviations from the test method;

(iv) All other items required on test reports according to the test method;

(v) Where the report contains results of tests performed by sub-contractors, these results shall be clearly identified along with the name of the laboratory and accreditation information listed in paragraph (a)(10) of this section.

(vi) A statement that the samples tested either *conform* or *do not conform* to the fastener standards and specifications or standards and identification of any nonconformance, except as provided for in §§ 280.13 and 280.14;

(7) A statement that the report must not be reproduced except in full;

(8) A statement to the effect that the test report relates only to the item(s) tested;

(9) Name, title and signature of approved signatory accepting technical responsibility for the tests and test report;

(10) The name of the body which accredited the laboratory for the specific tests performed which are the subject of the report, and code number assigned to the laboratory by the accreditation body, and the expiration of accreditation.

(b) For alternative chemical tests carried out under § 280.15 of this part, each laboratory accredited under subparts C, D, or E of this part and currently listed in the Accredited Laboratory List shall provide to the fastener manufacturer, either directly or through the metal manufacturer, a written inspection and testing report containing all required information. All reports must be in English or be translated into English, must be signed by an approved signatory, must be protected by a tamper resistant system, and contain the following information:

(1) Name and address of the laboratory;

(2) Unique identification of the test report including date of issue and serial number or other appropriate means.

(3) Name and address of client;

(4) Coil or heat number of metal being tested;

(5) Test results:

(i) Actual tests required by the standards and specifications;

(ii) Test results for each sample;

(iii) All deviations from the test method;

(iv) All other items required on test reports according to the test method;

(v) Where the report contains results of tests performed by sub-contractors, these results shall be clearly identified along with the name of the laboratory and accreditation information listed in paragraph (b)(9) of this section.

(vi) A statement that the samples tested either *conform* or *do not conform* to the metal standards and specifications and identification of any nonconformance;

(6) A statement that the report must not be reproduced except in full;

(7) A statement to the effect that the test report relates only to the item(s) tested;

(8) Name, title and signature of approved signatory accepting technical responsibility for the tests and test report;

(9) The name of the body which accredited the laboratory for the specific tests performed which are the subject of the report, and code number assigned to the laboratory by the accreditation body, and the expiration of accreditation.

(c) The laboratory shall issue corrections or additions to a test report only by a further document suitably marked, e.g. ''Supplement to test report serial number * * *'' This document must specify which test result is in question, the content of the result, the explanation of the result, and the reason for acceptance of the result.

§ 280.7 Recordkeeping requirements.

(a) Each laboratory accredited under subparts C, D, or E of this part shall retain for 5 years after the performance of a test all records pertaining to that test concerning the inspection and testing, and certification, of fasteners under the Act and these regulations. The final test report or the test records maintained by the laboratory shall contain sufficient information to permit the test to be repeated at a later time if a retest is necessary. The laboratory shall maintain the test report and a record of all original observations, calculations, and derived data. The records shall include the identity of personnel involved in sample preparation and testing. Procedures for storage and retrieval of records must be documented and maintained in the laboratory's quality manual.

(b) Manufacturers, importers, private label distributors, and persons who significantly alter fasteners shall retain for 5 years after the performance of a test all records pertaining to that test concerning the inspection and testing, and certification, of fasteners under the Act and these regulations.

(c) Original records required. Persons required to keep records under this part must maintain the original records in the form in which that person receives or creates them unless that person meets all of the conditions of paragraph (d) of this section relating to reproduction of records. Original laboratory test reports described in §§ 280.5, 280.6, 280.13 and 280.15(b) of this part must be kept.

(d) Reproduction of original records. A person required to keep records under this part may maintain reproductions of documents other than laboratory test reports instead of the original records using any photographic, photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the requirements of paragraphs (d)(1) through (d)(9) of this section.

(1) The system must be capable of reproducing all records on paper.

(2) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides of paper documents in legible form.

(3) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. (For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.)

(4) The system must preserve the initial image (including both obverse

and reverse sides of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(5) The regulated person must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(6) The regulated person must establish written procedures for inspection and quality assurance of records in the system and document the implementation of those procedures.

(7) The system must be complete and contain all records required to be kept by this part or the regulated person must provide a method for correlating, identifying and locating records relating to the same transaction(s) that are kept in other record keeping systems.

(8) The regulated person must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(9) Upon request by the Bureau of Export Administration or NIST, the regulated person must furnish, at the examination site, the records, the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record in the system.

(e) Destruction or disposal of records. If the Bureau of Export Administration, NIST or any other government agency makes a formal or informal request for any record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned. This prohibition applies even if such records have been retained for a period of time exceeding that required by paragraphs (a) or (b) of this section.

(f) All persons required to keep records by this part must furnish those records when requested to do so by an employee of the Bureau of Export Administration or NIST.

§ 280.8 Ownership of laboratories by manufacturers.

(a) If the Director finds that, as to a specific type of fastener, and as to a specific type of inspection or testing, a ban on manufacturer ownership or affiliation with a laboratory performing tests under the Act and these regulations would increase the protection of health and safety of the public or industrial workers, the Director may impose such a ban.

(b) Before imposing a ban under paragraph (a) of this section, the Director shall provide advance notice and the opportunity for public comment.

§ 280.9 Subcontracting of testing.

(a) Whenever a laboratory accredited under subparts C, D, or E of this part issues a test report under the Act and this part, it is implied that the report reflects work performed, and results obtained, by the personnel, equipment, and procedures of that laboratory. However, in some cases a laboratory may require the use of another facility due to equipment failure, need for specialized equipment, work overload, or to perform tests outside the laboratory's own scope of accreditation.

(b) Whenever a laboratory accredited under subparts C, D, or E of this part subcontracts to another laboratory for the performance of any test or portion of a test it must:

(1) Place the work with another laboratory accredited under either subpart C, D, or E of this part;

(2) Inform the client, before the fact, that subcontracting will be necessary; and

(3) Clearly identify in its records, and in the report to the client, specifically which test method(s) or portions of a test method(s) were performed by the accredited laboratory and which were performed by the subcontractor.

§ 280.10 Sampling.

In the event that the standard or specification to which a manufacturer represents the fasteners in a particular sample to have been manufactured does not provide for the size, selection or integrity of the sample to be inspected and tested, the sample shall be determined in accordance with ASME/ANSI B18.18.2M, *Inspection and Quality Assurance For High-Volume Machine Assembly Fasteners;* ASME/ANSI B18.18.3M, *Inspection and Quality Assurance for Special Purpose Fasteners;* or ASME/ANSI B18.18.4M, *Inspection and Quality Assurance for Highly Specialized Engineering Applications—Fasteners,* as appropriate.

§ 280.11 Significant alterations of fasteners.

(a) Any alteror who significantly alters a fastener so that it no longer conforms to the description in the relevant test report issued under section 5(c) of the Act or this part, and who thereafter offers for sale or sells such significantly altered fastener, shall:

(1) Assign a new lot number;

(2) Apply his or her registered insignia to the significantly altered fastener if the standards and specifications to which the fastener was originally manufactured required the fastener to bear a raised or depressed insignia identifying its manufacturer or private label distributor; and

(3) Be treated as a manufacturer for the purposes of the Act and this part, and shall cause the fastener to be inspected and tested as required by section 5 of the Act and by this part unless the significantly altered fastener is delivered to a purchaser accompanied by a written statement noting the original lot number and the new lot number assigned by the alteror, disclosing the subsequent alteration, and warning that such alteration may affect the dimensional or physical characteristics of the fastener.

(b) If the significant alteration is only electroplating of fasteners having a specified Rockwell C hardness of 32 or above, the requirements set forth in paragraphs (a)(2) and (a)(3) of this section shall not apply, but the alteror shall assign a new lot number as set forth in paragraph (a)(1) of this section and shall test the electroplated fasteners as required by the plating standards and specifications.

(c) Any person who knowingly sells a significantly altered fastener as described in paragraph (a) of this section, and who did not alter such fastener, shall provide to the purchaser a copy of the statement required by paragraph (a)(3) of this section; unless the significant alteration is only electroplating of the fastener, as described in paragraph (b) of this section.

(d) If the alteration is not a significant alteration, the requirements set forth in paragraph (a) of this section shall not apply, and the only testing requirements which apply are those required by the standards and specifications to which the alteration is performed. If the alteration involves cutting of threaded studs, rods, or bars into studs, these cut fasteners must be marked with the grade or property class identification marking appearing on the original threaded studs, rods, and bars.

§ 280.12 Applicability.

(a) The requirements of the Fastener Quality Act and this part shall be applicable only to fasteners manufactured on or after May 27, 1997.

(b) Metal manufactured prior to May 27, 1997 may not be used to manufacture fasteners subject to the Act and this part, unless the metal has been tested for chemistry pursuant to § 280.15 of this part by a laboratory accredited under the Act and this part and the chemical characteristics of the metal conform to those required by the standards and specifications.

(c) Nothing in the Act and this part prohibits selling finished fasteners manufactured prior to May 27, 1997 or representing that such fasteners meet standards and specifications of a consensus standards organization or a government agency. Fasteners manufactured prior to May 27, 1997 may not be represented as being in conformance with the Act or this part.

§ 280.13 Imports of fasteners.

(a) Except as provided in paragraph (b) of this section, it shall be unlawful for any person to sell to an importer, and for any importer to purchase any shipment of fasteners or fastener sets manufactured outside the United States unless such shipment to an importer is accompanied by a manufacturer's certificate of conformance, an original laboratory testing report with respect to each lot from which the fasteners are taken, and any other relevant lot identification information.

(b) The requirement that delivery of fasteners to any importer must be accompanied by an original laboratory testing report shall not apply:

(1) In the case of fasteners imported into the United States as products manufactured within a nation which is party to a congressionally approved free trade agreement with the United States that is in effect, provided that the Director has published in the Federal Register a certification that satisfactory arrangements have been reached by which purchasers within the United States can readily gain access to an original laboratory test report for such fasteners; or,

(2) In the case of fasteners imported into the United States as Canadian-origin products under the United States-Canada Automobile Pact for use as original equipment in the manufacture of motor vehicles.

§ 280.14 Option for importers and private label distributors.

(a) Notwithstanding the provisions of § 280.13 of this part, delivery of a lot, or portion of a lot, of fasteners may be made by a manufacturer to an importer or private label distributor without the required original copy of the laboratory testing report if—

(1) The manufacturer provides to the importer or private label distributor a certificate which, as a minimum, includes fastener description information contained in § 280.6(a)(4), and a statement by the manufacturer certifying that the fasteners have been manufactured according to the requirements of the applicable standard or specification, but have not been tested by a laboratory accredited in accordance with section 6 of the Act; and

(2) The importer or private label distributor assumes responsibility in writing for the inspection and testing of such lot or portion by a laboratory accredited in accordance with the procedures set out in this Part.

(b) If the importer or private label distributor assumes the responsibility in writing for the inspection and testing of such lot or portion, the provisions of section 5(a), (b) and (c) of the Act shall apply to the importer or private label distributor in the same manner and to the same extent as to a manufacturer; except that the importer or private label distributor shall provide to the testing laboratory the certificate described under paragraph (a)(1) of this section.

§ 280.15 Alternative procedure for chemical characteristics.

Notwithstanding any other provision of this regulation, a manufacturer shall be deemed to have demonstrated that the chemical characteristics of a lot conform to the standards and specifications to which the manufacturer represents such lot has been manufactured if the following requirements are met:

(a) The coil or heat number of metal from which such lot was fabricated has been inspected and tested with respect to its chemical characteristics by a laboratory accredited in accordance with the Act and these regulations;

(b) Such laboratory has provided to the manufacturer, either directly or through the metal manufacturer, a written inspection and testing report, prepared in accordance with § 280.6 of this part, listing the chemical characteristics of such coil or heat number;

(c) The report described in paragraph (b) of this section indicates that the chemical characteristics of such coil or heat number conform to those required by the standards and specifications to which the manufacturer represents such lot has been manufactured; and,

(d) The manufacturer demonstrates that such lot has been fabricated from the coil or heat number of metal to which the report described in paragraphs (b) and (c) of this section relates.

§ 280.16 Subsequent purchaser.

(a) If a purchaser of fasteners requests the seller to mark the container of fasteners with the lot number from which such fasteners were taken, either prior to the sale or at the time of sale, the seller shall conspicuously mark the container of fasteners with the lot number.

(b) The seller shall provide copies of any applicable laboratory testing report or certification of conformance upon request to the subsequent purchaser of fasteners taken from the lot to which such testing report or manufacturer's certificate of conformance relates.

Subpart B—Laboratory Accreditation

§ 280.100 Introduction.

The Fastener Quality Act sets out three alternatives by which a laboratory may become accredited for testing under the Act. This regulation sets out implementing procedures for each of those alternatives:

(a) Subpart C of this part contains procedures by which the National Institute of Standards and Technology's National Voluntary Laboratory Accreditation Program will accredit laboratories for the testing of fasteners under the Act;

(b) Subpart D of this part sets out procedures under which private entities may apply to NIST for approval to engage directly in the accreditation of laboratories for the testing of fasteners under the Act; and

(c) Subpart E of this part sets out conditions under which the accreditation of foreign laboratories by their governments or organizations recognized by the Director shall be deemed to satisfy the laboratory accreditation requirements for the testing of fasteners under the Act.

§ 280.101 Accredited laboratory list.

NIST shall prepare and maintain an Accredited Laboratory List of laboratories accredited under subparts C, D, and E of this part. Only laboratory test reports covering tests performed by a laboratory listed in the Accredited Laboratory List at the time the report was issued, and which are within the scope of the laboratory's accreditation, shall be deemed to meet the requirements of the Act.

§ 280.102 Procedures for inclusion in the accredited laboratory list.

(a) NVLAP, and all entities approved by NIST under subpart D of this part or recognized by NIST under subpart E of this part shall promptly notify NIST of each accreditation action taken under subparts C, D, or E of this part, respectively. Accreditation actions include initial accreditation, denials of accreditation, renewals, suspensions, terminations, revocations and changes in scope. Notifications shall be filed with: Fastener Quality Act Program Manager, Office of Standards Services, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

(b) Each notification to NIST shall include the following information, in English: The name of the laboratory accreditation body which granted the accreditation; the name and address of the laboratory affected by the accreditation action; the nature of the accreditation action; a copy of the laboratory's accreditation certificate and a scope of accreditation which states the fastener test methods for which it has been accredited; the name and telephone number of the authorized representative(s) and approved signatory(s) of the fastener testing laboratory; information concerning the physical locations of all organizational units involved in accredited fastener testing, and the specific scope of fastener testing for each organizational unit for which accreditation has been granted.

(c) NIST shall revise as appropriate the Accredited Laboratory List when notified of accreditation actions and shall take appropriate steps to make information changes promptly available to the public.

§ 280.103 Removal from the accredited laboratory list.

(a) NIST may remove from the Accredited Laboratory List any fastener testing laboratory accredited under subpart C, D or E of this part if NIST deems such action to be in the public interest. Laboratory test reports describing tests performed by a laboratory after it has been removed from the Accredited Laboratory List under this section shall not be deemed to meet the requirements of the Act.

(b) A laboratory may appeal the removal or proposed removal from the Accredited Laboratory List to the Director by submitting a statement of reasons why the laboratory should remain on the list. NIST may, at its discretion, hold in abeyance a removal action pending a final decision by the Director. The Director shall inform the laboratory in writing of the decision within sixty days following receipt of the appeal.

Subpart C—NIST Fastener Laboratory Accreditation Procedures

§ 280.200 Introduction.

This subpart sets out the procedures and technical requirements of the NVLAP Fasteners Testing Program (''the Program'') for the accreditation of laboratories that test fasteners. Laboratories which are granted accreditation under this program for certain tests will be eligible to provide testing services and test reports required by the Fastener Quality Act for those tests. Accreditation may be granted to any laboratory (including: Commercial; manufacturers'; university; and laboratories located in foreign countries) that demonstrates competence to provide services according to the criteria specified in this subpart. It is up to the laboratory to select the areas and specific tests within each area for its proposed scope of accreditation. A laboratory may be accredited to test and/or measure fasteners in any one or more of the areas of chemical, dimensional, nondestructive, mechanical and physical, or metallography testing. Laboratories located outside of the U.S. must meet certain additional requirements including: Additional fees for travel outside the U.S. and provision of a language translator.

§ 280.201 Applicability of part 285, title 15, Code of Federal Regulations.

As permitted by section 6 of the Act, and for the purposes of that Act only, the provisions of part 285, title 15 of the Code of Federal Regulations are superseded by the procedures and requirements set forth in this Subpart. The provisions of part 285, title 15 of the Code of Federal Regulations remain in effect except as they pertain to laboratory accreditation actions required by the Act.

§ 280.202 Establishment of the Program.

(a) NVLAP shall develop the technical requirements for the Program based on expert advice.

(b) As a means of assuring effective and meaningful cooperation, input, and participation by those federal agencies that may have an interest in and may be affected by the Program, NVLAP may communicate and consult with appropriate officials within those agencies.

(c) When NVLAP has completed the development of the technical requirements of the Program and established a schedule of fees for accreditation, NVLAP shall publish a notice in the Federal Register announcing the establishment of the Program.

(d) The notice will:

(1) Identify the scope of the Program;

(2) Advise how to apply for accreditation.

(e) NVLAP shall establish fees in amounts that will enable the Program to be self-sufficient. NVLAP shall revise the fees when necessary to maintain self-sufficiency.

§ 280.203 Adding to or modifying the program.

(a) The Program may be added to, modified, or realigned based on either a written request from any person wishing to add or delete specific standards, test methods, or types of test methods or a need identified by NVLAP.

(b) NVLAP may choose to make the additions or modifications available for accreditation when:

(1) The additional standards, test methods, or types of test methods requested are directly relevant to the Program;

(2) It is feasible and practical to accredit testing laboratories for the additional standards, test methods, or types of test methods; and

(3) It is likely that laboratories will seek accreditation for the additional standards, test methods, or types of test methods.

§ 280.204 NVLAP Program Handbook.

All specific laboratory accreditation requirements and NVLAP interpretations shall be documented in a program handbook which NVLAP shall develop and maintain. The handbook shall be made available to all participating laboratories. NVLAP may prepare a NVLAP Program Handbook for the Fastener Testing Program for use by applicant and accredited laboratories. The purpose of the handbook is to provide specific technical details for fastener testing as they apply to on-site assessment, proficiency testing, test equipment and facilities, and scope of accreditation.

§ 280.205 Applying for accreditation.

(a) A laboratory may request an application for accreditation in the Program in accordance with instructions provided in notices announcing the Program's formal establishment.

(b) Upon receipt of a laboratory's application, NVLAP shall:

(1) Acknowledge receipt of the application;

(2) Request further information, if necessary;

(3) Confirm payment of fees before proceeding with the accreditation process; and

(4) Specify the next step(s) in the accreditation process.

(c) All laboratory accreditation documents must be in English or the laboratory seeking accreditation must supply an English translation of all documents at the time it files its application.

(d) Accreditation of laboratories outside the United States may require payment of additional traveling expenses for on-site assessments and proficiency testing.

§ 280.206 Assessing and evaluating a laboratory.

(a) Information used to evaluate a laboratory's compliance with the conditions for accreditation set out in § 280.214, the criteria for accreditation set out in § 280.215, and the technical requirements established will include:

(1) Application and other material submitted by the laboratory (§ 280.214(b)).

(2) On-site assessment reports;

(3) Laboratory performance on proficiency tests;

(4) Laboratory responses to identified deficiencies; and

(5) Technical evaluation.

(b) NVLAP shall arrange the assessment and evaluation of applicant laboratories in such a way as to minimize potential conflicts of interest.

(c) NVLAP shall inform each applicant laboratory of any action(s) that the laboratory must take to qualify for accreditation.

§ 280.207 Granting and renewing accreditation.

(a) NVLAP will take action to grant initial accreditation, or renew, suspend, or propose to deny or revoke accreditation of an applicant laboratory, based on the degree to which the laboratory complies with the specific NVLAP requirements. Accreditation shall be granted for a one year period. Before initial accreditation and every 2 years thereafter, an on-site assessment of each laboratory shall be conducted to determine compliance with the NVLAP criteria.

(b) If accreditation is granted or renewed, NVLAP shall:

(1) Provide a Certificate of Accreditation and a Scope of Accreditation to the laboratory;

(2) Provide guidance on referencing the laboratory's accredited status, and the use of the NVLAP logo by the laboratory and its clients, as needed; and

(3) Remind the laboratory that accreditation does not relieve it from complying with applicable federal, state, and local laws and regulations.

(c) NVLAP shall notify an accredited laboratory at least 30 days before its accreditation expires advising of the action(s) the laboratory must take to renew its accreditation.

§ 280.208 Denying, suspending, and revoking accreditation.

(a) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(b) The laboratory will have 30 days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within that 30-day period.

(c) If NVLAP finds that an accredited laboratory has violated the terms of its accreditation or the provisions of these procedures, NVLAP may, after consultation with the laboratory, suspend the laboratory's accreditation, or advise of NVLAP's intent to revoke accreditation. If accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated.

(d) A laboratory whose accreditation has been denied, revoked, terminated, or expired, or which has withdrawn its application before being accredited, may reapply and be accredited if the laboratory:

(1) Completes the assessment and evaluation process; and

(2) Meets the conditions and criteria for accreditation that are set out in sections 280.214 and 280.215.

(e) Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test reports during the suspension period. The determination of NVLAP whether to suspend or to propose revocation of a laboratory's accreditation will depend on the nature of the violation(s) of the terms of its accreditation.

§ 280.209 Voluntary termination of accreditation.

A laboratory may at any time terminate its participation and responsibilities as an accredited laboratory by advising NVLAP in writing of its desire to do so. NVLAP shall terminate the laboratory's accreditation and shall notify the laboratory stating that its accreditation has been terminated in response to its request.

§ 280.210 Change in status of laboratory.

Accreditation of a laboratory is based on specific conditions and criteria including the laboratory ownership, location, staffing, facilities, and configuration. Changes in any of these conditions or criteria could result in loss of accreditation. NVLAP must be informed if any of the conditions or criteria for accreditation are changed so that a determination can be made concerning the status of the accreditation.

§ 280.211 Authorized representative.

The laboratory shall designate an Authorized Representative to sign the NVLAP application form and commit the laboratory to fulfill the NVLAP requirements. Only the Authorized Representative can authorize a change in the scope or nature of the laboratory's application. This person will receive all correspondence and inquiries from NVLAP. The Authorized Representative may also be an Approved Signatory. The laboratory must provide to NVLAP the name and address of the Authorized Representative and must, within 30 days, notify NVLAP of a change of Authorized Representative.

§ 280.212 Approved signatory.

(a) The laboratory shall designate one or more staff members as Approved Signatories. Approved Signatories shall be persons with appropriate responsibility, authority and technical capability within the organization. The laboratory must maintain a list of Approved Signatories and make that list available for review during on-site assessments. The laboratory must provide to NVLAP the name(s) and address(es) of the Approved Signatory(s) and must, within 30 days, notify NVLAP of a change of Approved Signatory(s).

(b) The authorized signature of at least one Approved Signatory must appear on each test reports that is written in compliance with the Act and endorsed with the NVLAP logo. The approved signatory is responsible for the technical content of the report and is the person to be contacted by NVLAP, laboratory clients, or others in case of questions or problems with the report.

§ 280.213 Application of accreditation conditions and criteria.

To become accredited and maintain accreditation, a laboratory must meet the conditions for accreditation set out in § 280.214, the criteria set out in § 280.215, and the guidance provided in the Program Handbook.

§ 280.214 Conditions for accreditation.

(a) To become accredited and maintain accreditation, a laboratory shall agree in writing to:

(1) Be assessed and evaluated initially and on a periodic basis;

(2) Demonstrate, on request that it is able to perform the tests representative

of those for which it is seeking accreditation;

(3) Pay all fees;

(4) Participate in proficiency testing as required.

(5) Be capable of performing the tests for which it is accredited according to the latest version of the test method within one year after its publication or within another time limit specified by NVLAP;

(6) Limit the representation of the scope of its accreditation to only those tests or services for which accreditation is granted;

(7) Resolve all deficiencies;

(8) Limit all its work or services for clients to those areas where competence and capacity are available;

(9) Inform its clients that the laboratory's accreditation or any of its test reports in no way constitutes or implies product certification, approval, or endorsement by NIST;

(10) Maintain records of all actions taken in response to testing complaints for 5 years, as required by § 280.7 of this part;

(11) Maintain an independent decisional relationship between itself and its clients, affiliates, or other organizations so that the laboratory's capacity to render test reports objectively and without bias is not adversely affected;

(12) Report to NVLAP within 30 days any major changes involving the location, ownership, management structure, authorized representative, approved signatories, or facilities of the laboratory; and

(13) Return to NVLAP the Certificate of Accreditation and the Scope of Accreditation for revision or other action should it:

(i) Be requested to do so by NVLAP;

(ii) Voluntarily terminate its accredited status; or

(iii) Become unable to conform to any of these conditions, the applicable criteria of this Subpart or § 280.215, and related technical requirements.

(b) To become accredited and maintain accreditation, a laboratory shall supply, upon request, the following information:

(1) Legal name and full address;

(2) Ownership of the laboratory;

(3) Organization chart defining relationships that are relevant to performing testing covered in the accreditation request;

(4) General description of the laboratory, including its facilities and scope of operation;

(5) Name, address, and telephone and FAX number of the authorized representative of the laboratory;

(6) Names or titles and qualifications of laboratory staff nominated to serve as approved signatories of test reports that reference NVLAP accreditation;

(7) The laboratory quality manual; and

(8) Other information as NVLAP may require.

§280.215 Criteria for accreditation.

(a) *Scope.* (1) This section sets out the general requirements in accordance with which a laboratory has to demonstrate that it operates, if it is to be recognized as competent to carry out specific tests.

(2) Additional requirements and information which have to be disclosed for assessing competence or for determining compliance with other criteria may be specified by NVLAP, depending upon the specific character of the task of the laboratory.

(3) This section is for use by testing laboratories in the development and implementation of their quality systems. It will also be used by NVLAP in the determination of the competence of laboratories.

(b) *Organization and management.* (1) The laboratory shall be legally identifiable. It shall be organized and shall operate in such a way that its permanent, temporary and mobile facilities meet the requirements of this Subpart.

(2) The laboratory shall:

(i) Have managerial staff with the authority and resources needed to discharge their duties;

(ii) Have policies to ensure that its personnel are free from any commercial, financial and other pressures which might adversely affect the quality of their work;

(iii) Be organized in such a way that confidence in its independence of judgement and integrity is maintained at all times;

(iv) Specify and document the responsibility, authority and interrelation of all personnel who manage, perform or verify work affecting the quality of calibrations and tests;

(v) Provide supervision by persons familiar with the calibration or test methods and procedures, the objective of the calibration or test and the assessment of the results. The ratio of supervisory to non-supervisory personnel shall be such as to ensure adequate supervision;

(vi) Have a technical manager (however named) who has overall responsibility for the technical operations;

(vii) Have a quality manager (however named) who has responsibility for the quality system and its implementation. The quality manager shall have direct access to the highest level of management at which decisions are taken on laboratory policy or resources, and to the technical manager. In some laboratories, the quality manager may also be the technical manager or deputy technical manager;

(viii) Nominate deputies in case of absence of the technical or quality manager;

(ix) Have documented policy and procedures to ensure the protection of clients' confidential information and proprietary rights;

(x) Where appropriate, participate in interlaboratory comparisons and proficiency testing programs.

(c) *Quality system, audit and review.* (1) The laboratory shall establish and maintain a quality system appropriate to the type, range and volume of calibration and testing activities it undertakes. The elements of this system shall be documented. The quality documentation shall be available for use by the laboratory personnel. The laboratory shall define and document its policies and objectives for, and its commitment to, good laboratory practice and quality of calibration or testing services. The laboratory management shall ensure that these policies and objectives are documented in a quality manual and communicated to, understood, and implemented by all laboratory personnel concerned. The quality manual shall be maintained current under the responsibility of the quality manager.

(2) The quality manual, and related quality documentation, shall state the laboratory's policies and operational procedures established in order to meet the requirements of this subpart. The quality manual and related quality documentation shall also contain:

(i) A quality policy statement, including objectives and commitments, by top management;

(ii) The organization and management structure of the laboratory, its place in any parent organization and relevant organizational charts;

(iii) The relations between management, technical operations, support services and the quality system;

(iv) Procedures for control and maintenance of documentation;

(v) Job descriptions of key staff and reference to the job descriptions of other staff;

(vi) Identification of the laboratory's approved signatories;

(vii) The laboratory's procedures for achieving traceability of measurements;

(viii) The laboratory's scope of calibrations and/or tests;

(ix) Arrangements for ensuring that the laboratory reviews all new work to

ensure that it has the appropriate facilities and resources before commencing such work;

(x) Reference to the calibration, verification and/or test procedures used;

(xi) Procedures for handling calibration and test items;

(xii) Reference to the major equipment and reference measurement standards used;

(xiii) Reference to procedures for calibration, verification and maintenance of equipment;

(xiv) Reference to verification practices including interlaboratory comparisons, proficiency testing programs, use of reference materials and internal quality control schemes;

(xv) Procedures to be followed for feedback and corrective action whenever testing discrepancies are detected, or departures from documented policies and procedures occur;

(xvi) The laboratory management policies for departures from documented policies and procedures or from standard specifications;

(xvii) Procedures for dealing with complaints;

(xviii) Procedures for protecting confidentiality and proprietary rights;

(xix) Procedures for audit and review.

(xx) Policies and procedures directly related to compliance with this Subpart.

(3) The laboratory shall arrange for audits of its activities at appropriate intervals to verify that its operations continue to comply with the requirements of the quality system. Such audits shall be carried out by trained and qualified staff who are, wherever possible, independent of the activity to be audited. Where the audit findings cast doubt on the correctness or validity of the laboratory's calibration or test results, the laboratory shall take immediate corrective action and shall immediately notify, in writing, any client whose work may have been affected.

(4) The quality system adopted to satisfy the requirements of this Section shall be reviewed at least once each year by the management to ensure its continuing suitability and effectiveness and to introduce any necessary changes or improvements.

(5) All audit and review findings and any corrective actions that arise from them shall be documented. The person responsible for quality shall ensure that these actions are discharged within the agreed timescale.

(6) In addition to periodic audits the laboratory shall ensure the quality of results provided to clients by implementing checks. These checks shall be reviewed and shall include, as appropriate, but not be limited to:

(i) Internal quality control schemes using whenever possible statistical techniques;

(ii) Participation in proficiency testing or other interlaboratory comparisons;

(iii) Regular use of certified reference materials and/or in-house quality control using secondary reference materials;

(iv) Replicate testings using the same or different methods;

(v) Re-testing of retained items;

(vi) Correlation of results for different characteristics of an item.

(d) *Personnel.* (1) The testing laboratory shall have sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions.

(2) The testing laboratory shall ensure that the training of its personnel is kept up-to-date.

(3) Records on the relevant qualifications, training, skills and experience of the technical personnel shall be maintained by the laboratory.

(e) *Accommodation and environment.* (1) Laboratory accommodation, calibration and test areas, energy sources, lighting, heating and ventilation shall be such as to facilitate proper performance of calibrations or tests.

(2) The environment in which these activities are undertaken shall not invalidate the results or adversely affect the required accuracy of measurement. Particular care shall be taken when such activities are undertaken at sites other than the permanent laboratory premises.

(3) The laboratory shall provide facilities for the effective monitoring, control and recording of environmental conditions as appropriate. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic interference, humidity, voltage, temperature, and sound and vibration levels, as appropriate to the calibrations or tests concerned.

(4) There shall be effective separation between neighboring areas when the activities therein are incompatible.

(5) Access to and use of all areas affecting the quality of these activities shall be defined and controlled.

(6) Adequate measures shall be taken to ensure good housekeeping in the laboratory.

(f) *Equipment and reference materials.* (1) The laboratory shall be furnished with all items of equipment (including reference materials) required for the correct performance of calibrations and tests. In those cases where the laboratory needs to use equipment outside its permanent control it shall ensure that the relevant requirements of this Section are met.

(2) All equipment shall be properly maintained. Maintenance procedures shall be documented. Any item of equipment which has been subjected to overloading or mishandling, or which gives suspect results, or has been shown by verification or otherwise to be defective, shall be taken out of service, clearly identified and wherever possible stored at a specified place until it has been repaired and shown by calibration, verification or test to perform satisfactorily. The laboratory shall examine the effect of this defect on previous calibrations or tests.

(3) Each item of equipment including reference materials shall, when appropriate, be labeled, marked or otherwise identified to indicate its calibration status.

(4) Records shall be maintained of each item of equipment and all reference materials significant to the calibrations or tests performed. The records shall include:

(i) The name of the item of equipment;

(ii) The manufacturer's name, type identification, and serial number or other unique identification;

(iii) Date received and date placed in service;

(iv) Current location, where appropriate;

(v) Condition when received (e.g. new, used, reconditioned);

(vi) Copy of the manufacturer's instructions, where available;

(vii) Dates and results of calibrations and/or verifications and date of next calibration and/or verification;

(viii) Details of maintenance carried out to date and planned for the future;

(ix) History of any damage, malfunction, modification or repair.

(g) *Measurement traceability and calibration.* (1) All measuring and testing equipment having an effect on the accuracy or validity of calibrations or tests shall be calibrated and/or verified before being put into service. The laboratory shall have an established program for the calibration and verification of its measuring and test equipment.

(2) The overall program of calibration and/or verification and validation of equipment shall be designed and operated so as to ensure that, wherever applicable, measurements made by the laboratory are traceable to national standards of measurement where available. Calibration certificates shall wherever applicable indicate the traceability to national standards of measurement and shall provide the

measurement results and associated uncertainty of measurement and/or a statement of compliance with an identified metrological specification.

(3) Where traceability to national standards of measurement is not applicable, the laboratory shall provide satisfactory evidence of correlation of results, for example by participation in a suitable program of interlaboratory comparisons or proficiency testing.

(4) Reference standards of measurement held by the laboratory shall be used for calibration only and for no other purpose, unless it can be demonstrated that their performance as reference standards has not been invalidated.

(5) Reference standards of measurement shall be calibrated by a body that can provide traceability to a national standard of measurement. There shall be a program of calibration and verification for reference standards.

(6) Where relevant, reference standards and measuring and testing equipment shall be subjected to in-service checks between calibrations and verifications.

(7) Reference materials shall, where possible, be traceable to national or international standards of measurement, or to national or international standard reference materials.

(h) *Calibration and test methods.* (1) The laboratory shall have documented instructions on the use and operation of all relevant equipment, on the handling and preparation of items and for calibration and/or testing, where the absence of such instructions could jeopardize the calibrations or tests. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be maintained up-to-date and be readily available to the staff.

(2) The laboratory shall use appropriate methods and procedures for all calibrations and tests and related activities within its responsibility (including sampling, handling, transport and storage, preparation of items, estimation of uncertainty of measurement and analysis of calibration and/or test data). They shall be consistent with the accuracy required, and with any standard specifications relevant to the calibrations or tests concerned.

(3) Where methods are not specified, the laboratory shall, wherever possible, select methods that have been published in international or national standards, those published by reputable technical organizations or in relevant scientific texts or journals.

(4) Where it is necessary to employ methods that have not been established as standard, these shall be subject to agreement with the client, be fully documented and validated, and be available to the client and other recipients of the relevant reports.

(5) Where sampling is carried out as part of the test method, the laboratory shall use documented procedures and appropriate statistical techniques to select samples.

(6) Calculations and data transfers shall be subject to appropriate checks.

(7) Where computers or automated equipment are used for the capture, processing, manipulation, recording, reporting, storage or retrieval of calibration or test data, the laboratory shall ensure that:

(i) The requirements of this subpart are complied with;

(ii) Computer software is documented and adequate for use;

(iii) Procedures are established and implemented for protecting the integrity of data; such procedures shall include, but not be limited to, integrity of data entry or capture, data storage, data transmission and data processing;

(iv) Computer and automated equipment is maintained to ensure proper functioning and provided with the environmental and operating conditions necessary to maintain the integrity of calibration and test data;

(v) It establishes and implements appropriate procedures for the maintenance of security of data including the prevention of unauthorized access to, and the unauthorized amendment of, computer records.

(8) Documented procedures shall exist for the purchase, reception and storage of consumable materials used for the technical operations of the laboratory.

(i) *Handling of calibration and test items.* (1) The laboratory shall have a documented system for uniquely identifying the items to be calibrated or tested, to ensure that there can be no confusion regarding the identity of such items at any time.

(2) Upon receipt, the condition of the calibration or test item, including any abnormalities or departures from standard conditions as prescribed in the relevant calibration or test method, shall be recorded. Where there is any doubt as to the item's suitability for calibration or test, where the item does not conform to the description provided, or where the calibration or test required is not fully specified, the laboratory shall consult the client for further instruction before proceeding. The laboratory shall establish whether the item has received all necessary preparation, or whether the client requires preparation to be undertaken or arranged by the laboratory.

(3) The laboratory shall have documented procedures and appropriate facilities to avoid deterioration or damage to the calibration or test item, during storage, handling, preparation, and calibration or test; any relevant instructions provided with the item shall be followed. Where items have to be stored or conditioned under specific environmental conditions, these conditions shall be maintained, monitored and recorded where necessary. Where a calibration or test item or portion of an item is to be held secure (for example, for reasons of record, safety or value, or to enable check calibrations or tests to be performed later), the laboratory shall have storage and security arrangements that protect the condition and integrity of the secured items or portions concerned.

(4) The laboratory shall have documented procedures for the receipt, retention or safe disposal of calibration or test items, including all provisions necessary to protect the integrity of the laboratory.

(j) *Records.* (1) The laboratory shall maintain a record system to suit its particular circumstances and comply with any applicable regulations. It shall retain on record all original observations, calculations and derived data, calibration records and a copy of the calibration certificate, test certificate or test report for an appropriate period as required in § 280.7. The records for each calibration and test shall contain sufficient information to permit their repetition. The records shall include the identity of personnel involved in sampling, preparation, calibration or testing.

(2) All records (including those listed in § 280.215(f)(4) pertaining to calibration and test equipment), certificates and reports shall be safely stored, held secure and in confidence to the client.

(k) *Certificates and reports.* (1) The results of each calibration, test, or series of calibrations or tests carried out by the laboratory shall be reported accurately, clearly, unambiguously and objectively, in accordance with any instructions in the calibration or test methods. The results should normally be reported in a calibration certificate, test report or test certificate and should include all the information necessary for the interpretation of the calibration or test results and all information required by the method used.

(2) Where the certificate or report contains results of calibrations or tests

performed by sub-contractors, these results shall be clearly identified.

(3) Particular care and attention shall be paid to the arrangement of the certificate or report, especially with regard to presentation of the calibration or test data and ease of assimilation by the reader. The format shall be carefully and specifically designed for each type of calibration or test carried out, but the headings shall be standardized as far as possible.

(4) Material amendments to a calibration certificate, test report or test certificate after issue shall be made only in the form of a further document, or data transfer including the statement ''Supplement to Calibration Certificate for Test Report or Test Certificate, serial number * * * or as otherwise identified'', or equivalent form of wording. Such amendments shall meet all the relevant requirements of § 280.215(j).

(5) The laboratory shall notify clients promptly, in writing, of any event such as the identification of defective measuring or test equipment that casts doubt on the validity of results given in any calibration certificate, test report or test certificate or amendment to a report or certificate.

(6) The laboratory shall ensure that, where clients require transmission of calibration or test results by telephone, telex, facsimile or other electronic or electromagnetic means, staff will follow documented procedures that ensure that the requirements of this Subpart are met and that confidentiality is preserved.

(l) *Subcontracting of calibration or testing.* (1) Where a laboratory sub-contracts any part of the calibration or testing, this work shall be placed with a laboratory accredited under either subparts C, D or E of this part for the specific tests being subcontracted. The laboratory shall comply with § 280.9, and shall advise the client in writing of its intention to subcontract any portion of the testing to another party.

(2) The laboratory shall record and retain details of its investigation of the accredited status and testing competence of subcontractors and maintain a register of all subcontracting.

(m) *Outside support services and supplies.* (1) Where the laboratory procures outside services and supplies, other than those referred to this Subpart, in support of calibrations or tests, the laboratory shall use only those outside support services and supplies that are of adequate quality to sustain confidence in the laboratory's calibrations or tests.

(2) Where no independent assurance of the quality of outside support services or supplies is available, the laboratory shall have procedures to ensure that purchased equipment, materials and services comply with specified requirements. The laboratory should, wherever possible, ensure that purchased equipment and consumable materials are not used until they have been inspected, calibrated or otherwise verified as complying with any standard specifications relevant to the calibrations or tests concerned.

(3) The laboratory shall maintain records of all suppliers from whom it obtains support services or supplies required for calibrations or tests.

(n) *Complaints.* (1) The laboratory shall have documented policy and procedures for the resolution of complaints received from clients or other parties about the laboratory's activities. A record shall be maintained of all complaints and of the actions taken by the laboratory.

(2) Where a complaint, or any other circumstance, raises doubt concerning the laboratory's compliance with the laboratory's policies or procedures, or with the requirements of this section or otherwise concerning the quality of the laboratory's calibrations or tests, the laboratory shall ensure that those areas of activity and responsibility involved are promptly audited in accordance with this section.

Subpart D—NIST Approval of Private Accreditation Programs

§ 280.300 Introduction.

In accordance with section 6(a)(1)(B) of the Act (15 U.S.C. 5405 (a)(1)(B)), this subpart sets forth the procedures and conditions under which private entities may apply for approval by NIST to engage directly in the accreditation of laboratories for the testing of fasteners under the Act.

§ 280.301 Application.

(a) Application must be made to NIST for approval to accredit laboratories for fastener testing under the Act. Upon request, NIST will provide application forms and instructions. The applicant shall complete the application in English and may provide whatever additional enclosures, attachments or exhibits the applicant deems appropriate.

(b) Application packages may be obtained from: Manager, FQA Accreditation Body Evaluation Program, NIST, Bldg. 820, Room 282, Gaithersburg, Maryland, 20899. Requests may be made by mail or by FAX to: (301) 963–2871.

(c) The applicant shall reimburse NIST for all costs incurred in the evaluation of its accreditation program and subsequent costs incurred in ensuring the continued compliance of its program. Reimbursement shall be in accordance with the fee schedule established by NIST for this purpose.

(d) An application may be revised by an applicant at any time prior to the final decision by NIST. An application may be withdrawn by an applicant, without prejudice, at any time prior to the final decision by the Director.

§ 280.302 Review and decision process.

(a) Applications submitted by private laboratory accreditation bodies will be accepted by NIST and their receipt acknowledged in writing. The applications will be reviewed by NIST against the criteria specified in this subpart and in subpart F of this part. NIST may request additional information as needed from the applicant.

(b) NIST shall conduct on-site assessments of the facilities of the applicant including all of the applicant's organizational units and locations covered by the application.

(c) If the applicant's program is deemed by NIST to have met the requirements for approval, the applicant shall be notified by NIST in writing. The approval notice shall include the dates when the approval begins and the scope of the approval. The approval period shall be for as long as the laboratory accreditation body continues to satisfy the requirements of § 280.303. As part of maintaining its approved status, each laboratory accreditation body shall agree to be reassessed by NIST every two years following its initial notice of approval. NIST will maintain and make available to the public a list of approved fastener accreditation programs.

(d) If the applicant's program does not meet the requirements for approval, the applicant shall be notified in writing, listing the specific requirements from this subpart and subpart F of this part which the applicant's program has not met. After receipt of such a notification, and within the response period provided by NIST, the applicant may:

(1) Submit additional information for further review. Reviewing the new submission may involve additional on-site visits by NIST personnel. Additional fees may be required. Or,

(2) Submit a request that the original application be reconsidered, including a statement of reasons why the application should have been approved.

§ 280.303 Criteria for approval.

An applicant for NIST approval must demonstrate the ability to operate an accreditation program consistent with the requirements of this subpart and subparts A, B and F of this part.

§ 280.304 Maintaining approved status.

(a) Approved accreditation bodies shall continue to satisfy all the requirements of approval during the approval period.

(b) Upon request by NIST, approved accreditation bodies shall make available to NIST and BXA all records and materials pertaining to the program.

(c) NIST may elect to have its representative participate as an observer during on-site visits to testing laboratories seeking accreditation by an approved accreditation body.

(d) Neither the accreditation body, nor any laboratory it accredits under the Act and these regulations shall take any action which states or implies the approval, or endorsement by NIST or any other agency of the U.S. government of the results of tests carried out by such laboratories. In addition, neither the accreditation body, nor any laboratory it accredits under the Act and these regulations shall take any action which states or implies that the accreditation body or its accredited laboratories are recognized by NIST in any testing or other area(s) beyond those for which NIST has approved the accreditation body under this regulation. Approved accreditation bodies shall not engage in misrepresentation of the scope or conditions of its approval by NIST.

§ 280.305 Voluntary termination of approval.

At any time, an accreditation body may voluntarily terminate its program's approval by giving written notice to NIST and to all laboratories accredited by that body under its fastener laboratory accreditation program. The written notice shall state the date on which the termination will take effect.

§ 280.306 Involuntary termination of approval by NIST.

(a) NIST may terminate or suspend its approval of an accreditation body if such an action is deemed to be in the public interest.

(b) Before terminating the approval of an accreditation body, NIST will notify the accreditation body in writing, giving it the opportunity to rebut or correct the stated reasons for the proposed termination. If the problems are not corrected or reconciled within 30 days, or such longer time as NIST in its sole discretion may grant, the termination shall become effective.

(c) An accreditation body may appeal a termination to the Director by submitting a statement of reasons why the approval should not be terminated. NIST may, at its discretion, hold in abeyance the termination action pending a final decision by the Director. Within sixty days following receipt of the appeal, the Director shall inform the accreditation body in writing of his or her decision.

(d) Fastener testing laboratories which have been listed by NIST in accordance with subpart B of this part, based on their accreditation by an accreditation body whose approval has terminated, shall be removed from the list, unless an exception is granted by NIST.

Subpart E—Recognition of Foreign Laboratories

§ 280.400 Introduction.

In accordance with section 6(a)(1)(C) of the Act, this subpart sets forth the conditions under which the accreditation of foreign laboratories by their governments, by organizations acting on behalf of their governments, or by organizations recognized by the Director shall be deemed to meet the requirements of the Act.

§ 280.401 Recognition of foreign laboratories.

Foreign entities wishing to be recognized to accredit fastener testing laboratories must submit an application for evaluation to NIST. NIST recognition is limited to bodies that accredit laboratories performing tests on materials or fasteners covered by the Act. To be recognized by NIST, accredited foreign laboratories must meet conditions set out in subpart C of this part, and applicable laboratory accreditation bodies must meet conditions set out in subparts D and F of this part.

Subpart F—Requirements for Fastener Laboratory Accreditation Bodies

§ 280.500 Introduction.

This subpart sets out organizational, operational and other requirements that must be met by all accreditation bodies approved or recognized (hereafter ''approved/recognized'') by NIST under subpart D or E of this part. This subpart also sets out the requirements against which an approved/recognized accreditation body assesses the technical competence of an applicant testing laboratory. These requirements include conditions with respect to subpart C of this part.

§ 280.501 Accreditation bodies.

(a) *General provisions.* (1) The procedures under which an approved/recognized accreditation body operates shall be administered in a non-discriminatory manner. Access to an accreditation system operated by an approved/recognized accreditation body shall not be conditional upon the size of the laboratory or membership in any association or group, nor shall there be undue financial conditions to restrict participation.

(2) The competence of an applicant laboratory shall be assessed by an approved/recognized accreditation body against requirements consistent with the conditions set out in subpart C of this part.

(3) The requirements of § 280.501(a)(2) may have to be interpreted for a specific test or type of test by an approved/recognized accreditation body. These interpretations shall be formulated by relevant and impartial committees or persons possessing the necessary technical competence. They shall be published by the accreditation body.

(4) An approved/recognized accreditation body shall require accredited laboratories to maintain impartiality and integrity.

(5) An approved/recognized accreditation body shall confine its requirements, assessment and decision on accreditation to those matters specifically related to the scope of the accreditation being considered.

(b) Organization of an approved/recognized accreditation body

(1) An approved/recognized accreditation body shall:

(i) Be a legally identifiable, public or private entity;

(ii) Have rights and responsibilities relevant to its accreditation activities;

(iii) Have adequate arrangements to cover liabilities arising from its operations and/or activities;

(iv) Have the financial stability and resources required for the operation of an accreditation system;

(v) Have and make available on request a description of the means by which it receives its financial support;

(vi) Employ a sufficient number of personnel having the necessary education, training, technical knowledge and experience for handling the type, range and volume of work performed, under a senior executive who is responsible to the organization, body or board to which it reports;

(vii) Have a quality system including an organizational structure, that enables it to give confidence in its ability to operate a laboratory accreditation system satisfactorily;

(viii) Have documented policies and procedures for the operation of the quality system that include:

(A) Policies and decision-making procedures that distinguish between laboratory accreditation and any other activities in which the body is engaged;

(B) Policies and procedures for the resolution of complaints and appeals

received from laboratories about the handling of accreditation matters, or from users of services about accredited laboratories or any other matters;

(ix) Together with its senior executive, and staff, be free from any commercial, financial and other pressures which might influence the results of the accreditation process;

(x) Have formal rules and structures for the appointment and operation of committees involved in the accreditation process; such committees shall be free from any commercial, financial and other pressures that might influence decisions or shall have a structure where members are chosen to provide impartiality through a balance of interest where no single interest predominates;

(xi) Establish one or more technical committees, each responsible, within its scope, for advising the accreditation body on the technical matters relating to the operation of its accreditation system;

(xii) Not offer consultancies or other services which may compromise the objectivity of its accreditation process and decisions;

(xiii) Have arrangements that are consistent with applicable laws, to safeguard, at all levels of its organization (including committees), confidentiality of the information obtained relating to applications, assessment and accreditation of laboratories;

(2) An approved/recognized accreditation body shall have arrangements for either controlling the ownership, use and display of the accreditation documents or controlling the manner in which an accredited laboratory may refer to its accredited status, or both.

(c) *Quality system*. (1) An approved/recognized accreditation body shall operate a quality system appropriate to the type, range and volume of work performed. This system shall be documented and the documentation shall be available for use by the accreditation body staff. The accreditation body shall designate a person having direct access to its highest executive level, to take responsibility for the quality system and the maintenance of the quality documentation.

(2) The quality system shall be documented in a quality manual and associated quality procedures, and the quality manual shall contain or refer to at least the following;

(i) A quality policy statement;

(ii) The organizational structure of the accreditation body;

(iii) The operational and functional duties and services pertaining to quality, so that each person concerned will know the extent and the limits of their responsibility;

(iv) Administrative procedures including document control;

(v) Policies and procedures to implement the accreditation process;

(vi) Arrangements for feedback and corrective actions whenever discrepancies are detected;

(vii) The policy and procedures for dealing with appeals, complaints and disputes;

(viii) The policy and procedures for conducting internal audits;

(ix) The policy and the procedures for conducting quality system reviews;

(x) The policy and the procedures for the recruitment and training of assessors and monitoring their performance.

(3) An approved/recognized accreditation body shall audit its activities to verify that they comply with the requirements of the quality system. The quality system shall also be reviewed to ensure its continued effectiveness. Audits and reviews shall be carried out systematically and periodically and recorded together with details of any corrective actions taken.

(4) An approved/recognized accreditation body shall maintain records to demonstrate that accreditation procedures have been effectively fulfilled, particularly with respect to application forms, assessment reports, and reports relating to granting, maintaining, extending, suspending or withdrawing accreditation. These accreditation documents shall form part of the record.

(5) An approved/recognized accreditation body shall have a policy and procedures for retaining records. The records shall be retained for a period of at least 5 years, and shall be available to NIST personnel and other persons considered by the accreditation body to have a right of access to these records.

(d) *Granting, maintaining, extending, suspending, and withdrawing accreditation*. (1) An approved/recognized accreditation body shall specify the conditions for granting, maintaining and extending accreditation and the conditions under which accreditation may be suspended or withdrawn, partially or in total for all or part of the laboratory's scope of accreditation.

(2) An approved/recognized accreditation body shall have arrangements to grant, maintain, suspend or withdraw accreditation, increase or reduce the scope of accreditation or require reassessment, in the event of changes affecting the laboratory's activity and operation, such as changes in personnel or equipment, or if analysis of a complaint or any other information indicates that the laboratory no longer complies with the requirements of the accreditation body.

(3) An approved/recognized accreditation body shall have arrangements relating to the transfer of accreditation when the legal status (e.g. ownership) of the accredited laboratory changes.

(e) *Documentation*. An approved/recognized accreditation body shall provide (through publications, electronic media or other means), update at adequate intervals, and make available on request:

(1) Information about the authority under which accreditation systems operated by the accreditation body were established and specifying whether they are mandatory or voluntary;

(2) A document containing its requirements for accreditation in accordance with this document;

(3) A document stating the arrangements for granting, maintaining, extending, suspending and withdrawing accreditation;

(4) Information about the assessment and accreditation process;

(5) General information on the fees charged to applicant and accredited laboratories;

(6) A description of the rights and duties of accredited laboratories as specified in § 280.504 of this part, including requirements, restrictions or limitations on the use of the accrediting body's logo and on the ways of referring to the accreditation granted.

§ 280.502 Laboratory assessors.

(a) *Requirements for assessors*. The assessor or assessment team appointed to assess a laboratory shall:

(1) Be familiar with the relevant legal regulations, accreditation procedures and accreditation requirements;

(2) Have a thorough knowledge of the relevant assessment method and assessment documents;

(3) Have appropriate technical knowledge of the specific tests or types of tests for which accreditation is sought and, where relevant, with the associated sampling procedures;

(4) Be able to communicate effectively, both in writing and orally;

(5) Be free of any commercial, financial or other pressures or conflicts of interest that might cause assessor(s) to act in other than an impartial or non-discriminatory manner;

(6) Not have offered consultancies to laboratories which might compromise their impartiality in the accreditation process and decisions.

(b) *Qualification procedures for assessors*. An approved/recognized

accreditation body shall have an adequate procedure for:

(1) Qualifying assessors, comprising an assessment of their competence and training, and attendance at one or more actual assessments with a qualified assessor, and

(2) Monitoring the performance of assessors.

(c) *Contracting of assessors.* An approved/recognized accreditation body shall require the assessors to sign a contract or other document by which they commit themselves to comply with the rules defined by the accreditation body, including those relating to confidentiality and those relating to independence from commercial and other interests, and any prior association with laboratories to be assessed.

(d) *Assessor records.* An approved/recognized accreditation body shall possess and maintain up-to-date records on assessors consisting of:

(1) Name and address;

(2) Organization affiliation and position held;

(3) Educational qualification and professional status;

(4) Work experience;

(5) Training in quality assurance, assessment and calibration and testing;

(6) Experience in laboratory assessment, together with field of competence;

(7) Date of most recent updating of record.

(e) *Procedures for assessors.* Assessors shall be provided with an up-to-date set of procedures giving assessment instructions and all relevant information on accreditation arrangements.

§ 280.503 Accreditation process.

(a) *Application for accreditation.* (1) A detailed description of the assessment and accreditation procedure, the documents containing the requirements for accreditation and documents describing the rights and duties of accredited laboratories (including fees to be paid by applicant and accredited laboratories) shall be maintained up-to-date and given to applicant laboratories.

(2) Additional relevant information shall be provided to applicant laboratories on request.

(3) A duly authorized representative of the applicant laboratory shall be required to sign an official application form, in which or attached to which

(i) The scope of the desired accreditation is clearly defined;

(ii) The applicant's representative agrees to fulfill the accreditation procedure, especially to receive the assessment team, to pay the fees charged to the applicant laboratory whatever the result of the assessment may be, and to accept the charges of subsequent maintenance of the accreditation of the laboratory;

(iii) the applicant agrees to comply with the requirements for accreditation and to supply any information needed for the evaluation of the laboratory.

(4)(i) The following minimum information shall be provided by the applicant laboratory prior to the on-site assessment:

(A) The general features of the applicant laboratory (corporate entity: Name, address, legal status, human and technical resources);

(B) General information concerning the laboratory covered by the application, such as primary function, relationship in a larger corporate entity and, If applicable, physical location of laboratories involved;

(C) A definition of the materials or products tested, the methods used and the tests performed;

(D) A copy of the laboratory's quality manual and, where required, the associated documentation.

(ii) The information gathered shall be used for the preparation of on-site assessment and shall be treated with appropriate confidentiality.

(b) *Assessment.* (1) An approved/recognized accreditation body shall appoint qualified assessor(s) to evaluate all material collected from the applicant and to conduct the assessment on its behalf at the laboratory and any other sites where activities to be covered by the accreditation are performed.

(2) To ensure that a comprehensive and correct assessment is carried out, each assessor shall be provided with the appropriate working documents.

(3) The date of assessment shall be mutually agreed with the applicant laboratory. The latter shall be informed of the name(s) of the qualified assessor(s) nominated to carry out the assessment, with sufficient notice so that the laboratory is given an opportunity to appeal against the appointment of any particular assessor.

(4) The assessor(s) shall be formally appointed. A lead assessor shall be appointed, if relevant. The mandate given to the assessor(s) shall be clearly defined and made known to the applicant laboratory.

(c) *Sub-contracting of assessment.* (1) If an approved/recognized accreditation body decides to delegate fully or partially the assessment of a laboratory to another body, then the accreditation body shall take full responsibility for such an assessment made on its behalf.

(2) An approved/recognized accreditation body shall ensure that the party to which assessment has been delegated is approved/recognized by NIST.

(d) *Assessment report.* (1) An approved/recognized accreditation body may adopt reporting procedures that suit its needs but as a minimum these procedures shall ensure that:

(i) A meeting takes place between the assessor or assessment team and the laboratory management prior to leaving the laboratory at which the assessment team provides a written or oral report on the compliance of the applicant laboratory with the accreditation requirements;

(ii) The assessor or assessment team provides the accreditation body with a detailed assessment report containing all relevant information concerning the ability of the applicant laboratory to comply with all of the accreditation requirements, including any which may come about from the results of proficiency testing;

(iii) A report on the outcome of the assessment is promptly brought to the applicant laboratory's notice by the accreditation body, identifying any non-compliances that have to be discharged in order to comply with all of the accreditation requirements. The laboratory shall be invited to present its comments on this report and to describe the specific actions taken, or planned to be taken within a defined time, to remedy any non-compliances with the accreditation requirements identified during the assessment.

(2) The final report authorized by an approved/recognized accreditation body and submitted to the laboratory, if it is different, shall include as a minimum:

(i) Date(s) of assessment(s);

(ii) The names of the person(s) responsible for the report;

(iii) The names and addresses of all the laboratory sites assessed;

(iv) The assessed scope of accreditation or reference thereto;

(v) comments of the assessor(s) or assessment team on the compliance of the applicant laboratory with the accreditation requirements.

(3) The reports shall take into consideration:

(i) The technical qualification, experience and authority of the staff encountered, especially the persons responsible for the technical validity of test reports or test certificates;

(ii) The adequacy of the internal organization and procedures adopted by the applicant laboratory to give confidence in the quality of its services, the physical facilities, i.e., the environment and the calibration/test equipment of the laboratory including maintenance and calibration having

regard to the volume of work undertaken;

(iii) Proficiency testing or other interlaboratory comparison performed by the applicant laboratory, the results of this proficiency testing, and the use of these results by the laboratory;

(iv) The actions taken to correct any non-compliances identified at previous assessments.

(e) *Decision on accreditation.* (1) The decision whether or not to accredit a laboratory shall be taken by an approved/recognized accreditation body on the basis of the information gathered during the accreditation process.

(2) An approved/recognized accreditation body shall not delegate its responsibility for granting, maintaining, extending, suspending or withdrawing accreditation.

(f) *Granting accreditation.* (1) An approved/recognized accreditation body shall transmit to each accredited laboratory formal accreditation documents such as a letter or a certificate signed by an officer who has been assigned such responsibility. These formal accreditation documents shall permit identification of—

(i) The name and address of the laboratory that has been accredited;

(ii) The scope of the accreditation including:

(A) The tests or types of test for which accreditation has been granted;

(B) For tests, the materials or products tested, the methods used and the tests performed;

(C) For specific tests for which accreditation has been granted the methods used defined by written standards or reference documents that have been accepted by the accreditation body.

(iii) Where appropriate, the persons recognized by the accreditation body as being responsible for the test certificates or the test reports;

(iv) The term of accreditation which shall be valid for a period not to exceed three years;

(v) The accredited laboratory by a unique number.

(2) An approved/recognized accreditation body shall furnish notification to NIST required by Subpart B of this part.

(g) *Surveillance and reassessment of accredited laboratories.* (1) An approved/recognized accreditation body shall have an established documented program consistent with the accreditation granted for carrying out periodic surveillance and reassessment at sufficiently close intervals to ensure that its accredited laboratories continue to comply with the accreditation requirements.

(2) Surveillance and reassessment procedures shall be consistent with those concerning the assessment of laboratories as described in this Subpart.

(h) *Proficiency testing.* (1) The approved/recognized accreditation body shall require each fastener testing laboratory it accredits, and each laboratory which has applied to it for accreditation to participate in proficiency testing comparable to that conducted under Subpart C of this part by NVLAP.

(2) Although an accreditation shall not be granted or maintained only on the basis of the results of proficiency testing, accreditation shall not be granted or maintained if required proficiency testing participation is unsatisfactory.

(i) *Certificates or reports issued by accredited laboratories.* (1) An approved/recognized accreditation body shall normally allow an accredited laboratory to refer to its accreditation in test reports and test certificates that contain only the results of tests or types of test for which accreditation is held.

(2) An approved/recognized accreditation body shall have a policy that defines the circumstances in which accredited laboratories are permitted to include in test reports or test certificates, the results of tests for which accreditation is not held and the results of sub-contracted tests.

§ 280.504 Relationship between approved/recognized accreditation body and laboratory.

(a) An approved/recognized accreditation body shall have arrangements to ensure that the laboratory and its representatives afford such accommodation and co-operation as is necessary, to enable the accreditation body to verify compliance with the requirements for accreditation. These arrangements shall include provision for examination of documentation and access to all testing areas, records and personnel for the purposes of assessment, surveillance, reassessment and resolution of complaints.

(b) An approved/recognized accreditation body shall require that an accredited laboratory—

(1) At all times complies with the relevant provisions of these regulations;

(2) Claims that it is accredited only in respect of services for which it has been granted accreditation and which are carried out in accordance with these conditions;

(3) Pays such fees as shall be determined by the accreditation body;

(4) Does not use its accreditation in such a manner as to bring the accreditation body into disrepute and does not make any statement relevant to its accreditation which the accreditation body may consider misleading or unauthorized;

(5) Upon suspension or withdrawal of its accreditation (however determined) forthwith discontinues its use of all advertising matter that contains any reference thereto and return any certificates of accreditation to the accreditation body;

(6) Does not use its accreditation to state or imply any product approval by the accreditation body or any agency of the United States Government;

(7) Endeavors to ensure that no certificate or report nor any part thereof is used in a misleading manner;

(8) In making reference to its accreditation status in communication media such as advertising, brochures or other documents, complies with the requirements of the accreditation body.

(c) *Notification of change.* (1) An approved/recognized accreditation body shall have arrangements to ensure that an accredited laboratory informs it without delay of changes in any aspect of the laboratory's status or operation that affects the laboratory's:

(i) Legal, commercial or organizational status;

(ii) Organization and management, e.g., key managerial staff;

(iii) Policies or procedures, where appropriate;

(iv) Premises;

(v) Personnel, equipment, facilities, working environment or other resources, where significant;

(vi) Authorized signatories;

(vii) Or other such matters that may affect the laboratory's capability, or scope of accredited activities, or compliance with the requirements in this document or any other relevant criteria of competence specified by the accreditation body.

(2) Upon receipt of due notice of any intended changes relating to the requirements of this document, the relevant criteria of competence and any other requirements prescribed by the accreditation body, the accreditation body shall ensure that the laboratory carries out the necessary adjustments to its procedures within such time, as in the opinion of the body is reasonable. The laboratory shall notify the body when such adjustments have been made.

(d) *Directory of accredited laboratories.* An approved/recognized accreditation body shall produce periodically but at least annually a

directory of accredited laboratories describing the accreditation granted.

Subpart G—Enforcement

§ 280.600 Scope.

Section 280.601 of this part lists definitions used in this part. Section 280.602 of this part specifies that failure to take any action required by or taking any action prohibited by this part constitutes a violation of this part. Section 280.603 describes the penalties that may be imposed for violations of this part. Sections 280.605 through 280.623 establish the procedures for imposing administrative penalties for violations of this part.

§ 280.601 Definitions used in this subpart.

The definitions in this § 280.601 apply to this part.

Administrative law judge (ALJ). The person authorized to conduct hearings in administrative enforcement proceedings brought under the Act.

Assistant Secretary. The Assistant Secretary for Export Enforcement, Bureau of Export Administration.

Department. The United States Department of Commerce, specifically, the Bureau of Export Administration, NIST and the Patent and Trademark Office.

Final decision. A decision or order assessing a civil penalty or otherwise disposing of or dismissing a case, which is not subject to further review under this part, but which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Initial decision. A decision of the administrative law judge which is subject to review by the Under Secretary for Export Administration, but which becomes the final decision of the Department in the absence of such an appeal.

Party. The Department and any person named as a respondent under this part.

Respondent. Any person named as the subject of a charging letter, proposed charging letter, or other order proposed or issued under this part.

Under Secretary. The Under Secretary for Export Administration, United States Department of Commerce.

§ 280.602 Violations.

(a) *Engaging in prohibited conduct.* No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any action required by the Act, this part, or any order issued thereunder.

(b) *Causing, aiding, or abetting a violation.* No person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the Act, this part, or any order issued thereunder.

(c) *Solicitation and attempt.* No person may solicit or attempt a violation of the Act, this part, or any order issued thereunder.

(d) *Conspiracy.* No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act, this part, or any order issued thereunder.

(e) *Misrepresentation and concealment of facts.* No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to NIST, or the Bureau of Export Administration, the Patent and Trademark Office, or any official of any other United States agency, or indirectly through any other person:

(1) In the course of an investigation or other action subject to the Act and this part; or

(2) In connection with the preparation, submission, issuance, use, maintenance of a laboratory test report, certificate of conformance as described in §§ 280.5 and 280.6 of this part; or

(3) In connection with any application for laboratory accreditation as described in § 280.205 of this part; or

(4) In connection with an application to be an accreditation body as described in § 280.301 of this part.

(f) *Falsification of test report.* No person shall falsify or make any false or misleading statement on or in connection with a laboratory test report required by section 5(c) of the Act or § 280.6 of this part.

(g) *Falsification of certificate of conformance.* No person shall falsify or make any false or misleading statement on or in connection with a certificate of conformance required by § 280.5 of this part.

(h) *Falsification of documents relating to laboratory accreditation or accreditation bodies.* No person shall falsify or make any false or misleading statement on or in connection with any document relating to laboratory accreditation or approval or recognition of accreditation bodies as required by sections 6(a) or 6(b) of the Act or this part.

(i) *Use of another person's recorded insignia.* No person may apply an insignia to a fastener if the Commissioner has issued a certificate of recordal (as described in § 280.712 of this part) for that insignia to another person without written permission from the person to whom the certificate was issued.

(j) *False claim of laboratory accreditation or accreditation body.* No person shall falsely claim to be an accredited laboratory or approved or recognized accreditation body as described in section 6 of the Act or subparts B, C, D, and E of this part.

§ 280.603 Penalties, remedies and sanctions.

(a) *Civil remedies.* The Attorney General may bring an action in an appropriate United States district court for declaratory and injunctive relief against any person who violates the Act or any regulation issued thereunder. Such action may not be brought more than 10 years after the cause of action accrues.

(b) *Civil penalties.* Any person who is determined, after notice and opportunity for a hearing, to have violated the Act or any regulation issued thereunder shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.

(c) *Criminal penalties.* (1) Whoever knowingly certifies, marks, offers for sale, or sells a fastener in violation of the Act or a regulation issued thereunder shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever intentionally fails to maintain records relating to a fastener in violation of the Act or a regulation issued thereunder shall be fined under title 18, United States Code, or imprisoned not more than five years or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of the Act or a regulation issued thereunder shall be fined under title 18, United States Code, or imprisoned not more than two years or both.

§ 280.604 Administrative enforcement proceedings.

Sections 280.605 through 280.623 set forth the procedures for imposing administrative penalties for violations of the Act and Fastener Quality Regulations (FQR).

§ 280.605 Institution of administrative enforcement proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement (OEE) may begin administrative enforcement proceedings under this part by issuing a charging letter. The charging letter shall constitute the formal complaint and will state that there is reason to believe that a violation of this part has occurred. It will set forth the essential

facts about each alleged violation, refer to the specific regulatory or other provisions involved, and give notice of the sanctions available under the Act and this part. The charging letter will inform the respondent that failure to answer the charges as provided in § 280.608 of this part will be treated as a default under § 280.609 of this part, that the respondent is entitled to a hearing if a written demand for one is requested with the answer, and that the respondent may be represented by counsel, or by other authorized representative. A copy of the charging letter shall be filed with the administrative law judge, which filing shall toll the running of the applicable statute of limitations. Charging letters may be amended or supplemented at any time before an answer is filed, or, with permission of the administrative law judge, afterwards. The Department may unilaterally withdraw charging letters at any time, by notifying the respondent and the administrative law judge.

(b) *Notice of issuance of charging letter instituting administrative enforcement proceeding.* A respondent shall be notified of the issuance of a charging letter, or any amendment or supplement thereto:

(1) By mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address;

(2) By leaving a copy with the respondent or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process for the respondent; or

(3) By leaving a copy with a person of suitable age and discretion who resides at the respondent's last known dwelling.

(4) Delivery of a copy of the charging letter, if made in the manner described in paragraph (b)(2) or (3) of this section, shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left. The certificate of service shall be filed with the administrative law judge.

(c) *Date.* The date of service of notice of the issuance of a charging letter instituting an administrative enforcement proceeding, or service of notice of the issuance of a supplement or amendment to a charging letter, is the date of its delivery, or of its attempted delivery if delivery is refused.

§ 280.606 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides if not the United States. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the administrative law judge. The Department will be represented by the Office of Chief Counsel for Export Administration, U.S. Department of Commerce.

§ 280.607 Filing and service of papers other than charging letter.

(a) *Filing.* All papers to be filed shall be addressed to ''FQA Administrative Enforcement Proceedings,'' at the address set forth in the charging letter, or such other place as the administrative law judge may designate. Filing by United States mail, first class postage prepaid, by express or equivalent parcel delivery service, or by hand delivery, is acceptable. Filing by mail from a foreign country shall be by airmail. In addition, the administrative law judge may authorize filing of papers by facsimile or other electronic means, provided that a hard copy of any such paper is subsequently filed. A copy of each paper filed shall be simultaneously served on each party.

(b) *Service.* Service shall be made by personal delivery or by mailing one copy of each paper to each party in the proceeding. Service by delivery service or facsimile, in the manner set forth in paragraph (a) of this section, is acceptable. Service on the Department shall be addressed to the Chief Counsel for Export Administration, Room H–3839, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Service on a respondent shall be to the address to which the charging letter was sent or to such other address as respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the charging letter, filed and served on parties.

(e) *Computing period of time.* In computing any period of time prescribed or allowed by this part or by order of the administrative law judge or the Under Secretary, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is seven days or less.

§ 280.608 Answer and demand for hearing.

(a) *When to answer.* The respondent must answer the charging letter within 30 days after being served with notice of the issuance of a charging letter instituting an administrative enforcement proceeding, or within 30 days of notice of any supplement or amendment to a charging letter, unless time is extended under § 280.618 of this part.

(b) *Contents of answer.* The answer must be responsive to the charging letter and must fully set forth the nature of the respondent's defense or defenses. The answer must admit or deny specifically each separate allegation of the charging letter; if the respondent is without knowledge, the answer must so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(c) *Demand for hearing.* If the respondent desires a hearing, a written demand for one must be submitted with the answer. Any demand by the Department for a hearing must be filed with the administrative law judge within 30 days after service of the answer. Failure to make a timely written demand for a hearing shall be deemed a waiver of the party's right to a hearing, except for good cause shown. If no party demands a hearing, the matter will go forward in accordance with the procedures set forth in § 280.617 of this part.

(d) *English language required.* The answer, all other papers, and all documentary evidence must be submitted in English, or translations into English must be filed and served at the same time.

§ 280.609 Default.

(a) *General.* Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on the Department's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial decision containing findings of fact and appropriate conclusions of law and issue an initial decision and order imposing appropriate sanctions. The decision and order may be appealed to the Under Secretary in accordance with the applicable procedures set forth in § 280.623 of this part.

(b) *Petition to set aside default.*—(1) *Procedure.* Upon petition filed by a respondent against whom a default order has been issued, which petition is accompanied by an answer meeting the requirements of 280.608(b) of this part, the Under Secretary may, after giving all parties an opportunity to comment, and for good cause shown, set aside the default and vacate the order entered thereon and remand the matter to the administrative law judge for further proceedings.

(2) *Time limits.* A petition under this section must be made within one year of the date of entry of the order which the petition seeks to have vacated.

§ 280.610 Summary decision.

At any time after a proceeding has been initiated, a party may move for a summary decision disposing of some or all of the issues. The administrative law judge may render an initial decision and issue an order if the entire record shows, as to the issue(s) under consideration:

(a) That there is no genuine issue as to any material fact; and

(b) That the moving party is entitled to a summary decision as a matter of law.

§ 280.611 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the administrative law judge or by waiver or agreement of the parties. The administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the administrative law judge for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties, and a copy of the certificate of service shall be filed with the administrative law judge. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make a determination or enter any order in the proceeding as the ALJ deems reasonable and appropriate. The ALJ may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by a district court of the United States may be sought under section 9(b)(6) of the Act.

§ 280.612 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the administrative law judge may issue subpoenas requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the ALJ deems relevant and material to the proceedings, and reasonable in scope. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as contempt thereof.

(b) *Service.* Subpoenas issued by the administrative law judge may be served in any of the methods set forth in § 280.607(b) of this part.

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the administrative law judge determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

§ 280.613 Matter protected against disclosure.

(a) *Protective measures.* The administrative law judge may limit discovery or introduction of evidence or issue such protective or other orders as in the ALJ's judgment may be needed to prevent undue disclosure of classified or sensitive documents or information.

Where the administrative law judge determines that documents containing the classified or sensitive matter need to be made available to a party to avoid prejudice, the ALJ may direct that an unclassified and/or nonsensitive summary or extract of the documents be prepared. The administrative law judge may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the administrative law judge determines that this procedure is unsatisfactory and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the administrative law judge may provide the parties an opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 280.614 Prehearing conference.

(a) The administrative law judge, on his or her own motion or on request of a party, may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

(1) Simplification of issues;

(2) The necessity or desirability of amendments to pleadings;

(3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(4) Such other matters as may expedite the disposition of the proceedings.

(b) The administrative law judge may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the administrative law judge may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The administrative law judge will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 280.615 Hearings.

(a) *Scheduling.* The administrative law judge, by agreement with the parties or upon notice to all parties of not less than 30 days, will schedule a hearing. All hearings will be held in Washington, DC., unless the administrative law judge determines, for good cause shown, that another location would better serve the interests of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the administrative law judge, who may limit attendance at any hearing or portion thereof to the parties, their representatives and witnesses if the administrative law judge deems this necessary or advisable in order to protect sensitive matter (see § 280.613 of this part) from improper disclosure. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the administrative law judge to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(c) *Testimony and record.* Witnesses will testify under oath or affirmation. A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, transcribed and filed with the administrative law judge. A respondent may examine the transcript and may obtain a copy by paying any applicable costs. Upon such terms as the administrative law judge deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed, and that party's failure to appear will not affect the validity of the hearing or any proceedings or action taken thereafter.

§ 280.616 Interlocutory review of rulings.

(a) At the request of a party, or on the administrative law judge's own initiative, the administrative law judge may certify to the Under Secretary for review a ruling that does not finally dispose of a proceeding, if the administrative law judge determines that immediate review may hasten or facilitate the final disposition of the matter.

(b) Upon certification to the Under Secretary of the interlocutory ruling for review, the parties will have 10 days to file and serve briefs stating their positions, and five days to file and serve replies, following which the Under Secretary will decide the matter promptly.

§ 280.617 Proceeding without a hearing.

If the parties have waived a hearing, the case will be decided on the record by the administrative law judge. Proceeding without a hearing does not relieve the parties from the necessity of proving the facts supporting their charges or defenses. Affidavits or declarations, depositions, admissions, answers to interrogatories and stipulations may supplement other documentary evidence in the record. The administrative law judge will give each party reasonable opportunity to file rebuttal evidence.

§ 280.618 Procedural stipulations; extension of time.

(a) *Procedural stipulations.* Unless otherwise ordered, a written stipulation agreed to by all parties and filed with the administrative law judge will modify any procedures established by this part.

(b) *Extension of time.* (1) The parties may extend any applicable time limitation, by stipulation filed with the administrative law judge before the time limitation expires.

(2) The administrative law judge may, on the judge's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time within which to file and serve an answer to a charging letter or do any other act required by this part.

§ 280.619 Decision of the administrative law judge.

(a) *Predecisional matters.* Except for default proceedings under § 280.609 of this part, the administrative law judge will give the parties reasonable opportunity to submit the following, which will be made a part of the record:

(1) Exceptions to any ruling by the judge or to the admissibility of evidence proffered at the hearing;

(2) Proposed findings of fact and conclusions of law;

(3) Supporting legal arguments for the exceptions and proposed findings and conclusions submitted; and

(4) A proposed order.

(b) *Decision and order.* After considering the entire record in the proceeding, the administrative law judge will issue a written initial decision. The decision will include

findings of fact, conclusions of law, and findings as to whether there has been a violation of the Act, this part, or any order issued thereunder. If the administrative law judge finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more charges, the ALJ shall order dismissal of the charges in whole or in part, as appropriate. If the administrative law judge finds that one or more violations have been committed, the ALJ may issue an order imposing administrative sanctions, as provided in this part. The decision and order shall be served on each party, and shall become effective as the final decision of the Department 30 days after service, unless an appeal is filed in accordance with § 280.623 of this part. In determining the amount of any civil penalty the ALJ shall consider the nature, circumstances and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(c) *Suspension of sanctions.* Any order imposing administrative sanctions may provide for the suspension of the sanction imposed, in whole or in part and on such terms of probation or other conditions as the administrative law judge or the Under Secretary may specify. Any suspension order may be modified or revoked by the signing official upon application by the Department showing a violation of the probationary terms or other conditions, after service on the respondent of notice of the application in accordance with the service provisions of § 280.607 of this part, and with such opportunity for response as the responsible signing official in his/her discretion may allow. A copy of any order modifying or revoking the suspension shall also be served on the respondent in accordance with the provisions of § 280.607 of this part.

§ 280.620 Settlement.

(a) *Cases may be settled before service of a charging letter.* In cases in which settlement is reached before service of a charging letter, a proposed charging letter will be prepared, and a settlement proposal consisting of a settlement agreement and order will be submitted to the Assistant Secretary for approval and signature. If the Assistant Secretary does not approve the proposal, he/she will notify the parties and the case will proceed as though no settlement proposal had been made. If the Assistant Secretary approves the proposal, he/she will issue an appropriate order, and no action will be required by the administrative law judge.

(b) *Cases may also be settled after service of a charging letter.* (1) If the case is pending before the administrative law judge, the ALJ shall stay the proceedings for a reasonable period of time, usually not to exceed 30 days, upon notification by the parties that they have entered into good faith settlement negotiations. The administrative law judge may, in his/her discretion, grant additional stays. If settlement is reached, a proposal will be submitted to the Assistant Secretary for approval and signature. If the Assistant Secretary approves the proposal, he/she will issue an appropriate order, and notify the administrative law judge that the case is withdrawn from adjudication. If the Assistant Secretary does not approve the proposal, he/she will notify the parties and the case will proceed to adjudication by the administrative law judge as though no settlement proposal had been made.

(2) If the case is pending before the Under Secretary under § 280.623 of this part, the parties may submit a settlement proposal to the Under Secretary for approval and signature. If the Under Secretary approves the proposal, he/she will issue an appropriate order. If the Under Secretary does not approve the proposal, the case will proceed to final decision in accordance with Section 280.623 of this part, as appropriate.

(c) Any order disposing of a case by settlement may suspend the administrative sanction imposed, in whole or in part, on such terms of probation or other conditions as the signing official may specify. Any such suspension may be modified or revoked by the signing official, in accordance with the procedures set forth in § 280.619(c) of this part.

(d) Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that the Department has neither the authority nor the responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility is vested in the Attorney General and the Department of Justice.

(e) Cases that are settled may not be reopened or appealed.

§ 280.621 Reopening.

The respondent may petition the administrative law judge within one year of the date of the final decision, except where the decision arises from a default judgment or from a settlement, to reopen an administrative enforcement proceeding to receive any relevant and material evidence which was unknown or unobtainable at the time the proceeding was held. The petition must include a summary of such evidence, the reasons why it is deemed relevant and material, and the reasons why it could not have been presented at the time the proceedings were held. The administrative law judge will grant or deny the petition after providing other parties reasonable opportunity to comment. If the proceeding is reopened, the administrative law judge may make such arrangements as the ALJ deems appropriate for receiving the new evidence and completing the record. The administrative law judge will then issue a new initial decision and order, and the case will proceed to final decision and order in accordance with § 280.623 of this part.

§ 280.622 Record for decision and availability of documents.

(a) *General.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings and, for purposes of any appeal under § 280.623 of this part, the decision of the administrative law judge and such submissions as are provided for by § 280.623 of this part, will constitute the record and the exclusive basis for decision. When a case is settled after the service of a charging letter, the record will consist of any and all of the foregoing, as well as the settlement agreement and the order. When a case is settled before service of a charging letter, the record will consist of the proposed charging letter, the settlement agreement and the order.

(b) *Restricted access.* On the administrative law judge's own motion, or on the motion of any party, the administrative law judge may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible for submitting, at the time specified in § 280.622(c)(2) of this part, a version of the document proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to

identify it as a portion of the official record in the proceedings. The administrative law judge may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents*—(1) *Scope.* All charging letters, answers, initial decisions, and orders disposing of a case will be made available for public inspection in the BXA Freedom of Information Records Inspection Facility, U.S. Department of Commerce, Room H–6624, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* Documents are available immediately upon filing, except for any portion of the record for which a request for segregation is made. Parties that seek to restrict access to any portion of the record under paragraph (b) of this section must make such a request, together with the reasons supporting the claim of confidentiality, simultaneously with the submission of material for the record.

§ 280.623 Appeals.

(a) *Grounds.* A party may appeal to the Under Secretary from an order disposing of a proceeding or an order denying a petition to set aside a default or a petition for reopening, on the grounds:

(1) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(2) That a necessary legal conclusion or finding is contrary to law;

(3) That prejudicial procedural error occurred; or

(4) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion. The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal is taken.

(b) *Filing of appeal.* An appeal from an order must be filed with the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H–3898, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within 30 days after service of the order appealed from. If the Under Secretary cannot act on an appeal for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the appeal.

(c) *Effect of appeal.* The filing of an appeal shall not stay the operation of any order, unless the order by its express terms so provides or unless the Under Secretary, upon application by a party and with opportunity for response, grants a stay.

(d) *Appeal procedure.* The Under Secretary normally will not hold hearings or entertain oral argument on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The decision will be in writing and will be accompanied by an order signed by the Under Secretary giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the administrative law judge or may refer the case back to the administrative law judge for further proceedings.

(f) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 280.622 of this part.

(g) *Judicial Review.* The charged party may appeal the Under Secretary's written order within 30 days to the appropriate United States District Court pursuant to section 9(b)(3) of the Act (15 U.S.C. 5408(b)(3)) by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Chief Counsel for Export Administration, Room H–3839, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The findings and order of the Under Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5 United States Code.

Subpart H—Recordal of Insignia

§ 280.700 Recorded insignia required prior to offer for sale.

(a) Any manufacturer or private label distributor of a fastener must, prior to any sale or offer for sale of any fastener which is required by the standards and specifications by which it is manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor, apply for and record an insignia to be applied to any fastener which is to be sold or offered for sale to ensure that each fastener may be traced to its manufacturer or private label distributor.

(b) The manufacturer's or private label distributor's insignia must be applied to any fastener which is sold or offered for sale if such fastener is required by the standards and specification by which it is manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor. If the fastener has no head, the insignia must be applied to another surface area in a legible manner.

(c) The insignia must be applied through a raised or depressed impression. The insignia must be readable with no greater than 10x magnification.

The Written Application

§ 280.710 Applications for insignia.

(a) Each manufacturer or private label distributor must submit a written application for recordal of an insignia on the Fastener Insignia Register along with the prescribed fee. The application must be in a form prescribed by the Commissioner.

(b) The written application must be in the English language and must include the following:

(1) The name of the applicant;

(2) The address of the applicant;

(3) The entity, domicile, and state of incorporation, if applicable, of the applicant;

(4) either:

(i) A request for recordal and issuance of a unique alphanumeric designation by the Commissioner, or

(ii) A request for recordal of a trademark, which is the subject of either a duly filed application or a registration for fasteners in the name of the applicant in the U.S. Patent and Trademark Office on the Principal Register, indicating the application serial number or registration number and accompanied by a copy of the drawing page of the application or a copy of the registration;

(5) A statement that the applicant will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the person signing the application on behalf of the applicant has personal knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the applicant;

(7) A verification stating that the person signing declares under penalty of perjury under the laws of the United States of America that the information and statements included in the application are true and correct; and

(8) The application fee.

(c) An applicant may designate only one registered trademark for recordal on the Fastener Insignia Register in a single application. The trademark application or registration which forms the basis for the fastener recordal must be in active status, that is a pending application or a registration which is not expired, abandoned or canceled, at the time of the application for recordal.

(d) Applications and other documents should be addressed to: Box Fastener, Commissioner of Patents and Trademarks, Washington DC 20231.

§ 280.711 Review of the application.

The Commissioner will review the application for compliance with § 280.710. If the application does not contain one or more of the elements required by § 280.710, the Commissioner will not issue a certificate of recordal, and will return the papers and fees. The Commissioner will notify the applicant of any defect in the application. Applications for recordal of an insignia may be re-submitted to the Commissioner at any time.

§ 280.712 Certificate of recordal.

If the application complies with the requirements of § 280.710, the Commissioner shall accept the application and issue a certificate of recordal. Such certificate shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and a record shall be kept in the Patent and Trademark Office. The certificate of recordal shall display the recorded insignia of the applicant, and state the name, address, legal entity and domicile of the applicant, as well as the date of issuance of such certificate.

§ 280.713 Recordal of additional insignia.

(a) A manufacturer or private label distributor to whom the Commissioner has issued an alphanumeric designation may apply for recordal of its trademark for fasteners if the trademark is the subject of a duly filed application or is registered in the U.S. Patent and Trademark Office on the Principal Register. Upon recordal, either the alphanumeric designation or the registered mark, or both, may be used as recorded insignias.

(b) A manufacturer or private label distributor for whom the Commissioner has recorded a trademark as its fastener insignia, may apply for issuance and recordal of an alphanumeric designation as a fastener insignia. Upon recordal, either the alphanumeric designation or the trademark, or both, may be used as recorded insignias.

Post-Recordal Maintenance

§ 280.720 Maintenance of the certificate of recordal.

(a) Certificates of recordal remain in an active status for five years and may be maintained in an active status for five-year periods running consecutively from the date of issuance of the certificate of recordal upon compliance with the requirements of § 280.720(c).

(b) Maintenance applications shall be required only if the holder of the certificate of recordal is a manufacturer or private label distributor at the time the maintenance application is required.

(c) Certificates of recordal will be designated as inactive unless, within six months prior to the expiration of each five-year period running consecutively from the date of issuance, the certificate holder files the prescribed maintenance fee and the maintenance application. The maintenance application must be in the English language and must include the following:

(1) The name of the applicant;

(2) The address of the applicant;

(3) The entity, domicile, and state of incorporation, if applicable, of the applicant;

(4) A copy of applicant's certificate of recordal;

(5) A statement that the applicant will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the person signing the application on behalf of the applicant has knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the applicant;

(7) A verification stating that the person signing declares under penalty of perjury under the laws of the United States of America that the information and statements included in the application are true and correct; and

(8) The maintenance application fee.

(d) Where no maintenance application is timely filed, a certificate of recordal will be designated inactive. However, such certificate may be designated active if the certificate holder files the prescribed maintenance fee and application and the additional surcharge within six months following the expiration of the certificate of recordal.

(e) After the six-month period following the expiration of the certificate of recordal, the certificate of recordal shall be deemed active only if the certificate holder files a new application for recordal with the prescribed fee for obtaining a fastener insignia and attaches a copy of the expired certificate of recordal.

(f) A separate maintenance application and fee must be filed and paid for each recorded insignia.

§ 280.721 Notification of changes of address.

The applicant or the holder of a certificate of recordal shall notify the Commissioner of any change of address or change of name no later than six months after the change. The holder must do so whether the certificate of recordal is in an active or inactive status.

§ 280.722 Transfer or amendment of the certificate of recordal.

(a) The certificate of recordal cannot be transferred or assigned.

(b) The certificate of recordal may be amended only to show a change of name or change of address.

§ 280.723 Transfer or assignment of the trademark registration or recorded insignia.

(a) A trademark application or registration which forms the basis of a fastener recordal may be transferred or assigned. Any transfer or assignment of such an application or registration shall be recorded in the Patent and Trademark Office within three months of the transfer or assignment. A copy of such transfer or assignment must also be sent to: Box Fastener, Commissioner of Patents and Trademarks, Washington, DC 20231.

(b) Upon transfer or assignment of a trademark application or registration which forms the basis of a certificate of recordal, the Commissioner shall designate the certificate of recordal as inactive. The certificate of recordal shall be deemed inactive as of the effective date of the transfer or assignment. Certificates of recordal designated inactive due to transfer or assignment of a trademark application or registration cannot be reactivated.

(c) An assigned trademark application or registration may form the basis for a new application for recordal of a fastener insignia.

(d) A fastener insignia consisting of an alphanumeric designation issued by the Commissioner can be transferred or assigned.

(e) Upon transfer or assignment of an alphanumeric designation, the Commissioner shall designate such alphanumeric designation as inactive. The alphanumeric designation shall be deemed inactive as of the effective date of the transfer or assignment. Alphanumeric designations which are designated inactive due to transfer or assignment may be reactivated upon application by the assignee of such alphanumeric designation. Such application must meet all the

requirements of § 280.710 and must include a copy of the pertinent portions of the document assigning rights in the alphanumeric designation. Such application must be filed within six months of the date of assignment.

§ 280.724 Change in status of trademark registration or amendment of the trademark.

(a) The Commissioner shall designate the certificate of recordal as inactive, upon:

(1) Issuance of a final decision on appeal which refuses registration of the application which formed the basis for the certificate of recordal; or

(2) Abandonment of the application which formed the basis for the certificate of recordal; or

(3) Cancellation or expiration of the trademark registration which formed the basis of the certificate of recordal.

(b) Any amendment of the mark in a trademark application or registration which forms the basis for a certificate of recordal will result in such certificate of recordal being designated inactive. The certificate of recordal shall become inactive as of the date of the amendment of the trademark. A new application for recordal of the amended trademark application or registration may be submitted to the Commissioner at any time.

(c) Certificates of recordal designated inactive due to cancellation, expiration, abandonment or amendment of the trademark application or registration cannot be reactivated.

§ 280.725 Cumulative listing of recordal information.

The Commissioner shall maintain a record of the names, current addresses, and legal entities of all recorded manufacturers and private label distributors and their recorded insignia.

§ 280.726 Records and files of the Patent and Trademark Office.

The records relating to fastener insignia shall be open to public inspection. Copies of any such records may be obtained upon request and payment of the fee set by the Commissioner.

[FR Doc. 96–24105 Filed 9–25–96; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No: 960726209–6209–01]

Accreditation Body Evaluation Program and NIST Fastener Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, (NIST) Commerce.

ACTION: Notice.

SUMMARY: As required by section 6 of the Fastener Quality Act (FQA) (Pub.L. 101–592, as amended by Public Law 104–113, the National Institute of Standards and Technology (NIST) has established the following two programs: The Accreditation Body Evaluation Program (ABEP) to evaluate and approve/recognize qualified entities to accredit laboratories that perform testing of fastener products or materials, implemented in subparts D, E, and F of Part 280 of title 15 of the Code of Federal Regulations; and the Fastener Laboratory Accreditation Program under the National Voluntary Laboratory Accreditation Program (NVLAP) to accredit laboratories that perform inspection and testing of fastener products or materials, implemented in subpart C of Title 15, Part 280 of the U.S. Code of Federal Regulations. This notice invites interested entities to submit applications for accreditation to the ABEP, and also invites interested laboratories to submit applications for accreditation to the Fastener Laboratory Accreditation Program.

DATES: Applications for the program are available from NIST. NIST will begin processing the applications after the effective date of the regulations. Completed applications returned to NIST will be scheduled for accreditation or assessment visits on a first come first served basis.

FOR FURTHER INFORMATION CONTACT: For the ABEP: Robert L. Gladhill, Program Manager ABEP, NIST, Building 820, Room 282, Gaithersburg, MD 20899; telephone 301–975–4273, telefax 301–963–2871 or E-mail robert.gladhill@nist.gov.

For the Fastener Laboratory Accreditation Program: David F. Alderman, Deputy Chief NVLAP, NIST, Building 820, Room 282, Gaithersburg, MD 20899; telephone 301–975–4016, telefax 301–926–2884, E-mail david.alderman@nist.govt OR by writing to: Chief, NVLAP, Building 820, Room 282, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: Any laboratory accreditation entity or testing laboratory which considers that it can demonstrate conformance to the criteria published in the relevant subpart of Part 280 of Title 15 of the Code of Federal Regulations may apply for approval/recognition or accreditation, respectively. The requirements of the programs, application materials, instructions and fee schedules may be obtained from the addresses listed above. These programs are required to be operated on a cost-reimbursable basis. All costs incurred in the evaluation of applicant accreditation entities and testing laboratories must be paid by the applicant prior to the granting of approval/recognition/accreditation.

To allow time for an adequate number of laboratories to obtain accreditation, the FQA regulations will not be applicable to fasteners for 180 days after the effective date of publication of the regulations. If NIST determines that the number of laboratories is insufficient, this period may be extended.

Dated: September 16, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–24106 Filed 9–25–96; 8:45 am]

BILLING CODE 3510–13–P

[Docket No: 960726209–6209–01]

Consensus Standards Organization Under the Fastener Quality Act

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: The Fastener Quality Act (Act) (Pub. L. 101–592) as amended by Public Law 104–113 requires that certain fasteners sold in commerce conform to the standards and specifications to which they are represented to be manufactured. For the purposes of the Act, the fasteners covered by the Act are those manufactured in accordance with the standards and specifications published by a consensus standards organization or by a government agency. This announcement provides a provisional list of ''consensus standards organizations,'' and seeks comments on this list from interested organizations and individuals. Specifically, NIST is interested in receiving comments on: (1) Why any of the U.S., foreign national, or international organizations listed in this notice should not be defined as ''consensus standards organizations''; and (2) if there are additional U.S., foreign national, or international organizations which produce standards for the manufacture or alteration of fasteners, as those terms are defined in the Act and regulations, that should be defined as ''consensus standards organizations.'' Following the comment period, NIST will publish a final list in the Federal Register.

DATES: Comments will be accepted until December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Subhas G. Malghan, NIST, Building 820, Room 316, Gaithersburg, MD 20899. Tel. No. 301–975–4500. Telefax 301–975–2183. E-Mail Malghan@nist.gov.

SUPPLEMENTARY INFORMATION: In accordance with section 3(2) of the Act, NIST reserves the right to add or delete organizations from its list of ''consensus standards organizations'' at any time, based upon decision criteria contained in this notice. Prior to amending the list, NIST will notify affected organizations and provide an opportunity for comment. As defined in the Act, the American Society for Testing and Materials (ASTM), American National Standards Institute (ANSI), American Society of Mechanical Engineers (ASME), Society of Automotive Engineers (SAE) are ''consensus standards organizations.'' According to an industry source, nearly 95% of the commercial fasteners in the US and Canada are manufactured using standards and specifications developed by ASME, ASTM, and SAE. Therefore, any US or foreign standards-setting organization that wants to be recognized under the Act and regulations, has to meet the same criteria as these organizations to be included in the list of ''consensus standards organization.''

A. United States ''Consensus Standards Organizations''

The Act defines ''consensus standards organizations'' as ASTM, ANSI, ASME, and SAE, or any other consensus standards-setting organization determined by the Secretary of Commerce to have comparable knowledge, expertise, and concern for health and safety in the field for which such organization purports to set standards. According to this definition, the following nineteen organizations have been provisionally determined by NIST to be ''consensus standards organizations'' within the meaning of Section 3(2) of the Act, as amended; and listed below in alphabetical order.

1. American Architectural Manufacturers Association, AAMA
2. American Boilers Manufacturers Association, ABMA
3. American Concrete Institute, ACI
4. American Gas Association, AGA
5. Aerospace Industries Association of America Inc., AIA/NAS

6. American National Standards Institute, ANSI
7. American Society of Mechanical Engineers, ASME
8. American Society for Testing and Materials, ASTM
9. Builders Hardware Manufacturers Association Inc., BHMA
10. Brick Institute of America, BIA
11. Cooling Tower Institute, CTI
12. Door & Hardware Institute, DHI
13. International Staple, Nail & Tool Association, ISANTA
14. National Electrical Manufacturers Association, NEMA
15. National Fluid Power Association, NFPA
16. National Particleboard Association, NPA
17. Society of Automotive Engineers International, SAE
18. Steel Tank Institute, STI
19. Underwriters Laboratories Inc., UL

B. Foreign and International ''Consensus Standards Organizations''

The Act permits the sale in the United States of fasteners manufactured in accordance with standards and specifications published by a foreign, regional, or international ''consensus standards organization'' or by a government agency of a foreign country. In accordance with the above definition of consensus standards organizations, NIST has provisionally determined within the meaning of Section 3(2) of the Act, as amended, that the following are ''consensus standards organizations'' in foreign and international arena. These organizations are listed below in alphabetical order.

1. Association Europeene des Constructeurs de Materiel Aerospatial (AECMA)
2. Association Francaise de Normalisation (AFNOR)
3. British Standards Institution (BSI)
4. Civil Aviation Authority Airworthiness Division (CAA)
5. European Committee for Standardization (CEN)
6. British Defense Standards (MOD) UK
7. Deutsches Institut fur Normung e. V. (DIN)
8. European Community (EC)
9. International Organization for Standardization (ISO) and the National Member Bodies of ISO
10. North Atlantic Treaty Organization (NATO)
11. Society of British Aerospace Companies (SBAC)
12. Verband Deutscher Electrotechniker, e.V. (VDE)
13. National Standards Authority of Ireland (NSAI)

Dated: September 16, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–24107 Filed 9–20–96; 8:45 am]

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federal register

Thursday
September 26, 1996

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Primary Aluminum Reduction Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL–64–2–5807; FRL–5602–1]

RIN 2060–AE76

National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes national emission standards for each new or existing potline, paste production operation, and anode bake furnace associated with a primary aluminum reduction plant. The major hazardous air pollutants (HAPs) emitted by the facilities covered by this proposed rule include hydrogen fluoride (HF) and polycyclic organic matter (POM). Polycyclic aromatic hydrocarbons (PAHs) are included in the chemical group POM. Polycyclic aromatic hydrocarbons have been reported to produce carcinogenic, reproductive, and developmental effects as well as toxic effects on blood, the liver, eyes and the immune system. The proposed rule will result in a 50 percent reduction in fluoride and POM emissions from the current level of 11,000 tons per year (tpy); a substantial reduction in emissions of nonHAP pollutants, such as particulate matter, also would be achieved.

The proposed standards implement section 112(d) of the Clean Air Act as amended (the Act) and are based on the Administrator's determination that primary aluminum plants may reasonably be anticipated to emit several of the 189 HAPs listed in section 112(b) of the Act from the various process operations found within the industry.

DATES: *Comments.* The EPA will accept comments on the proposed rule until November 25, 1996.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by October 17, 1996, a public hearing will be held on October 28, 1996, beginning at 10 a.m. For more information, see VII, B of the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Docket No. A–92–60 at the following address: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of the comments also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor) and may be inspected from 8:30 a.m. to noon, and from 1 to 3 p.m., Monday through Friday. The proposed regulatory text, proposed Method 315, the Basis and Purpose Document, Technical Support Document, and other materials related to this rulemaking are available for review in the docket. Copies of this information may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

The public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina.

FOR FURTHER INFORMATION CONTACT: Steve Fruh, Policy, Planning, and Standards Group, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–2837.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that emit or have the potential to emit HAPs listed in § 112(b) of the Act. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Primary aluminum reduction plants.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.840 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Technology Transfer Network

A detailed evaluation and rationale for this notice of proposal are provided in the Basis and Purpose Document. The Basis and Purpose Document, proposed regulation, and this preamble also are available on the Technology Transfer Network (TTN), one of 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) 541–5742 with a modem of up to 14,400 baud per second (BPS). If more information on the TTN is needed, call the HELP line at (919) 541–5384.

Outline

The information in this preamble is organized as shown below.

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  E. Unfunded Mandates Act
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  G. Paperwork Reduction Act
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I. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

II. Introduction

A. Background

This proposed maximum achievable control technology (MACT) standard was developed as a pilot demonstration of EPA's Share-A-MACT program. Under this rulemaking approach, EPA works with State regulatory agencies and tribal governments to resolve major issues while working in a cooperative effort with industry and professional associations to identify data needs and

to collect, exchange, and analyze the information and data. For example, on this project emission tests were conducted with shared funding from EPA, the Washington State Department of Ecology, and the aluminum industry.

The proposed standard is based on a combination of control techniques that either prevent the escape of emissions or capture the pollutants and return them to the process. These pollution prevention measures include work practices, equipment modifications, operating practices, housekeeping measures, and in-process recycling. The overall effect of the proposed standard will be to raise the control performance of nearly half of the industry to the level of control achieved by the best performing plants. Currently, over 11,000 tpy of fluoride and POM are emitted nationwide; these emissions would be reduced by more than 50 percent, and higher reductions would be achieved at particular sites. Emissions of total particulate matter also would be reduced by 16,000 tpy. These reductions will lower ambient air concentrations of these pollutants and, consequently, lower levels of exposure. The deposition of fluorides and POM on waters, such as the Great Lakes, also would be reduced. These benefits will be achieved with no plant closures predicted and without any significant adverse economic impacts on the industry. According to the economic analysis, the price of aluminum is projected to increase by less than 1 percent, and total revenue and employment will decrease by less than 1 percent. Total capital expenditures are estimated as $160 million, with a total annualized cost of $40 million per year.

The proposed standard provides flexibility to the owner or operator with an incentive for improved performance. For example, the proposed monitoring requirements allow less frequent sampling at plants that show consistent performance below the level of the standard; provisions for similar potlines allow a reduction in manual sampling and the use of less expensive alternative sampling; and provisions are included for emission averaging. Additional time for achieving compliance also is allowed for existing sources, depending on the extent of changes needed to meet the standards.

B. NESHAP for Source Categories

Section 112(b) of the Act lists 189 HAPs and directs the EPA to develop rules to control all major and some area sources emitting HAPs. On July 16, 1992 (57 FR 31576), the EPA published a list of major and area sources for which NESHAP are to be promulgated, and primary aluminum production was one of the 174 categories of sources listed. The listing was based on the Administrator's determination that primary aluminum plants may reasonably be anticipated to emit several of the 189 listed HAPs in sufficient quantity to be designated as major sources. The EPA schedule for promulgation of the MACT standards was published on December 3, 1993 (58 FR 63941), and requires that rules for the primary aluminum source category be promulgated by November 15, 1997.

C. Overview of the Industry

Primary aluminum plants produce aluminum metal through the electrolytic reduction of aluminum oxide (alumina) by direct current voltage in an electrolyte (called ''cryolite'') of sodium aluminum fluoride. There are 23 primary aluminum plants currently located in a total of 14 States. Many of these plants are concentrated in the Northwest in close proximity to hydroelectric power sources. The 23 plants have 91 potlines that produce aluminum, each plant has a paste production operation, and 17 of these plants have anode bake furnaces. The major HAPs emitted by these facilities are HF and POM.

Primary aluminum plants are subject to varying State emission limits for TF developed pursuant to section 111(d) of the Act. A total of 5 potlines at 4 plants are subject to New Source Performance Standards (NSPS) for primary aluminum reduction plants (40 CFR part 60, subpart S). The EPA is considering removing the NSPS and incorporating any necessary provisions into this proposed rule to avoid duplicative control requirements, eliminate redundant monitoring provisions, and to reduce paperwork. Removal of the NSPS would probably require certain changes to this rule for those specific cases that would have otherwise triggered the NSPS. For sources that would have been subject to the NSPS, these changes could include incorporating the part 60 provisions for modifications, establishing the NSPS limits when appropriate, and adopting the NSPS opacity limits. The EPA is requesting comments on the concept of removal of the NSPS and the specific additional provisions that would need to be incorporated into this proposed rule.

D. Health Effects of Pollutants

The Clean Air Act was created in part ''to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' [See section 101(b)(1).] Section 112 of the Act establishes a control technology-based program to reduce stationary source emissions of HAPs. The goal of the section 112(d) MACT standards is to apply such control technology to reduce emissions and thereby reduce the hazard of HAPs emitted from stationary sources.

This proposed rule is technology-based, i.e., based on MACT. The MACT strategy avoids depending on a detailed and comprehensive risk assessment for MACT standards for control of air toxics for the following reasons: (1) some of the HAPs emitted from stationary sources are unknown, and (2) many of the HAPs about which EPA has emissions information lack complete data with which to describe health hazards.

The EPA does recognize that the degree of adverse effects to health resulting from the most significant emissions identified can range from mild to severe. The extent to which the effects could be experienced depends upon the ambient concentrations and exposure time. The latter is further influenced by source-specific characteristics such as emission rates and local meteorological conditions. Human variability factors also influence the degree to which effects to health occur: genetics, age, pre-existing health conditions, and lifestyle.

Available emission data, in conjunction with development of the proposed standard, show that HF and POM are the HAPs that are most significant and that have the potential for reduction by implementation of the standard. The emission limits in the proposed standard would reduce emissions of both HF, a gaseous inorganic compound, and POM. The proposed standard also would reduce emissions of particulate matter (PM), which is controlled under the National Ambient Air Quality Standards (NAAQS) as a ''criteria'' pollutant. Following is a summary of the potential health effects caused by emissions of pollutants that would be reduced by the standard.

Short-term inhalation exposure to gaseous HF and related fluoride compounds can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. Long-term inhalation exposure to low levels of HF by humans has been reported to result in irritation and congestion of the nose, throat, and bronchi while damage to liver, kidney, and lungs has been observed in animals. There is generally a lack of information on human health effects associated with exposures to HF at current ambient air concentrations

near primary aluminum plants. Occupational studies have not specifically implicated inhaled fluoride as a cause of cancer, and the Agency has not classified HF with respect to potential carcinogenicity.

Emission test results reveal that primary aluminum reduction plants may emit POM, which includes a combination of PAHs such as anthracene, benzo(a)pyrene, and naphthalene, among others. Several of the PAH compounds, including benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene, are probable human carcinogens. Cancer is the major concern from exposure to these PAHs. Specifically, long-term exposure to benzo(a)pyrene has been reported to result in toxic effects on skin, irritation to eyes and cataracts in humans, and toxic effects on liver, blood, and the immune system in animal studies. Reproductive and developmental effects from benzo(a)pyrene have also been reported in animal studies.

The health effects of ''criteria'' pollutants reduced by this proposed standard (e.g., particulate matter smaller than 10 microns in diameter [PM_{10}]) are described in EPA's criteria documents that support the NAAQS. For example, particles addressed by the PM_{10} standard have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death.

III. Summary of the Proposed Rule

A. Applicability

The proposed standard would apply to emissions of HF, measured using total fluorides (TF) as a surrogate, and POM (as measured by methylene chloride extractables) from each affected source associated with primary aluminum reduction. Affected sources are each potline of reduction cells, each anode bake furnace, and each paste production plant, except for one off-site anode bake furnace that is subject to the State MACT determination under section 112(l) of the Act.

B. Subcategories

Section 112(d) of the Act requires EPA to establish emission standards for each category or subcategory of major and area sources. Section 112(d)(1) of the Act states that ''the Administrator may distinguish among classes, types, and sizes of sources within a category * * * in establishing such standards * * *.'' In establishing subcategories, EPA has considered factors such as air pollution control engineering differences, process operations (including differences between batch and continuous operations), emission characteristics, control device applicability, and opportunities for pollution prevention.

The EPA's analysis of existing aluminum production processes and operations resulted in the designation of seven subcategories for potlines. For the subcategories of potlines, the distinctions are based primarily on differences in the process operation, process equipment, emissions, and the applicability of control devices. Additional information on the subcategorization is included in the Basis and Purpose Document for Primary Aluminum Reduction Plants.

One of the subcategories was developed for center-worked prebake potlines with wet primary control systems. These potlines produce a high purity aluminum for a specialized market, and they can do so only because metal impurities are removed with the sludge from the wet scrubbers. If these potlines were required to be equipped with dry alumina scrubbers, the contaminants would be returned to the reduction cell and contaminate the aluminum. The company claims that if they must meet MACT for the prebake subcategory of modern potlines with dry alumina scrubbers, they could lose their market for high purity aluminum. The EPA is requesting comments on the issue of a separate subcategory for potlines that produce high purity aluminum.

C. Emission Control Technology

The control option for primary emissions from the reduction process for six of the seven subcategories of existing potlines and for all new potlines is the installation of a dry alumina scrubber (with a baghouse to collect the alumina and other particulate matter) at those plants that do not have them. The control option for prebake plants producing high purity aluminum is a wet scrubber that removes impurities that would otherwise contaminate the aluminum. The MACT technology used to establish the floor of performance for potline secondary emission control involves the use of wet roof scrubbers for side-worked prebake potlines and one type of Soderberg potline. Work practice programs, inspection procedures, and maintenance programs for repairing or replacing damaged hoods and seals provide the most efficient control for secondary emissions from other types of existing and new potlines. Based on EPA's MACT floor analyses, the dry alumina scrubber also is the MACT floor technology for new and existing anode bake furnaces, and a capture system vented to a dry coke scrubber is the MACT floor technology for new and existing paste production operations.

For the one bake furnace plant not located with a primary aluminum reduction plant, the MACT floor control technology (dry alumina scrubbers) does not apply because the plant does not have access to alumina as do other bake furnaces, and there are no potlines onsite to use the reacted alumina. Consequently, EPA placed this plant in a separate subcategory and proposes to adopt the State MACT determination for this facility. This approach is consistent with EPA's policy of working with the States, adopting MACT determinations from State programs when appropriate, and avoiding regulatory duplication.

No additional control options were identified that had been demonstrated to be more effective than the MACT floor technologies at a reasonable cost or that would achieve significant additional reductions in HAP emissions. Consequently, the technologies associated with the MACT floor were also determined to represent the MACT technology. Additional information on EPA's beyond-the-floor analysis is included in the Basis and Purpose Document.

D. Emission Limits

Analyses of available data led EPA to conclude that the emission levels shown in Table 1 for existing sources and Table 2 for new sources represent the MACT floor and MACT for each emission source.

TABLE 1.—SUMMARY OF PROPOSED EMISSION LIMITS FOR EXISTING SOURCES

Source	Emission limit
Potlines	*TF Emission Limits:* 0.95 kg/Mg (1.9 lb/ton) of aluminum produced for CWPB1 [1] potlines. 1.5 kg/Mg (3.0 lb/ton) of aluminum produced for CWPB2 [1] potlines. 1.25 kg/Mg (2.5 lb/ton) of aluminum produced for CWPB3 [1] potlines.

TABLE 1.—SUMMARY OF PROPOSED EMISSION LIMITS FOR EXISTING SOURCES—Continued

Source	Emission limit
	0.80 kg/Mg (1.6 lb/ton) of aluminum produced for SWPB [1] potlines. 1.1 kg/Mg (2.2 lb/ton) of aluminum produced for VSS1 [1] potlines. 1.35 kg/Mg (2.7 lb/ton) of aluminum produced for VSS2 [1] potlines. 1.35 kg/Mg (2.7 lb/ton) of aluminum produced for HSS [1] potlines. *POM Emission Limits:* 2.35 kg/Mg (4.7 lb/ton) of aluminum produced for HSS potlines. 1.2 kg/Mg (2.4 lb/ton) of aluminum produced for VSS1 potlines. 1.85 kg/Mg (3.7 lb/ton) of aluminum produced for VSS2 potlines.
Paste Production	*POM Emission Limit:* Install, operate, and maintain equipment for capture of emissions and vent emissions to a dry coke scrubber.
Anode Bake Furnace (located with a primary aluminum plant).	*TF Emission Limit:* 0.10 kg/Mg (0.20 lb/ton) of anode. *POM Emission Limit:* 0.09 kg/Mg (0.18 lb/ton) of anode.

[1] Abbreviations defined:
CWPB1=Center-worked prebake potline with the most modern reduction cells; includes all center-worked prebake potlines not specifically identified as CWPB2 or CWPB3.
CWPB2=Center-worked prebake potlines located at Alcoa in Rockdale, Texas; Kaiser Aluminum in Mead, Washington; Ormet Corporation in Hannibal, Ohio; Ravenswood Aluminum in Ravenswood, West Virginia; Reynolds Metals in Troutdale, Oregon; and Vanalco Aluminum in Vancouver, Washington.
CWPB3=Center-worked prebake potline that produces very high purity aluminum, has wet scrubbers as the primary control system, and is located at the primary aluminum plant operated by NSA in Hawesville, Kentucky.
HSS=Horizontal stud Soderberg potline.
SWPB=Side-worked prebake potline.
VSS1=Vertical stud Soderberg potline at Northwest Aluminum in The Dalles, Oregon, or at Columbia Aluminum in Goldendale, Washington.
VSS2=Vertical stud Soderberg potlines at Columbia Falls Aluminum in Columbia Falls, Montana.

TABLE 2.—SUMMARY OF PROPOSED EMISSION LIMITS FOR NEW SOURCES

Source	Emission limit
Potlines	*TF Emission Limit:* 0.6 kg/Mg (1.2 lb/ton) of aluminum produced. *POM Emission Limit:* 0.32 kg/Mg (0.63 lb/ton) of aluminum produced.
Paste Production	*POM Emission Limit:* Install, operate, and maintain equipment for the capture of emissions and vent emissions to a dry coke scrubber.
Anode Bake Furnace	*TF Emission Limit*: 0.01 kg/Mg (0.02 lb/ton) of anode. *POM Emission Limit:* 0.025 kg/Mg (0.05 lb/ton) of anode.

The limits for potlines are in the same format as the NSPS (40 CFR part 60, subpart S)—kilogram of pollutant per megagram of aluminum (kg/Mg) or pound of pollutant per ton of aluminum (lb/ton). A similar format, lb/ton of anode, is used for emission limits for anode bake plants.

An equipment standard requiring installation of a capture system and the routing of emissions through a closed system to a dry coke scrubber or equivalent alternative control device is proposed for paste production. If an alternative to the dry coke scrubber is used, the control device must achieve a POM removal efficiency of at least 95 percent for continuous paste mixing operations and at least 90 percent for batch operations. The capture system must be designed and operated to meet generally accepted engineering standards for minimum exhaust rates.

E. Emission Monitoring and Compliance Provisions

The proposed standard requires monthly sampling of TF secondary emissions from each potline using Methods 13 and 14 (40 CFR part 60, appendix A) or an approved alternative method and quarterly sampling of POM for Soderberg potlines using proposed Method 315 or an approved alternative method. For secondary emissions, the owner or operator would perform at least three runs per month for TF and at least one run per month (three runs per quarter) for POM from Soderberg potlines.

Annual sampling of TF using Method 13 and POM (for Soderberg potlines) using Method 315 would be required for the primary emission control system for potlines. To demonstrate compliance, the owner or operator would compute a monthly average for TF and a quarterly average for POM using the results of at least three runs for secondary emissions of TF (or POM), the aluminum production rate, and the most recent compliance test for the primary control system. If the primary control system has been sampled more than once in the previous 12-month period, then the average of all runs during the 12-month period is to be used to determine the contribution from the primary system.

Annual sampling of TF using Method 13 and POM using proposed Method 315 would be required for the anode bake furnace stack. Compliance with the applicable emission limits for anode bake plants would be determined by the average of at least three runs annually.

The proposed standard also would require the monitoring of control device parameters. For example, plants with dry alumina scrubbers must perform a daily visual inspection of the stack and install devices to monitor the flow of alumina and air. The control device parameters would be evaluated from data collected during the initial performance test and from historical performance tests to determine upper and/or lower limit(s), as appropriate, for each process parameter. The owner or operator may redetermine the upper and/or lower operating limits, as appropriate, based on historical data and other information and submit an application to the regulatory authority to change the applicable limit(s). A corrective action program would be triggered if the control device is operating outside of the acceptable range for the specified parameters. Failure to initiate corrective actions within one hour after exceeding the limit is a violation. A violation also occurs if the operating limit for a parameter is exceeded more than 6

times in any semiannual reporting period. For the purpose of determining the number of exceedances, no more than one exceedance would be attributed in any given 24 hour period.

Typically, EPA has considered the exceedance of established operating parameters for the control device to be a violation. However, several factors indicated that triggering a corrective action program would be more appropriate for this application of control device monitoring. An important consideration was that a change in a control device's operating parameter does not directly correlate with an increase in emissions and does not provide reasonable assurance that the emission limit was exceeded when the parameter changed. The acceptable range for the operating parameter that is monitored is established during performance testing. However, if the source is performing well below the emission limit during the performance test, the range established for the monitoring parameter would not be representative of operation at a level when actual emissions are close to (but still below) the applicable emission limit. In other words, the operating parameter may be outside the limit established during the performance test while emissions are still below the applicable limit. The primary value of monitoring the control device parameters is to detect a potential problem with the device's operation as soon as possible and to promptly investigate and correct the cause.

The owner or operator also must install devices to measure the daily weight of aluminum produced and the weight of anodes placed in the furnace for an operating cycle. This information is needed to determine the average production rate used in compliance equations. The total weight of all anodes placed in the furnace may be measured, or the number of anodes placed in the furnace and a representative weight may be measured to determine the total weight.

Similar Potlines. Provisions also are included in the proposed standard to allow the owner or operator to perform manual sampling of only one potline in a group of similar potlines and to use less expensive monitoring techniques for the other similar potlines. To show that a potline is similar, the owner or operator must demonstrate that the level of emission control is equivalent for all of the potlines in the group according to the requirements included in the proposed standard. Hydrogen fluoride continuous emission monitors (CEMs) and Alcan cassette samplers are approved to show that the performance of similar potlines is the same as or better than that of the potline sampled using Methods 13 and 14. After demonstrating that the potlines are similar, EPA methods must be used to monitor one potline, and the other similar potlines must be monitored using an approved alternative procedure.

The EPA is also considering work practice inspections as an option to show similar performance among potlines. However, this issue is unresolved because every specific work practice and its corresponding effect on emissions are difficult to identify and quantify, and there is no evidence that a work practice ''score'' is relatable to emission rates. For this approach to be acceptable, the owner or operator must demonstrate the validity of the approach and correlate the results of work practice inspections to measured emissions. The EPA specifically requests comments on the acceptability of work practice inspections as a measure of emission control performance.

Reduced Sampling. The owner or operator of a plant that demonstrates consistent compliance with an applicable emission limit and low variability may apply for a reduced sampling frequency, such as quarterly sampling instead of monthly sampling.

Alternative Method. Under the proposed standard, the owner or operator can use an approved alternative method for measuring emissions. An approved alternative may include an HF CEM or the Alcan cassette sampling system. Continuous emission monitors are currently being evaluated at several plants and have shown promise as a process control tool as well as for monitoring secondary emissions at a lower cost than manual methods. The EPA decided not to require the use of an HF CEM, but is including provisions for its use in the rule. However, the new HF monitors do not operate on the same principles as other CEMs for which EPA has developed performance specifications and quality assurance/quality control provisions. Until these specifications are developed, EPA does not believe the new monitors should be required. However, the Agency encourages their development and use by accepting the use of the monitors as an approved alternative to monthly sampling on a case-by-case basis for those plants that show it to be an acceptable alternative to Methods 13 and 14.

To show that another method is an acceptable alternative, the owner or operator would be required to develop a correlation with results from the applicable methods in the rule (such as Methods 13, 14, and 315) to the satisfaction of the regulatory authority. For fluoride measurements, the alternative method must account for or include gaseous fluoride and cannot be based on measurement of particulate matter or particulate fluoride alone because HF, the HAP of interest, is in gaseous form. The EPA and industry are currently investigating the use of Alcan cassettes as an alternative to Methods 13 and 14. If this method development is completed successfully, the Alcan cassette will be approved as an applicable method for TF under this proposed rule.

F. Emission Averaging

The proposed standard contains provisions allowing the owner or operator to demonstrate compliance through averaging emissions of TF from all existing potlines, POM from Soderberg potlines, and TF and POM from anode bake furnaces. The provisions in the proposed standard limit averaging to like sources (i.e., TF emissions from a potline can be averaged only with TF emissions from another potline) and to those sources located on the plant site and within the same State or regulatory jurisdiction. Averaging between pollutants (TF and POM) is not allowed. Emission averaging would not be allowed in any State that selects to exclude this option from its approved permitting program.

The emission limits for emission averaging are summarized in Table 3. This approach requires that the monthly average of TF emissions from the group of sources not exceed the average performance demonstrated as the MACT level of control (increased by a small amount to account for variability).

TABLE 3.—POTLINE TF AND POM LIMITS FOR EMISSION AVERAGING

Type	2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
Monthly TF limit (lb/ton) for given number of potlines							
CWPB1	1.7	1.6	1.5	1.5	1.4	1.4	1.4
CWPB2	2.9	2.8	2.7	2.7	2.6	2.6	2.6
CWPB3	2.3	2.2	2.2	2.1	2.1	2.1	2.1
VSS1	2.0	1.9	1.8	1.7	1.7	1.7	1.7
VSS2	2.6	2.5	2.5	2.4	2.4	2.4	2.4
HSS	2.5	2.4	2.4	2.3	2.3	2.3	2.3
SWPB	1.4	1.3	1.3	1.2	1.2	1.2	1.2
Quarterly POM limit (lb/ton) for number of potlines							
HSS	4.1	3.8	3.7	3.5	3.5	3.4	3.3
VSS1	2.1	2.0	1.9	1.9	1.8	1.8	1.8
VSS2	3.4	3.2	3.2	3.1	3.1	3.0	3.0

Monthly TF and quarterly POM limits for each group of potlines (two or more lines) are included in the rule. Under this approach, the owner or operator would sample TF and/or POM emissions from at least three runs each month/quarter for each potline in the group to determine the average emissions from each potline. The sum of emissions from each potline would be divided by total aluminum production from all of the potlines for the month (or for the quarter for POM) to determine the emissions in lb/ton for comparison to the applicable emission limit.

Emission averaging limits for TF and POM from anode bake furnaces were also developed and allow the annual testing of bake furnaces to be averaged across multiple bake furnaces. The applicable emission limits are given in Table 4.

To implement emissions averaging, the owner or operator would be required to include the information specified in the rule in the application for a part 70 permit or in an Implementation Plan (if the application has already been submitted) for approval by the applicable regulatory authority. The regulatory authority would review and approve or disapprove the plan within a specified time period based on the criteria included in the standard.

TABLE 4.—ANODE BAKE FURNACE LIMITS FOR EMISSION AVERAGING

Number of furnaces	Emission limit (lb/ton of anode)	
	TF	POM
2	0.11	0.17
3	0.090	0.17
4	0.077	0.17
5	0.070	0.17

The information to be provided in the permit or plan would include the type of plan selected, the emission sources to be averaged, and the applicable limit assigned to each source. The owner or operator may submit a request to revise the plan, or if emission averaging is not selected initially, the owner or operator may submit a request to implement emission averaging after the compliance date.

The emissions averaging system in this rule is intended to provide a facility with flexibility to achieve the required emissions reductions in the most cost effective way. Consistent with EPA policy on regulatory flexibility expressed in the economic incentive program rule (59 FR 16690, April 7, 1994), the use of emissions averaging under this rule should reduce pollution as well as benefit regulated entities. Compliance through averaging is expected to achieve somewhat greater emissions reductions than would occur without averaging.

G. Notification, Reporting, and Recordkeeping Requirements

Notification, reporting, and recordkeeping requirements for MACT standards are included in the NESHAP General Provisions (40 CFR part 63, subpart A). The proposed standard would incorporate all of these provisions, except that the existing performance specifications for CEM are not applicable to an HF CEM because such specifications have not yet been developed for that device.

The proposed requirements would include one-time notifications of applicability, intent to construct or reconstruct, anticipated startup date, actual startup date, date of performance test, compliance status, and, if applicable, the intent to use an HF CEM. The owner or operator also would submit a report of performance test results (which can be sent as part of the compliance status notification) and semiannual reports of excess emissions, if any excess emissions occurred. If excess emissions are reported, quarterly reports are required until compliance has been demonstrated for 1 year. A startup, shutdown, and malfunction plan also would be required with semiannual reports of events that are not managed according to the plan. The plan must also include the corrective actions to be taken if the limit for a control device's operating parameter is exceeded.

Recordkeeping requirements for all MACT standards are established in section 63.10(b) of the General Provisions. In addition to these requirements, the proposed standard would specifically require plants to maintain records of the corrective actions taken when a control device's operating parameter is exceeded and the daily production rate for aluminum and anodes.

If an HF CEM were used as an alternative monitoring method, the owner or operator would be required to submit a report to the applicable regulatory authority containing the correlation and information showing how the correlation was derived.

All records must be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The records for the most recent 2 years must be retained on site; records for the remaining 3 years may be retained off site but still must be readily available for review. The files may be retained on microfilm, on microfiche, on a computer, or on computer or magnetic disks.

Compliance with the standard must be demonstrated at startup for new sources and in 2 to 4 years from the effective date of the final rule for existing sources. All plants would be allowed at least 2 years. The EPA

believes that additional time beyond the 2-year period should be allowed for sources that must make major capital investments to achieve compliance. An extension for a fourth year may be granted by the regulatory authority under section 112(i)(3)(B) of the Act.

IV. Summary of Impacts

A. Environmental Impacts

Nationwide emissions from primary aluminum potlines are estimated at 6,400 tpy of TF. After implementation of the proposed standards, these emissions would decrease by almost 50 percent to 3,400 tpy. Polycyclic organic matter emissions would be reduced by about 45 percent, from 3,200 tpy to 1,800 tpy. TF emissions from the anode bake furnaces are estimated at 700 tpy; POM emissions are estimated at 555 tpy. After control of all bake furnaces, TF emissions would be reduced by 97 percent and an 84-percent reduction would be achieved for POM emissions. Polycyclic organic matter emissions from paste production plants, estimated at 147 tpy at baseline, would be reduced by about 130 tpy, to about 16 tpy—an 89 percent reduction from current levels. Emissions of other HAPs included in the TF and POM emissions would also be reduced, as would non-HAP pollutants such as PM. For example, PM emissions would be reduced by 16,000 tpy.

The generation of solid waste and wastewater will be reduced when at least one plant replaces its wet scrubber system with a dry alumina scrubber. The dry alumina scrubber captures fluorides and other pollutants and returns them to the reduction cell. The proposed rule is estimated to have no significant effect on energy consumption.

B. Cost and Economic Impacts

The total capital cost of the proposed rule is estimated as about $160 million with a total annualized cost of $40 million per year. The estimated nationwide capital and annual costs of the proposed standards for potlines are estimated at $104 million and $23 million per year, respectively. The major cost impacts expected arise from the installation of dry alumina scrubbers for the primary control system at one plant and work practices, operating procedures, maintenance and repair, and equipment modifications at most plants. A few plants may incur capital costs to replace or upgrade hoods or doors and to install automated equipment for improved emission control.

The cost estimates for paste production assume that the 18 plants without dry coke scrubbers for the control of POM emissions will each install one. However, some plants may be able to meet the proposed performance standard with dry alumina scrubbers or other control devices, or they may be able to utilize many of the components of their existing system. The total capital cost is estimated at $26 million and the estimated total annualized cost is $6.1 million per year. The total capital cost for control of anode bake furnaces, estimated at $20.6 million, assumes that the 5 of 17 plants without a dry alumina scrubber must each install one. The total annualized cost is estimated at $6.2 million per year.

Currently, about one-third of existing potlines are sampled for TF on a regular basis. Because of the flexibility provided in the rule, many plants are expected to take advantage of the use of HF CEMs and Alcan cassettes for similar potlines, both of which are much less expensive than manual sampling using Methods 13 and 14. The nationwide capital cost estimate of $7 million for monitoring equipment includes new Method 14 manifolds, HF CEMs, and Alcan cassettes. The total annualized cost of monitoring (including capital recovery) is estimated as about $4 million per year after all plants are subject to the rule. These costs may be reduced significantly as plants qualify for reduced sampling frequency (e.g., quarterly instead of monthly). The CEM will have value as a process monitoring tool in addition to its use for monitoring to determine compliance.

The market price increase calculation indicated that implementing the controls will result in a primary aluminum market price increase of less than 1 percent. As a result of the low market price increase and relatively inelastic demand, the corresponding changes in output, employment, and total revenue were also low (all less than 1 percent). Therefore, the economic impact analysis estimates that the proposed rule will not result in significant economic impacts for the primary aluminum industry.

V. Selection of Proposed Standard

A. Selection of Pollutants

Total Fluoride. Historically, the combination of gaseous and particulate fluorides emitted from aluminum plants have been measured and regulated as emissions of TF. Methods 13A and 13B, originally promulgated in 1975, have been used for TF sampling and analyses, along with Method 14, which specifies the equipment and sampling procedures for emission testing of potroom roof monitors.

Traditionally, fluoride captured by the front-half filter has been called ''particulate fluoride,'' and fluoride captured in the back-half impingers has been called ''gaseous fluoride'' (GF). However, the method has been validated only as a measure of TF expressed as the sum of the front-half and back-half catches. Thus, TF has been used for many years as a surrogate to represent this mixture of gaseous and particulate fluorides, and most emissions data currently available result from sampling and analysis for TF.

During the development of the proposed standards, EPA discussed with State and industry representatives various options for measuring gaseous HF, the listed HAP, and the use of GF or TF as surrogate measures for HF. Several factors were considered in these discussions that led to the choice of TF as a measure of emission control performance. A major consideration was the absence of a validated, accurate method for measuring HF or GF. Studies by EPA in the development of Method 13 identified problems in attempts to obtain an accurate split between particulate and gaseous fluoride. Hydrogen fluoride is highly reactive and reacts with glass in the sampling probe to form silicon tetrafluoride. The reactivity of HF has also been a problem in developing an analytical standard; currently, there is no EPA analytical standard that can be used to determine the accuracy of attempts to measure HF. During sampling, particulate matter in the front half of the train adsorbs GF, where it is then measured as particulate fluoride. Fine particulate matter that passes through the filter is measured as GF in the back half of the train. These factors produce confounding effects in attempts to measure HF or GF with biases in different directions. In addition, the quantity of HF or GF that is formed is affected by humidity and the water content of raw materials.

A large historical database for TF was available to characterize the emission control performance of the industry, to identify the best controlled potlines, and to develop the MACT floor and MACT level of control. There was a discussion among many different parties as to whether the MACT performance standard should be based on TF or GF, and EPA concluded that TF provides the most defensible basis to ensure that the MACT level of control is achieved. However, EPA recognizes the importance of identifying the contribution of gaseous HF to adverse health effects when exposure modeling

is performed in the future. Consequently, the split between particulate and gaseous fluoride from Methods 13A and 13B will continue to be reported, and an attempt will be made to improve the accuracy and consistency of this determination. In addition, EPA is encouraging the development and application of HF CEMs as an improved monitoring tool for HF emissions.

Comments are requested on EPA's understanding of the issue of emission limits based on TF versus GF and on the potential to use back-half measurements from Method 13 to establish GF limits, even after considering the uncertainty described above. Any comments should be accompanied by information and data supporting the commenter's position. If public comments change EPA's perspective on this issue, EPA will announce the availability of data or additional information and will ask for comment on it.

POM. The choices for measuring POM included expensive sampling and analysis to identify and quantify each of the numerous individual compounds that might be present or to develop a reasonable surrogate measure for POM. During the MACT test program jointly funded by the EPA, the State of Washington Department of Ecology, and the industry, sampling and analysis were performed for both individual species and for a surrogate measure. The surrogate approach uses methylene chloride extractables from both the front and back halves of a modified Method 5 procedure. The testing program indicated that methylene chloride extractables provided an adequate surrogate measure of the total POM species at a fraction of the cost associated with speciation. The various parties involved in the rulemaking agreed that proposed Method 315 was the most feasible approach for measuring POM emissions. Consequently, the MACT level of POM control was defined from data for methylene chloride extractables, and Method 315, developed during the test program, is being proposed for POM compliance determinations for the primary aluminum industry.

B. Selection of Emission Limits

Potlines. The data analysis for each median potline, representing the average emission limitation achieved by the top five performing potlines, was based generally on the monthly averages of total fluoride emissions. The data for each of the MACT floor potlines were evaluated to determine the monthly average limit that had been achieved by the potline and to establish the MACT floor level of emission control. There are no monthly averages in the data set that exceed the proposed emission limits. Additional details on the derivation of emission limits and a complete listing of the data are given in the Basis and Purpose Document.

An exception to this procedure was developed for the CWPB3 subcategory (potlines producing very high purity aluminum and using wet scrubbers for the primary emission control system). For the CWPB3 subcategory, the MACT level was determined to be a level of control achieved by upgrading existing emission control equipment and procedures rather than the higher emission levels associated with historical performance. After considering improvements in control to date at these potlines and projected future improvements based on data for emissions and costs provided by the affected facility, the MACT level for CWPB3 was determined to be 2.5 lb TF/ton, which is the level of control that has been required historically for prebake potlines subject to the NSPS.

The POM limits for Soderberg potlines were determined from the data collected during the MACT test program. Because of the absence of valid POM data for the VSS2 subcategory, emissions data from the VSS1 subcategory measured before control by wet roof scrubbers were used. The VSS2 subcategory does not have wet roof scrubbers; consequently, this approach provides MACT emission limits that have been achieved for VSS2 potlines.

Anode Bake Furnaces. For anode bake furnaces, POM limits were developed from the best performing furnaces in the industry with the MACT technology (dry alumina scrubbers), which were the only ones for which EPA had adequate data to determine the MACT level of control. The TF limit for bake furnaces is based on emissions data that were used to determine the MACT level of control, which is equivalent to the level associated with the NSPS. The NSPS limit applies to eight existing anode bake furnaces.

Paste Production. Based on the POM data for paste plants, the EPA concluded that it was not practical to set an emission limit because there were too few data to characterize the control performance that could be achieved by the various types of paste plants and because of uncertainty in the limited existing data. The high level of uncertainty would cause EPA to set a standard that could be impractical on a technological basis. The EPA considered drafting a standard that would require each owner or operator to conduct measurements to set limits on a case-by-case basis; however, the cost of this approach was not considered to be reasonable, especially given the reasonableness and effectiveness of specifying a design and equipment standard. Consequently, the proposed rule requires the installation of a capture system that collects and vents emissions to a dry coke scrubber (or equivalent alternative control device) for all paste production plants.

New Source MACT. The emission limits proposed for new and reconstructed sources are based on the data for the best-controlled potline and anode bake furnace. The limit applies to all new potlines, and no distinction is made for the different subcategories that were developed for existing potlines. As provided in the definition of ''reconstruction'' in the proposed rule, two criteria must be met for a source to be considered reconstructed and subject to new source MACT: (1) All of the major components of the source must be replaced (for example, the major components of a potline include the raw material handling system, reduction cells, superstructure, hooding, ductwork, etc.), and (2) it must be technically and economically feasible for the reconstructed source to meet new source MACT.

The EPA believes that it is unlikely that an existing potline could be reconstructed in such a manner that it would be technically feasible for the potline to meet new source MACT unless the criteria described above are met. For example, the conversion of a Soderberg potline to a prebake potline, while retaining some of the major components of the original potline, is expected to subject the source to emission limits for existing prebake potlines rather than triggering new source MACT. Similarly, if an existing potline is modified to increase capacity (e.g., by adding more reduction cells), the modified potline would continue to be subject to MACT for existing sources.

VI. Public Participation

The EPA seeks full public participation in arriving at its final decisions and strongly encourages comments on all aspects of this proposal from all interested parties. Whenever applicable, full supporting data and detailed analyses should be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the Air and Radiation Docket and Information Center, Docket No. A–92–60 (see **ADDRESSES**). Comments on this notice must be submitted on or before the date specified in ''DATES.''

Commenters wishing to submit proprietary information for

consideration should clearly distinguish such information from other comments and clearly label it ''Confidential Business Information'' (CBI). Submissions containing such proprietary information should be sent directly to the Emission Standards Division CBI Office, U.S. Environmental Protection Agency (MD–13), Research Triangle Park, North Carolina 27711, with a copy of the cover letter directed to the contact person listed above. Confidential business information should not be sent to the public docket. Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in developing this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in case of judicial review. (See section 307(d)(7)(A) of the Act.)

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Act. Persons wishing to attend or to make oral presentations on the proposed standards should contact EPA (see **FOR FURTHER INFORMATION CONTACT**). To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement for the public hearing on or before October 28, 1996. Written statements should be addressed to the Air and Radiation Docket and Information Center (see **ADDRESSES**), and refer to Docket No. A–92–60. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or be mailed upon request, at the Air and Radiation Docket and Information Center (see **ADDRESSES**).

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The OMB has classified this rule as potentially significant and has requested review. Under the current regulatory agenda, this proposed rule will be submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. Any written EPA response to those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES**. The docket is available for public inspection at EPA's Air Docket Section, the location of which is listed in the **ADDRESSES** section of this preamble.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, EPA has involved State, local, and tribal Governments in the development of this proposed rule. These governments are not directly affected by the rule; i.e., they are not required to purchase control systems to meet the requirements of this rule. However, they will be required to implement the rule; e.g., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the resources burden of implementing the rule. State representatives and one tribal Government have been included in rule development meetings with EPA under the Share-A-MACT approach. Comments have been solicited from the State and tribal partners and have been carefully considered in the rule development process. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and EPA intends to fully consider these comments in developing of the final rule.

E. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, 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 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 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 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 EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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. In addition, EPA has determined that small governments will not be significantly or

uniquely affected by this proposed rule because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, this proposed rule is not subject to the requirements of the Unfunded Mandates Reform Act.

F. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended, Pub. L. 104–121, 110 Stat. 847, EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses and therefore no initial regulatory flexibility analysis under section 604(a) of the Act is required. EPA has determined that none of the 23 facilities in this industry could be classified as a small entity.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. ____), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M Street SW; Washington, DC 20460, or by calling (202) 260–2740.

The proposed information collection requirements include mandatory notifications, records, and reports required by the NESHAP General Provisions (40 CFR part 63, Subpart A). These information collection requirements are needed to confirm the compliance status of major sources, to identify any nonmajor sources not subject to the standards and any new or reconstructed sources subject to the standards, to confirm that emission control devices are being properly operated and maintained, and to ensure that the standards are being achieved. Based on the recorded and reported information, EPA can decide which plants, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized by section 114 of the Act (42 U.S.C. 7414). All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B. (See 41 FR 36902, September 1, 1976; 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979.)

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the rule) is estimated to total 54,600 hours for the 23 respondents and to average 2,400 hours per respondent (i.e., per plant). Each respondent would report semiannually. The annualized cost of monitoring equipment is estimated as $390,000 per year, with an operation and maintenance cost of $39,000 per year (excluding labor hours included in the previous total). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or 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 collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments are requested on the Agency's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M Street SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked ''Attention: Desk Office for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after September 26, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by October 28, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. Clean Air Act

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Primary aluminum reduction plants, Reporting and recordkeeping requirements.

Dated: August 22, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart LL to read as follows:

Subpart LL—National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

Sec.
63.840 Applicability.
63.841 Incorporation by reference.
63.842 Definitions.
63.843 Emission limits for existing sources.
63.844 Emission limits for new or reconstructed sources.
63.845 Emission averaging.
63.846 Performance tests.
63.847 Emission monitoring requirements.
63.848 Test methods and procedures.
63.849 Notification, reporting, and recordkeeping requirements.
63.850 Applicability of general provisions.
63.851 Delegation of authority.
63.852–63.859 [Reserved]

Appendix A to Subpart LL of Part 63—Applicability of General Provisions (40 CFR part 63, subpart A) To Subpart LL

Subpart LL—National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

§ 63.840 Applicability.

(a) Except as provided in paragraph (b) of this section, the requirements of this subpart apply to the owner or operator of each new or existing potline, paste production plant, or anode bake furnace associated with primary aluminum production and located at a major source as defined in § 63.3.

(b) The requirements of this subpart do not apply to the owner or operator

of an existing anode bake furnace that is not located on the same site as a primary aluminum reduction plant. The owner or operator shall comply with the MACT determinations established by the applicable regulatory authority pursuant to section 112(l) of the Act.

§ 63.841 Incorporation by reference.

(a) The following material is incorporated by reference in the corresponding sections noted. This incorporation by reference was approved by the Director of the Federal Register on ____ [Insert date of approval] in accordance with 5 U.S.C 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and notice of any change in the materials will be published in the Federal Register. Revisions to ''Industrial Ventilation: A Manual of Recommended Practice'' (22 ed.) are applicable only after publication of a document in the Federal Register to amend subpart LL to require use of the new information.

(1) Chapters 3 and 5 of ''Industrial Ventilation: A Manual of Recommended Practice'', American Conference of Governmental Industrial Hygienists, 22nd edition, 1995, IBR approved for §§ 63.843(b) and 63.844(b); and

(2) ASTM D 2986–95, Standard Practice for Evaluation of Air Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for section 7.1.1 of Method 315 in appendix A to this part.

(b) The materials incorporated by reference are available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, 7th Floor, Washington, DC and at the Air and Radiation Docket Center, U.S. EPA, 401 M Street, SW., Washington, DC. The materials also are available for purchase from one of the following addresses:

(1) Customer Service Department, American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, Ohio 45240, telephone number (513) 742–2020; or

(2) American Society for Testing and Materials, 100 Bar Harbour Drive, West Conshohocken, Pennsylvania 19428, telephone number (610) 832–9500.

§ 63.842 Definitions.

Terms used in this subpart are defined in the Clean Air Act as amended (the Act), in § 63.2, or in this section as follows:

Anode bake furnace means an oven in which the formed green anodes are baked for use in a prebake process. This definition includes multiple anode bake furnaces controlled by a common control device (i.e., bake furnaces controlled by a common control device are considered to be one source).

Center-worked prebake (CWPB) process means a method of primary aluminum reduction using the prebake process in which the alumina feed is added down the center of the reduction cell.

Center-worked prebake one (CWPB1) means all existing center-worked prebake potlines not defined as center-worked prebake two (CWPB2) or center-worked prebake three (CWPB3) potlines.

Center-worked prebake two (CWPB2) means all existing center-worked prebake potlines located at Alcoa in Rockdale, Texas; Kaiser Aluminum in Mead, Washington; Ormet Corporation in Hannibal, Ohio; Ravenswood Aluminum in Ravenswood, West Virginia; Reynolds Metals in Troutdale, Oregon; and Vanalco Aluminum in Vancouver, Washington.

Center-worked prebake three (CWPB3) means all existing center-worked prebake potlines that produce very high purity aluminum, have a wet scrubber for the primary control system, and are located at the NSA primary aluminum plant in Hawesville, Kentucky.

Horizontal stud Soderberg (HSS) process means a method of primary aluminum reduction using the Soderberg process in which the electrical current is introduced to the anode by steel rods (studs) inserted into the side of a monolithic anode.

Paste production plant means the processes whereby calcined petroleum coke, coal tar pitch (hard or liquid), and/or other materials are mixed, transferred, and formed into briquettes or paste for vertical stud Soderberg (VSS) and HSS processes or into green anodes for a prebake process. This definition includes all operations from initial mixing to final forming (i.e., briquettes, paste, green anodes) within the paste plant, including conveyors and units managing heated liquid pitch.

Polycyclic organic matter (POM) means organic matter extractable by methylene chloride as determined by Method 315 in appendix A to this part or by an approved alternative method.

Potline means a single, discrete group of electrolytic reduction cells electrically connected in series, in which alumina is reduced to form aluminum.

Prebake process means a method of primary aluminum reduction that utilizes a baked anode, which is introduced into the top of the reduction cell and consumed as part of the reduction process.

Primary aluminum reduction plant means any facility manufacturing aluminum by electrolytic reduction.

Reconstruction means the replacement of components of a source to such an extent that:

(1) All of the major components of the source are replaced (for example, the major components of a potline include the raw material handling system, reduction cells, superstructure, hooding, ductwork, etc.); and

(2) It is technologically and economically feasible for the reconstructed source to meet the standards for new sources established in this subpart.

Roof monitor means that portion of the roof of a potroom building where gases not captured at the cell exit from the potroom.

Side-worked prebake (SWPB) process means a method of primary aluminum reduction using the prebake process, in which the alumina is added along the sides of the reduction cell.

Soderberg process means a method of primary aluminum reduction in which the anode paste mixture is baked in the reduction pot by the heat resulting from the electrolytic process.

Total fluorides (TF) means elemental fluorine and all fluoride compounds as measured by Method 13A or 13B in appendix A to part 60 of this chapter or by an approved alternative method.

Vertical stud Soderberg (VSS) process means a method of primary aluminum reduction using the Soderberg process, in which the electrical current is introduced to the anode by steel rods (studs) inserted into the top of a monolithic anode.

Vertical stud Soderberg one (VSS1) means all existing vertical stud Soderberg potlines located either at Northwest Aluminum in The Dalles, Oregon, or at Columbia Aluminum in Goldendale, Washington.

Vertical stud Soderberg two (VSS2) means all existing vertical stud Soderberg potlines located at Columbia Falls Aluminum in Columbia Falls, Montana.

§ 63.843 Emission limits for existing sources.

(a) *Potlines.* The owner or operator shall not discharge or cause to be discharged into the atmosphere any emissions of TF or POM in excess of the applicable limits in paragraphs (a)(1) and (a)(2) of this section.

(1) *TF limits.* Emissions of TF shall not exceed:

(i) 0.95 kg/Mg (1.9 lb/ton) of aluminum produced for each CWPB1 potline;

(ii) 1.5 kg/Mg (3.0 lb/ton) of aluminum produced for each CWPB2 potline;

(iii) 1.25 kg/Mg (2.5 lb/ton) of aluminum produced for each CWPB3 potline;

(iv) 0.8 kg/Mg (1.6 lb/ton) of aluminum produced for each SWPB potline;

(v) 1.1 kg/Mg (2.2 lb/ton) of aluminum produced for each VSS1 potline;

(vi) 1.35 kg/Mg (2.7 lb/ton) of aluminum produced for each VSS2 potline; and

(vii) 1.35 kg/Mg (2.7 lb/ton) of aluminum produced for each HSS potline.

(2) *POM limits.* Emissions of POM shall not exceed:

(i) 2.35 kg/Mg (4.7 lb/ton) of aluminum produced for each HSS potline;

(ii) 1.2 kg/Mg (2.4 lb/ton) of aluminum produced for each VSS1 potline; and

(iii) 1.85 kg/Mg (3.7 lb/ton) of aluminum produced for each VSS2 potline.

(3) *Change in subcategory.* Any potline, other than a reconstructed potline, that is changed such that its applicable subcategory also changes shall meet the applicable emission limit in this subpart for the original subcategory or the new subcategory, whichever is more stringent.

(b) *Paste production plants.* The owner or operator shall install, operate, and maintain equipment for the capture and control of POM emissions from each paste production plant.

(1) The emission capture system shall be installed and operated to meet the generally accepted engineering standards for minimum exhaust rates as published by the American Conference of Governmental Industrial Hygienists in ''Industrial Ventilation: A Handbook of Recommended Practice'' (incorporated by reference in § 63.841); and

(2) Captured emissions shall be routed through a closed system to a dry coke scrubber; or

(3) The owner or operator may submit a written request for use of an alternative control device to the applicable regulatory authority for review and approval. The request shall contain information and data demonstrating that the alternative control device achieves a POM emission reduction efficiency of at least 95 percent for plants with continuous mixers and a POM emission reduction efficiency of at least 90 percent for plants with batch mixers.

(c) *Anode bake furnaces.* The owner or operator shall not discharge or cause to be discharged into the atmosphere any emissions of TF or POM in excess of the limits in paragraphs (c)(1) and (c)(2) of this section.

(1) *TF limit.* Emissions of TF shall not exceed 0.10 kg/Mg (0.20 lb/ton) of green anode; and

(2) *POM limit.* Emissions of POM shall not exceed 0.09 kg/Mg (0.18 lb/ton) of green anode.

§ 63.844 Emission limits for new or reconstructed sources.

(a) *Potlines.* The owner or operator shall not discharge or cause to be discharged into the atmosphere any emissions of TF or POM in excess of the limits in paragraphs (a)(1) and (a)(2) of this section.

(1) *TF limit.* Emissions of TF shall not exceed 0.6 kg/Mg (1.2 lb/ton) of aluminum produced; and

(2) *POM limit.* Emissions of POM shall not exceed 0.32 kg/Mg (0.63 lb/ton) of aluminum produced.

(b) *Paste production plants.* The owner or operator shall meet the requirements in § 63.843(b) for existing paste production plants.

(c) *Anode bake furnaces.* The owner or operator shall not discharge or cause to be discharged into the atmosphere any emissions of TF or POM in excess of the limits in paragraph (c)(1) and (c)(2) of this section.

(1) *TF limit.* Emissions of TF shall not exceed 0.01 kg/Mg (0.02 lb/ton) of green anode; and

(2) *POM limit.* Emissions of POM shall not exceed 0.025 kg/Mg (0.05 lb/ton) of green anode.

§ 63.845 Emission averaging.

(a) *General.* The owner or operator of an existing potline or anode bake furnace in a State that does not choose to exclude emission averaging in the approved operating permit program may demonstrate compliance by emission averaging according to the procedures in this section.

(b) *Potlines.* The owner or operator may average TF emissions from potlines and demonstrate compliance with the limits in Table 1 of this subpart using the procedures in paragraphs (b)(1) and (b)(2) of this section. The owner or operator also may average POM emissions from potlines and demonstrate compliance with the limits in Table 2 of this subpart using the procedures in paragraphs (b)(1) and (b)(2) of this section.

(1) Monthly average emissions of TF and/or quarterly average emissions of POM, calculated from the total emissions from all potlines over the period divided by the quantity of aluminum produced for the period, from a given number of potlines making up each averaging group, shall not exceed the applicable emission limit in Table 1 of this subpart (for TF emissions) and/or Table 2 of this subpart (for POM emissions).

(2) To determine compliance with the applicable emission limit in Table 1 of this subpart (for TF emissions) and/or Table 2 of this subpart (for POM emissions), the owner or operator shall determine the monthly average emissions (in lb/ton) from all potlines from at least three runs each month for TF secondary emissions and/or the quarterly average emissions from at least one run each month for POM emissions.

TABLE 1.—POTLINE TF LIMITS FOR EMISSION AVERAGING

Type	Monthly TF limit (lb/ton) [for given number of potlines]						
	2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
CWPB1	1.7	1.6	1.5	1.5	1.4	1.4	1.4
CWPB2	2.9	2.8	2.7	2.7	2.6	2.6	2.6
CWPB3	2.3	2.2	2.2	2.1	2.1	2.1	2.1
VSS1	2.0	1.9	1.8	1.7	1.7	1.7	1.7
VSS2	2.6	2.5	2.5	2.4	2.4	2.4	2.4
HSS	2.5	2.4	2.4	2.3	2.3	2.3	2.3
SWPB	1.4	1.3	1.3	1.2	1.2	1.2	1.2

TABLE 2.—POTLINE POM LIMITS FOR EMISSION AVERAGING

Type	Quarterly POM limit (lb/ton) [for given number of potlines]						
	2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
HSS	4.1	3.8	3.7	3.5	3.5	3.4	3.3
VSS1	2.1	2.0	1.9	1.9	1.8	1.8	1.8
VSS2	3.4	3.2	3.2	3.1	3.1	3.0	3.0

The owner or operator shall combine the results of secondary TF monthly average emissions with the TF results for the primary control system and/or the results of quarterly average POM emissions with the POM results for the primary control system and divide total emissions by total aluminum production.

(c) *Anode bake furnaces.* The owner or operator may average TF emissions from anode bake furnaces and demonstrate compliance with the limits in Table 3 of this subpart using the procedures in paragraphs (c)(1) and (c)(2) of this section. The owner or operator also may average POM emissions from anode bake furnaces and demonstrate compliance with the limits in Table 3 of this subpart using the procedures in paragraphs (c)(1) and (c)(2) of this section.

(1) Annual emissions of TF and/or POM from a given number of anode bake furnaces making up each averaging group shall not exceed the applicable emission limit in Table 3 of this subpart in any one year; and

(2) To determine compliance with the applicable emission limit in Table 3 of this subpart for anode bake furnaces, the owner or operator shall determine TF and/or POM emissions from the control device for each furnace at least once a year using the procedures and methods in §§ 63.846 and 63.848.

TABLE 3.—ANODE BAKE FURNACE LIMITS FOR EMISSION AVERAGING

Number of furnaces	Emission limit (lb/ton of anode)	
	TF	POM
2	0.11	0.17
3	0.090	0.17
4	0.077	0.17
5	0.070	0.17

(d) *Implementation Plan.* Unless an operating permit application has been submitted, the owner or operator shall develop and submit an Implementation Plan for emission averaging to the applicable regulatory authority for review and approval according to the following procedures and requirements:

(1) *Deadlines.* The owner or operator must submit the Implementation Plan no later than 6 months before the applicable compliance date.

(2) *Contents.* The owner or operator shall include the following information in the Implementation Plan or in the application for an operating permit for all emission sources to be included in an emissions average.

(i) The identification of all emission sources (potlines or anode bake furnaces) in the average;

(ii) The assigned TF or POM emission limit for each averaging group of potlines or anode bake furnaces;

(iii) The specific control technology or pollution prevention measure to be used for each emission source in the averaging group and the date of its installation or application. If the pollution prevention measure reduces or eliminates emissions from multiple sources, the owner or operator must identify each source;

(iv) Results of an initial performance test conducted according to the procedures and methods in §§ 63.846 and 63.848 to determine the TF or POM emissions and emission reduction from each source in the averaging group, and supporting documentation (all equations, calculations, procedures, measurement data, and quality assurance/quality control procedures);

(v) The operating parameters to be monitored for each control system or device and the operating limits established according to § 63.846(g)(1);

(vi) If the owner or operator requests to monitor an alternative operating parameter pursuant to § 63.847(l):

(A) A description of the parameter(s) to be monitored and an explanation of the criteria used to select the parameter(s); and

(B) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device; the frequency and content of monitoring, reporting, and recordkeeping requirements; and a demonstration, to the satisfaction of the applicable regulatory authority, that the proposed monitoring frequency is sufficient to represent control device operating conditions; and

(vii) A demonstration that compliance with each of the applicable emission limit(s) will be achieved under representative operating conditions.

(3) *Approval criteria.* Upon receipt, the regulatory authority shall review and approve or disapprove the plan or permit application according to the following criteria:

(i) Whether the content of the plan includes all of the information specified in paragraph (d)(2) of this section; and

(ii) Whether the plan or permit application presents sufficient information to determine that compliance will be achieved and maintained.

(4) *Prohibitions.* The applicable regulatory authority shall not approve an Implementation Plan or permit application containing any of the following provisions:

(i) Any averaging between emissions of differing pollutants or between differing sources. Emission averaging shall not be allowed between TF and POM, and emission averaging shall not be allowed between potlines and bake furnaces;

(ii) The inclusion of any emission source other than an existing potline or anode bake furnace or the inclusion of any potline or anode bake plant not subject to the same operating permit;

(iii) The inclusion of any potline or anode bake furnace while it is shutdown; or

(iv) The inclusion of any periods of startup, shutdown, or malfunction, as described in the Startup, Shutdown, and Malfunction Plan required by § 63.6(e)(3), in the emission calculations for the Implementation Plan.

(5) *Term.* Following review, the applicable regulatory authority shall approve the plan or permit application, request changes, or request additional information. Once the applicable regulatory authority receives any additional information requested, the applicable regulatory authority shall approve or disapprove the plan or permit application within 120 days.

(i) The applicable regulatory authority shall approve the plan for the term of the operating permit;

(ii) To revise the plan prior to the end of the permit term, the owner or

operator shall submit a request to the applicable regulatory authority; and

(iii) The owner or operator may submit a request to the applicable regulatory authority to implement emission averaging after the applicable compliance date.

(6) *Operation.* While operating under an approved Implementation Plan, the owner or operator shall monitor the operating parameters of each control system, keep records, and submit periodic reports as required for each source subject to this subpart.

§ 63.846 Performance tests.

(a) *Compliance dates.* The owner or operator of a primary aluminum plant shall demonstrate initial compliance with the requirements of this subpart by:

(1) ____ [Insert date 2 years following the effective date of the final rule], for an owner or operator of an existing plant or source;

(2) ____ [Insert date 3 years following the effective date of the final rule], for an existing source, provided the owner or operator demonstrates to the satisfaction of the applicable regulatory authority that additional time is needed to install or modify the emission control equipment;

(3) ____ [Insert date 4 years following the effective date of the final rule], for an existing source that is granted an extension by the regulatory authority under section 112(i)(3)(B) of the Act; or

(4) Upon startup, for an owner or operator of a new or reconstructed source.

(b) *Potlines and anode bake furnaces.* During the first month following the compliance date, the owner or operator shall conduct an initial performance test to determine and demonstrate compliance with the applicable TF and POM emission limits for each new or existing potline and anode bake furnace. The owner or operator shall conduct the initial performance test (and subsequent performance tests) according to the requirements in § 63.7 and in this section.

(c) *Test plan.* The owner or operator shall prepare a site-specific test plan prior to the initial performance test according to the requirements of § 63.7(c)(2). The test plan must include procedures for conducting the initial performance test and for subsequent performance tests required in § 63.847 for emission monitoring. In addition to the information required by § 63.7, the test plan shall include:

(1) Procedures to ensure a minimum of three runs are performed annually for the primary control system for each source;

(2) For a source with a single control device exhausted through multiple stacks, procedures to ensure that at least three runs are performed annually by a representative sample of the stacks satisfactory to the applicable regulatory authority;

(3) For multiple control devices on a single source, procedures to ensure that at least one run is performed annually for each control device by a representative sample of the stacks satisfactory to the applicable regulatory authority;

(4) Procedures for sampling single stacks associated with multiple anode bake furnaces;

(5) For plants with roof scrubbers, procedures for rotating sampling among the scrubbers;

(6) For a VSS1 potline, procedures to ensure that one fan (or one scrubber) per potline is sampled for each run;

(7) For a SWPB potline, procedures to ensure that the average of the sampling results for two fans (or two scrubbers) per potline is used for each run; and

(8) Procedures for establishing the frequency of testing to ensure that at least one run is performed before the 15th of the month, at least one run is performed after the 15th of the month, and that there are at least 6 days between two of the runs during the month, or that secondary emissions are measured according to an alternate schedule satisfactory to the applicable regulatory authority.

(d) *Initial performance test.* Following approval of the site-specific test plan, the owner or operator shall conduct an initial performance test in accordance with the requirements of the general provisions in subpart A of this part, the approved test plan, and the procedures in this section.

(1) *TF emissions from potlines.* For each potline, the owner or operator shall measure and record the emission rate of TF exiting the outlet of the primary control system for each potline and the rate of secondary emissions exiting through each roof monitor, or for a plant with roof scrubbers, exiting through the scrubbers. Using the equation in paragraph (e)(1) of this section, the owner or operator shall compute and record the average of at least three runs to determine compliance with the applicable emission limit. Compliance is demonstrated when the emission rate of TF is equal to or less than the applicable emission limit in §§ 63.843, 63.844, or 63.845.

(2) *POM emissions from Soderberg potlines.* For each Soderberg (HSS, VSS1, and VSS2) potline, the owner or operator shall measure and record the emission rate of POM exiting the primary emission control system and the rate of secondary emissions exiting through each roof monitor, or for a plant with roof scrubbers, exiting through the scrubbers. Using the equation in paragraph (e)(2) of this section, the owner or operator shall compute and record the average of at least three runs to determine compliance with the applicable emission limit. Compliance is demonstrated when the emission rate of POM is equal to or less than the applicable emission limit in §§ 63.843, 63.844, or 63.845.

(3) *Previous control device tests.* If the owner or operator has performed more than one test of primary emission control device(s) for a potline during the previous consecutive 12 months, the average of all runs performed in the previous 12-month period shall be used to determine the contribution from the primary emission control system.

(4) *TF and POM emissions from anode bake furnaces.* For each anode bake furnace, the owner or operator shall measure and record the emission rate of TF and POM exiting the exhaust stack(s) of the primary emission control system for each anode bake furnace. Using the equations in paragraphs (e)(3) and (e)(4) of this section, the owner or operator shall compute and record the average of at least three runs to determine compliance with the applicable emission limits for TF and POM. Compliance is demonstrated when the emission rates of TF and POM are equal to or less than the applicable TF and POM emission limits in §§ 63.843, 63.844, or 63.845.

(e) *Equations.* The owner or operator shall determine compliance with the applicable TF and POM emission limits using the following equations and procedures:

(1) Compute the emission rate (E_p) of TF from each potline using Equation 2:

$$E_p = \frac{\left[\left(C_{s1} \times Q_{sd}\right)_1 + \left(C_{s2} \times Q_{sd}\right)_2\right]}{(P \times K)} \qquad \text{(Equation 2)}$$

where

E_p=emission rate of TF from a potline, kg/Mg (lb/ton);

C_{s1}=concentration of TF from the primary control system, mg/dscm (mg/dscf);

Q_{sd}=volumetric flow rate of effluent gas, dscm/hr (dscf/hr);

C_{s2}=concentration of TF as measured for roof monitor emissions, mg/dscm (mg/dscf);

P=aluminum production rate, Mg/hr (ton/hr);

K=conversion factor, 10^6 mg/kg (453,600 mg/lb);

$_1$=subscript for primary control system effluent gas; and

$_2$=subscript for secondary control system or roof monitor effluent gas.

(2) Compute the emission rate of POM from each potline using Equation 2, where

E_p=emission rate of POM from the potline, kg/mg (lb/ton); and

C_s=concentration of POM, mg/dscm (mg/dscf). POM emission data collected during the installation and startup of a cathode shall not be included in C_s.

(3) Compute the emission rate (E_b) of TF from each anode bake furnace using Equation 3,

$$E_b = \frac{(C_s \times Q_{sd})}{(P_b \times K)} \qquad \text{(Equation 3)}$$

where

E_b=emission rate of TF, kg/Mg (lb/ton) of green anodes produced;

C_s=concentration of TF, mg/dscm (mg/dscf);

Q_{sd}=volumetric flow rate of effluent gas, dscm/hr (dscf/hr);

P_b=quantity of green anode material placed in the furnace, Mg/hr (ton/hr); and

K=conversion factor, 10^6 mg/kg (453,600 mg/lb).

(4) Compute the emission rate of POM from each anode bake furnace using Equation 3,

where

C_s=concentration of POM, mg/dscm (mg/dscf).

(5) Determine the weight of the aluminum tapped from the potline and the weight of the green anode material placed in the anode bake furnace using the monitoring devices required in § 63.847(j).

(6) Determine the aluminum production rate (P) by dividing 720 hours into the weight of aluminum tapped from the potline during a period of 30 days before and including the final run of a performance test.

(7) Determine the rate of green anode material introduced into the furnace by dividing the number of operating hours into the weight of green anode material used during an operating cycle.

(f) *Paste production plants.* Initial compliance with the standards for existing and new paste production plants in §§ 63.843(b) and 63.844(b) will be demonstrated through site inspection(s) and review of site records by the applicable regulatory authority.

(g) *Parameter operating range for control devices.* The owner or operator shall determine the operating limits for each of the control devices that is to be monitored as described in § 63.847(f).

(1) For potlines and anode bake furnaces, the owner or operator shall determine upper and/or lower operating limits, as appropriate, for each monitoring device from the values recorded during each of the runs performed during the initial performance test and from historical data from previous performance tests conducted by the methods specified in this subpart.

(2) For a paste production plant, the owner or operator shall specify parameters to be monitored and operating limits for the capture and control devices in the application for a part 70 operating permit (or an administrative amendment to the part 70 operating permit if a permit has already been issued).

(3) The owner or operator may redetermine the upper and/or lower operating limits, as appropriate, based on historical data or other information and submit an application to the applicable regulatory authority to change the applicable limit(s). The redetermined limits shall become effective upon approval by the applicable regulatory authority.

§ 63.847 Emission monitoring requirements.

(a) *TF emissions from potlines.* Using the procedures in § 63.846 and in the approved test plan, the owner or operator shall monitor emissions of TF from each potline by conducting monthly performance tests. The owner or operator shall compute and record the monthly average from at least three runs for secondary emissions and the previous 12-month average of all runs for the primary control system to determine compliance with the applicable emission limit. The owner or operator must include all valid runs in the monthly average.

(b) *POM emissions from existing Soderberg potlines.* Using the procedures in § 63.846 and in the approved test plan, the owner or operator shall monitor emissions of POM from each Soderberg (HSS, VSS1, and VSS2) potline every three months. The owner or operator shall compute and record the quarterly (3-month) average from at least one run per month for secondary emissions and the previous 12-month average of all runs for the primary control systems to determine compliance with the applicable emission limit. The owner or operator must include all valid runs in the quarterly (3-month) average.

(c) *TF and POM emissions from anode bake furnaces.* Using the procedures in § 63.846 and in the approved test plan, the owner or operator shall monitor TF and POM emissions from each anode bake furnace on an annual basis. The owner or operator shall compute and record the annual average of TF and POM emissions from at least three runs to determine compliance with the applicable emission limits. The owner or operator must include all valid runs in the annual average.

(d) *Similar potlines.* As an alternative to monthly monitoring of TF or POM secondary emissions from each potline, the owner or operator may perform a monthly performance test for one potline to represent a similar potline(s). A similar potline must be in the same operating condition, have the same cell and hooding design, share the same work practices, and have the same or better level of emission control performance than the potline tested by the applicable test methods.

(1) To demonstrate (to the satisfaction of the regulatory authority) that the level of emission control performance is the same or better, the owner or operator shall perform an emission test using an alternative monitoring procedure for the similar potline simultaneously with an emission test using the applicable test methods. The results of the emissions test using the applicable test methods must be in compliance with the applicable emission limit for existing or new potlines in §§ 63.843 or 63.844. An alternative method:

(i) For TF emissions, must account for or include gaseous fluoride and cannot be based on measurement of particulate matter or particulate fluoride alone; and

(ii) For TF and POM emissions, must meet or exceed Method 14 criteria.

(2) The following methods are approved alternatives for the monitoring of TF secondary emissions:

(i) An HF continuous emission monitoring system; and

(ii) The Alcan cassette sampling system.

(3) An owner or operator electing to use an alternative monitoring procedure shall establish an equivalent alternative emission limit based on at least nine simultaneous runs using the applicable test methods and the alternative monitoring method. All runs must cover a full process cycle.

(4) The owner or operator shall derive an equivalent alternative emission limit for the HF continuous emission monitor, the Alcan cassette sampling system, or an alternative method using either of the following procedures:

(i) Use the highest value associated with a simultaneous run by the applicable test methods that does not exceed the applicable emission limit; or

(ii) Correlate the results of the two methods (the applicable test method results and the alternative monitoring method) and establish an emission limit for the alternative monitoring system that corresponds to the applicable emission limit.

(5) The owner or operator shall submit the results of the correlated value or the highest value that does not exceed the applicable emission limit and all supporting documentation to the applicable regulatory authority for approval along with a request for a part 70 operating permit (or an administrative amendment to the part 70 operating permit if a permit has already been issued).

(6) Following approval by the applicable regulatory authority, the owner or operator shall perform monthly emission monitoring using the approved alternative monitoring procedure to demonstrate compliance with the equivalent alternative emission limit for each similar potline rather than the applicable TF emission limit.

(e) *Reduced sampling frequency.* The owner or operator may submit a written request to the applicable regulatory authority to establish an alternative testing requirement that requires less frequent testing for TF and POM emissions from potlines or anode bake furnaces.

(1) In the request, the owner or operator shall provide information and data demonstrating, to the satisfaction of the applicable regulatory authority, that the emissions from these sources have low variability during normal operations.

(2) The regulatory authority may evaluate the alternative testing requirement based on the approach used in ''Primary Aluminum: Statistical Analysis of Potline Fluoride Emissions and Alternative Sampling Frequency'' (EPA–450–86–012, October 1986), which is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

(3) An approved alternative requirement must include a test schedule and the method to be used to measure emissions for the purpose of performance tests.

(4) The applicable regulatory authority shall publish the approved alternative monitoring requirement in the Federal Register.

(5) The owner or operator of a plant that has received approval of an alternative sampling frequency under § 60.194 of this chapter is deemed to have approval of the alternative sampling frequency under this subpart.

(6) If emissions in excess of the applicable TF or POM limit occur, the approved alternative sampling frequency is no longer in effect and the owner or operator shall immediately return to the monthly sampling schedule required by paragraph (a), (b), or (c) of this section until another request for an alternative sampling frequency is approved by the applicable regulatory authority.

(f) *Monitoring devices.* The owner or operator shall install, operate, calibrate, and maintain a monitoring device(s) for each emission control system as follows:

(1) For dry alumina scrubbers, devices for the measurement of alumina flow and air flow;

(2) For dry coke scrubbers, devices for the measurement of coke flow and air flow;

(3) For wet scrubbers as the primary control system, devices for the measurement of water flow and air flow;

(4) For electrostatic precipitators, devices for the measurement of voltage and secondary current; and

(5) For wet roof scrubbers for secondary emission control:

(i) A device for the measurement of total water flow; and

(ii) The owner or operator shall inspect each control device at least once each operating day to ensure the control device is operating properly and record the results of each inspection.

(g) *Visible emissions.* The owner or operator shall visually inspect the exhaust stack(s) of each control device on a daily basis for evidence of any visible emissions indicating abnormal operation.

(h) *Corrective action.* If a monitoring device for a primary control device measures an operating parameter outside the limit(s) established pursuant to § 63.846(g); if visible emissions indicating abnormal operation are observed from the exhaust stack of a control device during a daily inspection, or if a problem is detected during the daily inspection of a wet roof scrubber for potline secondary emission control, the owner or operator shall initiate the corrective action procedures identified in the Startup, Shutdown, and Malfunction Plan within 1 hour. Failure to initiate the corrective action procedures within 1 hour or to take the necessary corrective actions to remedy the problem is a violation.

(i) *Exceedances.* If the limit for a given operating parameter associated with monitoring a specific control device is exceeded 6 times in any semiannual reporting period, then any subsequent exceedance in that reporting period is a violation. For the purpose of determining the number of exceedances, no more than one exceedance shall be attributed in any given 24 hour period.

(j) *Weight of aluminum and green anodes.* The owner or operator of a new or existing potline or anode bake furnace shall install, operate, and maintain a monitoring device to determine the daily weight of aluminum produced and the weight of green anode material placed in the anode bake furnace during an operating cycle. The weight of green anode material may be determined by monitoring the weight of all anodes or by monitoring the number of anodes placed in the furnace and determining an average weight from measurements of a representative sample of anodes.

(k) *Accuracy and calibration.* All monitoring devices required by this section must be certified by the manufacturer to meet the accuracy requirements specified by the applicable regulatory authority in the part 70 operating permit and must be calibrated in accordance with the manufacturer's instructions.

(l) *Alternative operating parameters.* The owner or operator may monitor alternative control device operating parameters subject to prior written approval by the applicable regulatory authority.

(m) *Other control systems.* An owner or operator using a control system not identified in this section shall request that the applicable regulatory authority include the recommended parameters

for monitoring in the facility's part 70 permit.

§ 63.848 Test methods and procedures.

(a) The owner or operator shall use the following reference methods to determine compliance with the applicable emission limits for TF and POM emissions:

(1) Method 1 in appendix A to part 60 of this chapter for sample and velocity traverses;

(2) Method 2 in appendix A to part 60 of this chapter for velocity and volumetric flow rate;

(3) Method 3 in appendix A to part 60 of this chapter for gas analysis;

(4) Method 13A or Method 13B in appendix A to part 60 of this chapter, or an approved alternative, for the concentration of TF where stack or duct emissions are sampled;

(5) Method 13A or Method 13B and Method 14 in appendix A to part 60 of this chapter or an approved alternative method for the concentration of TF where emissions are sampled from roof monitors not employing wet roof scrubbers;

(6) Method 315 in appendix A to this part or an approved alternative method for the concentration of POM where stack or duct emissions are sampled; and

(7) Method 315 in appendix A to this part and Method 14 in appendix A to part 60 of this chapter or an approved alternative method for the concentration of POM where emissions are sampled from roof monitors not employing wet roof scrubbers.

(b) The owner or operator of a VSS potline or a SWPB potline equipped with wet roof scrubbers for the control of secondary emissions shall use methods that meet the intent sampling requirements of Method 14 in appendix A to part 60 of this chapter and that are approved by the State. Sample analysis shall be performed using Method 13A or Method 13B in appendix A to part 60 of this chapter for TF, Method 315 in appendix A to this part for POM, or by an approved alternative method.

(c) References to ''potroom'' or ''potroom group'' in Method 14 in appendix A to part 60 of this chapter shall be interpreted as ''potline'' for the purposes of this subpart.

(d) For sampling using Method 14 in appendix A to part 60 of this chapter, the owner or operator shall install one Method 14 manifold per potline in a potroom that is representative of the entire potline, and this manifold shall meet the installation requirements specified in section 2.2.1 of Method 14 in appendix A to part 60 of this chapter.

(e) The owner or operator may use an alternative test method for TF or POM emissions providing:

(1) The owner or operator has already demonstrated the equivalency of the alternative method for a specific plant and has received previous approval from the Administrator or the applicable regulatory authority for TF or POM measurements using the alternative method; or

(2) The owner or operator demonstrates to the satisfaction of the applicable regulatory authority that the alternative method results are correlated to the sampling results from simultaneously sampling using Methods 13 and 14 in appendix A to part 60 of this chapter and the alternative method for TF or Method 315 in appendix A to this part, Method 14 in appendix A to part 60 of this chapter, and the alternative method for POM.

§ 63.849 Notification, reporting, and recordkeeping requirements.

(a) *Notifications.* As required by § 63.9 (b) through (d), the owner or operator shall submit the following written notifications:

(1) Notification for an area source that subsequently increases its emissions such that the source is a major source subject to the standard;

(2) Notification that a source is subject to the standard, where the initial startup is before the effective date of the standard;

(3) Notification that a source is subject to the standard, where the source is new or has been reconstructed, the initial startup is after the effective date of the standard, and for which an application for approval of construction or reconstruction is not required;

(4) Notification of intention to construct a new major source or reconstruct a major source; of the date construction or reconstruction commenced; of the anticipated date of startup; of the actual date of startup, where the initial startup of a new or reconstructed source occurs after the effective date of the standard, and for which an application for approval of construction or reconstruction is required; [See § 63.9 (b)(4) and (b)(5).]

(5) Notification of special compliance obligations;

(6) Notification of performance test;

(7) Notification of compliance status. The owner or operator shall develop and submit to the applicable regulatory authority, if requested, an engineering plan that describes the techniques that will be used to address the capture efficiency of the reduction cells for gaseous hazardous air pollutants in compliance with the emission limits in §§ 63.843, 63.844, and 63.845; and

(8) Notification for continuous emission monitor.

(b) *Performance test report.* As required by § 63.10(d)(2), the owner or operator shall report the results of the initial performance test as part of the notification of compliance status required in paragraph (a)(7) of this section.

(c) *Startup, Shutdown, and Malfunction Plan and reports.* The owner or operator shall develop and implement a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and control systems used to comply with the standard. In addition to the information required in § 63.6(e)(2), the plan shall include:

(1) Procedures, including corrective actions, to be followed if a monitoring device measures an operating parameter outside the limit(s) established under § 63.846(g), if visible emissions from an exhaust stack indicating abnormal operation of a control device are observed by the owner or operator during the daily inspection required in § 63.847(g), or if a problem is detected during the daily inspection of a wet roof scrubber for potline secondary emission control required in § 63.847(f)(5)(ii); and

(2) The owner or operator shall also keep records of each event as required by § 63.10(b) and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the procedures in the plan as described in § 63.6(e)(3)(iv).

(d) *Excess emissions report.* As required by § 63.10(e)(3), the owner or operator shall submit a report (or a summary report) if measured emissions are in excess of the applicable standard. The report shall contain the information specified in § 63.10(e)(3)(v) and be submitted semiannually unless quarterly reports are required as a result of excess emissions.

(e) *Recordkeeping.* The owner or operator shall maintain files of all information (including all reports and notifications) required by § 63.10(b) and by this subpart.

(1) The owner or operator must retain each record for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The most recent 2 years of records must be retained at the facility. The remaining 3 years of records may be retained off site;

(2) The owner or operator may retain records on microfilm, on a computer, on computer disks, on magnetic tape, or on microfiche;

(3) The owner or operator may report required information on paper or on a labeled computer disc using commonly available and compatible computer software; and

(4) In addition to the general records required by § 63.10(b), the owner or operator shall maintain records of the following information:

(i) Daily production rate of aluminum;

(ii) Production rate of green anode material placed in the anode bake furnace for each operating cycle;

(iii) A copy of the Startup, Shutdown, and Malfunction Plan;

(iv) Records of design information for paste production plant capture systems;

(v) Records of design information for an alternative emission control device for a paste production plant;

(vi) Records supporting the monitoring of similar potlines demonstrating the performance of similar potlines is the same or better than that of potlines sampled by manual methods;

(vii) Records supporting a request for reduced sampling of potlines;

(viii) Records supporting the correlation of emissions measured by a continuous emission monitoring system to emissions measured by manual methods and the derivation of the alternative emission limit derived from the measurements;

(ix) The current Implementation Plan for emission averaging and any subsequent amendments;

(x) Records, such as a checklist or the equivalent, demonstrating the daily inspection of a potline with wet roof scrubbers for secondary emission control has been performed as required in § 63.847(f)(5)(ii), including the results of each inspection;

(xi) Records, such as a checklist or the equivalent, demonstrating the daily visual inspection of the exhaust stack for each control device has been performed as required in § 63.847(g), including the results of each inspection;

(xii) For a potline equipped with an HF continuous emission monitor, records of information and data required by § 63.10(c);

(xiii) Records documenting the corrective actions taken when the limit(s) for an operating parameter established under § 63.846(g) were exceeded, when visible emissions indicating abnormal operation were observed from a control device stack during a daily inspection required under § 63.847(g), or when a problem was detected during the daily inspection of a wet roof scrubber for potline secondary control required in § 63.847(f)(5)(ii); and

(xiv) Records documenting any POM data that is invalidated due to the installation and startup of a cathode.

§ 63.850 Applicability of general provisions.

(a) The requirements of the general provisions in subpart A of this part that are not applicable to the owner or operator subject to the requirements of this subpart are shown in Appendix A of this subpart.

§ 63.851 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: No authorities are retained by the Administrator.

(c) Each State may elect to exclude the provisions of § 63.845, Emission Averaging, from their permitting program and the operating permits issued under that program.

§ 63.852–63.859 [Reserved]

Appendix A to Subpart LL of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart LL

General provisions citation	Requirement	Applies to subpart LL	Comment
63.1(c)(2)		No	All are major sources.
63.2 Definition of ''reconstruction''		No	Subpart LL defines ''reconstruction''.
63.6(c)(1)	Compliance Date for Existing Sources	No	Subpart LL specifies compliance date for existing sources.
63.6(h)	Opacity/VE Standards	No	Subpart LL does not require COMS, VE or opacity standards.
63.8 (c)(4)–(c)(8)	CMS Operation and Maintenance	No	Subpart LL does not require COMS/CMS or CMS performance specifications.
63.8(d)	Quality Control	No	Subpart LL does not require CMS or CMS performance evaluation.
63.8(e)	Performance Evaluation for CMS	No	
63.9(f)	Notification of VE or Opacity Test	No	Subpart LL does not include VE/opacity standard.
63.9(g)	Additional CMS Notification	No	
63.10(d)(3)	VE/Opacity Observations	No	Subpart LL does not require COM or include VE/opacity standard.
63.10(e)(2)	Reporting Performance Evaluations	No	Subpart LL does not require performance evaluation for CMS.
63.11 (a)–(b)	Control Device Requirements	No	Flares not applicable.

3. Appendix A to part 63 is amended by adding, in numerical order, Method 315 to read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Method 315—Determination of Particulate and Methylene Chloride Extractable Matter (MCEM) From Selected Sources at Primary Aluminum Production Facilities

1.0 Scope and Application

1.1 Analyte. Particulate matter (PM). No CAS Number assigned. Methylene Chloride extractable matter (MCEM). No CAS number assigned.

1.2 Applicability. This method is applicable for the simultaneous determination of PM and MCEM when specified in an applicable regulation. This method was developed by consensus with the Aluminum Association and the U.S. Environmental Protection Agency (EPA) and has limited precision estimates for MCEM; it should have similar precision as Method 5 for PM in 40 CFR part 60, appendix A since the procedures are similar for PM.

2.0 Summary of Method

Particulate matter (PM) and MCEM is withdrawn isokinetically from the source. PM is collected on a glass fiber filter maintained at a temperature in the range of l20 ± 14 °C (248 ± 25 °F) or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator, for a particular application. The PM mass, which includes any material that condenses on the probe and is subsequently removed in an acetone rinse or on the filter at or above the filtration temperature, is determined gravimetrically after removal of uncombined water. MCEM is then determined by adding a methylene chloride rinse of the probe and filter holder, extracting the condensable hydrocarbons collected in the impinger water, adding an acetone rinse followed by a methylene chloride rinse of the sampling train components after the filter and before the silica gel impinger, and determining residue gravimetrically after evaporating the solvents.

3.0 Definitions

$_n$=Cross-sectional area of nozzle, m^3 (ft^3).

B_{ws}=Water vapor in the gas stream, proportion by volume.

C_a=Acetone blank residue concentration, mg/g.

C_s=Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dscm (g/dscf).

I=Percent of isokinetic sampling.

L_a=Maximum acceptable leakage rate for either a pretest leak check or for a leak check following a component change; equal to 0.00057 m^3/min (0.02 cfm) or 4 percent of the average sampling rate, whichever is less.

L_i=Individual leakage rate observed during the leak check conducted prior to the ''i^{th}'' component change (I=1, 2, 3...n), m^3/min (cfm).

L_p=Leakage rate observed during the post-test leak check, m^3/min (cfm).

m_a=Mass of residue of acetone after evaporation, mg.

m_n=Total amount of particulate matter collected, mg.

M_w=Molecular weight of water, 18.0 g/g-mole (18.0 lb/ lb-mole).

P_{bar}=Barometric pressure at the sampling site, mm Hg (in. Hg).

P_s=Absolute stack gas pressure, mm Hg (in. Hg).

P_{std}=Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R=Ideal gas constant, 0.06236 [(mm Hg)(m^3)]/[(°K) (g-mole)] {21.85 [(in. Hg) (ft^3)]/[(°R) (lb-mole)]}.

T_m=Absolute average DGM temperature (see Figure 5–2 of Method 5, 40 CFR part 60, appendix A), °K (°R).

T_s=Absolute average stack gas temperature (see Figure 5–2 of Method 5, 40 CFR part 60, appendix A), °K(°R).

T_{std}=Standard absolute temperature, 293°K (528°R).

V_a=Volume of acetone blank, ml.

V_{aw}=Volume of acetone used in wash, ml.

V_t=Volume of methylene chloride blank, ml.

V_{tw}=Volume of methylene chloride used in wash, ml.

V_{lc}=Total volume liquid collected in impingers and silica gel (see Figure 5–3 of Method 5, 40 CFR part 60, appendix A), ml.

V_m=Volume of gas sample as measured by dry gas meter, dcm (dcf).

$V_{m(std)}$=Volume of gas sample measured by the dry gas meter, corrected to standard conditions, dscm (dscf).

$V_{w(std)}$=Volume of water vapor in the gas sample, corrected to standard conditions, scm (scf).

V_s=Stack gas velocity, calculated by Equation 2–9 in Method 2, 40 CFR part 60, appendix A, using data obtained from Method 5, 40 CFR part 60, appendix A, m/sec (ft/sec).

W_a=Weight of residue in acetone wash, mg.

Y=Dry gas meter calibration factor.

ΔH=Average pressure differential across the orifice meter (see Figure 5–2 of Method 5, 40 CFR part 60, appendix A), mm H_20 (in. H_30).

ρa=Density of acetone, 785.1 mg/ml (or see label on bottle).

ρw=Density of water, 0.9982 g/ml (0.002201 lb/ml).

ρt=Density of methylene chloride, 1316.8 mg/ml (or see label on bottle).

θ=Total sampling time, min.

θ_l=Sampling time interval, from the beginning of a run until the first component change, min.

θ_i=Sampling time interval, between two successive component changes, beginning with the interval between the first and second changes, min.

θ_p=Sampling time interval, from the final (n^{th}) component change until the end of the sampling run, min.

13.6=Specific gravity of mercury.

60=Sec/min.

l00=Conversion to percent.

4.0 Interferences [Reserved]

5.0 Safety

This method may involve hazardous materials, operations, and equipment. This method does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

6.0 Equipment and Supplies

Note: Mention of trade names or specific products does not constitute endorsement by the EPA.

6.1 Sampling train. A schematic of the sampling train used in this method is shown in Figure 5–1, Method 5, 40 CFR part 60, appendix A. Complete construction details are given in APTD–0581 (Reference 2 in section 17.0 of this method); commercial models of this train are also available. For changes from APTD–0581 and for allowable modifications of the train shown in Figure 5–1, Method 5, 40 CFR part 60, appendix A see the following subsections.

Note: The operating and maintenance procedures for the sampling train are described in APTD–0576 (Reference 3 in section 17.0 of this method). Since correct usage is important in obtaining valid results, all users should read APTD–0576 and adopt the operating and maintenance procedures outlined in it, unless otherwise specified herein. The sampling train consists of the following components:

6.1.1 *Probe nozzle.*

6.1.1.1 Glass or glass lined with sharp, tapered leading edge. The angle of taper shall be ≤30°, and the taper shall be on the outside to preserve a constant internal diameter. The probe nozzle shall be of the button-hook or elbow design, unless otherwise specified by the Administrator. Other materials of construction may be used, subject to the approval of the Administrator.

6.1.1.2 A range of nozzle sizes suitable for isokinetic sampling should be available. Typical nozzle sizes range from 0.32 to 1.27 cm (⅛ to ½ in.) inside diameter (ID) in increments of 0.16 cm (1⁄16 in.). Larger nozzle sizes are also available if higher volume sampling trains are used. Each nozzle shall be calibrated according to the procedures outlined in section 10.0 of this method.

6.1.2 *Probe liner.*

6.1.2.1 Borosilicate or quartz glass tubing with a heating system capable of maintaining a probe gas temperature at the exit end during sampling of 120 ± 14°C (248 ± 25°F), or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application. Since the actual temperature at the outlet of the probe is not usually monitored during sampling, probes constructed according to APTD–0581 and utilizing the calibration curves of APTD–0576 (or calibrated according to the procedure outlined in APTD–0576) will be considered acceptable.

6.1.2.2 Either borosilicate or quartz glass probe liners may be used for stack temperatures up to about 480°C (900°F);

quartz liners shall be used for temperatures between 480 and 900°C (900 and 1,650°F). Both types of liners may be used at higher temperatures than specified for short periods of time, subject to the approval of the Administrator. The softening temperature for borosilicate glass is 820°C (1,500°F), and for quartz glass it is 1,500°C (2,700°F).

6.1.3 *Pitot tube.* Type S, as described in section 6.1 of Method 2, 40 CFR part 60, appendix A, or other device approved by the Administrator. The pitot tube shall be attached to the probe (as shown in Figure 5–1 of Method 5, 40 CFR part 60, appendix A) to allow constant monitoring of the stack gas velocity. The impact (high pressure) opening plane of the pitot tube shall be even with or above the nozzle entry plane (see Method 2, Figure 2–6b, 40 CFR part 60, appendix A) during sampling. The Type S pitot tube assembly shall have a known coefficient, determined as outlined in section 10.0 of Method 2, 40 CFR part 60, appendix A.

6.1.4 *Differential pressure gauge.* Inclined manometer or equivalent device (two), as described in section 6.2 of Method 2, 40 CFR part 60, appendix A. One manometer shall be used for velocity head (Dp) readings, and the other, for orifice differential pressure readings.

6.1.5 *Filter holder.* Borosilicate glass, with a glass frit filter support and a silicone rubber gasket. The holder design shall provide a positive seal against leakage from the outside or around the filter. The holder shall be attached immediately at the outlet of the probe (or cyclone, if used).

6.1.6 *Filter heating system.* Any heating system capable of maintaining a temperature around the filter holder of 120 ± 14°C (248 ± 25°F) during sampling, or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application. Alternatively, the tester may opt to operate the equipment at a temperature lower than that specified. A temperature gauge capable of measuring temperature to within 3°C (5.4°F) shall be installed so that the temperature around the filter holder can be regulated and monitored during sampling. Heating systems other than the one shown in APTD–058l may be used.

6.1.7 *Condenser.* The following system shall be used to determine the stack gas moisture content: Four glass impingers connected in series with leak-free ground glass fittings. The first, third, and fourth impingers shall be of the Greenburg-Smith design, modified by replacing the tip with a 1.3 cm (½ in.) ID glass tube extending to about 1.3 cm (½ in.) from the bottom of the flask. The second impinger shall be of the Greenburg-Smith design with the standard tip. The first and second impingers shall contain known quantities of water (section 4.1.3 of this method), the third shall be empty, and the fourth shall contain a known weight of silica gel, or equivalent desiccant. A temperature sensor, capable of measuring temperature to within 1°C (2°F) shall be placed at the outlet of the fourth impinger for monitoring purposes.

6.1.8 *Metering system.* Vacuum gauge, leak-free pump, temperature sensors capable of measuring temperature to within 3°C (5.4°F), dry gas meter (DGM) capable of measuring volume to within 2 percent, and related equipment, as shown in Figure 5–1 of Method 5, 40 CFR part 60, appendix A. Other metering systems capable of maintaining sampling rates within 10 percent of isokinetic and of determining sample volumes to within 2 percent may be used, subject to the approval of the Administrator. When the metering system is used in conjunction with a pitot tube, the system shall allow periodic checks of isokinetic rates. Sampling trains utilizing metering systems designed for higher flow rates than that described in APTD–0581 or APTD–0576 may be used provided that the specifications of this method are met.

6.1.9 *Barometer.* Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm (0.1 in.) Hg.

Note: The barometric reading may be obtained from a nearby National Weather Service station. In this case, the station value (which is the absolute barometric pressure) shall be requested and an adjustment for elevation differences between the weather station and sampling point shall be made at a rate of minus 2.5 mm (0.1 in.) Hg per 30 m (100 ft) elevation increase or plus 2.5 mm (0.1 in) Hg. Per 30 m (100 ft) elevation decrease.

6.1.10 *Gas density determination equipment.* Temperature sensor and pressure gauge, as described in section 6.3 and 6.4 of Method 2, 40 CFR part 60, appendix A, and gas analyzer, if necessary, as described in Method 3, 40 CFR part 60, appendix A. The temperature sensor shall, preferably, be permanently attached to the pitot tube or sampling probe in a fixed configuration, such that the tip of the sensor extends beyond the leading edge of the probe sheath and does not touch any metal. Alternatively, the sensor may be attached just prior to use in the field. Note, however, that if the temperature sensor is attached in the field, the sensor must be placed in an interference-free arrangement with respect to the Type S pitot tube openings (see Method 2, Figure 2–4, 40 CFR part 60, appendix A). As a second alternative, if a difference of not more than 1 percent in the average velocity measurement is to be introduced, the temperature sensor need not be attached to the probe or pitot tube. (This alternative is subject to the approval of the Administrator.)

6.2 Sample recovery. The following items are needed:

6.2.1 *Probe-liner and probe-nozzle brushes.* Nylon bristle brushes with stainless steel wire handles. The probe brush shall have extensions (at least as long as the probe) constructed of stainless steel, Nylon, Teflon, or similarly inert material The brushes shall be properly sized and shaped to brush out the probe liner and nozzle.

6.2.2 *Wash bottles.* Glass wash bottles are recommended; polyethylene wash bottles may be used; however this may introduce a positive bias due to contamination from the bottle. It is recommended that acetone not be stored in polyethylene bottles for longer than a month.

6.2.3 *Glass sample storage containers.* Chemically resistant, borosilicate glass bottles, for acetone and methylene chloride washes and impinger water, 500-ml or 1000-ml. Screw cap liners shall either be rubber-backed Teflon or shall be constructed so as to be leak-free and resistant to chemical attack by acetone or methylene chloride. (Narrow mouth glass bottles have been found to be less prone to leakage.) Alternatively, polyethylene bottles may be used.

6.2.4 *Petri dishes.* For filter samples, glass, unless otherwise specified by the Administrator.

6.2.5 *Graduated cylinder and/or balance.* To measure condensed water, acetone wash and methylene chloride wash used during field recovery of the samples, to within 1 ml or 1 g. Graduated cylinders shall have subdivisions no greater than 2 ml. Most laboratory balances are capable of weighing to the nearest 0.5 g or less. Any such balance is suitable for use here and in section 6.3.4 of this method.

6.2.6 *Plastic storage containers.* Air-tight containers to store silica gel.

6.2.7 *Funnel and rubber policeman.* To aid in transfer of silica gel to container; not necessary if silica gel is weighed in the field.

6.2.8 *Funnel.* Glass or polyethylene, to aid in sample recovery.

6.3 *Analysis.* For analysis, the following equipment is needed:

6.3.1 *Glass or teflon weighing dishes.*

6.3.2 *Desiccator.* It is recommended that fresh desiccant be used to minimize the chance for positive bias due to absorption of organic during drying.

6.3.3 *Analytical balance.* To measure to within 0.1 mg.

6.3.4 *Balance.* To measure to within 0.5 g.

6.3.5 *Beakers.* 250-ml.

6.3.6 *Hygrometer.* To measure the relative humidity of the laboratory environment.

6.3.7 *Temperature sensor.* To measure the temperature of the laboratory environment.

6.3.8 *Allihin tubes.* 30 ml. size, fine (<50 micron) porosity fritted glass.

6.3.9 *Pressure filtration apparatus.*

6.3.10 *Aluminum dish.* Flat bottom, smooth sides and flanged top. Approximately 60 mm inside diameter and 18 mm deep.

7.0 Reagents.

7.1 *Sampling.* The reagents used in sampling are as follows:

7.1.1 *Filters.* Glass fiber filters, without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3-micron dioctyl phthalate smoke particles. The filter efficiency test shall be conducted in accordance with ASTM Method D 2986–95 (Reapproved 1995) (incorporated by reference in § 63.841). Test data from the supplier's quality control program are sufficient for this purpose. In sources containing S_{02} or S_{03}, the filter material must be of a type that is unreactive to S_{02} or S_{03}. Reference 10 in section 17.0 of this method may be used to select the appropriate filter.

7.1.2 *Silica gel.* Indicating type, 6- to 16-mesh. If previously used, dry at 175 °C (350 °F) for 2 hours. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used, subject to the approval of the Administrator.

7.1.3 *Water.* When analysis of the material caught in the impingers is required,

deionized distilled water shall be used. Run blanks prior to field use to eliminate a high blank on test samples.

7.1.4 *Crushed ice.*

7.1.5 *Stopcock grease.* Acetone-insoluble, heat-stable silicone grease. This is not necessary if screw-on connectors with Teflon sleeves, or similar, are used. Alternatively, other types of stopcock grease may be used, subject to the approval of the Administrator. [Caution: many stopcock greases are methylene chloride soluble. Use sparingly and carefully remove prior to recovery to prevent contamination of the MCEM analysis.]

7.2 Sample recovery.

7.2.1 *Acetone*—Acetone with blank values <1 ppm, by weight residue, is required. Acetone blanks may be run prior to field use and only acetone with low blank values used. In no case shall a blank value of greater than 1E–06 of the weight of acetone used be subtracted from the sample weight.

Note: This is more restrictive than Method 5, 40 CFR part 60, appendix A. At least one vendor (Supelco Incorporated located in Bellefonte, Pennsylvania) lists <1 mg/l as residue for their Environmental Analysis Solvents.

7.2.2 *Methylene chloride*—Methylene chloride with a blank value <1.5 ppm, by weight, residue. Methylene chloride blanks may be run prior to field use and only methylene chloride with low blank values used. In no case shall a blank value of greater than 1.6E–06 of the weight of methylene chloride used be subtracted from the sample weight.

Note: At least one vendor quotes <1 mg/l for Environmental Analysis Solvents grade methylene chloride.

7.3 Analysis.

7.3.1 *Acetone.* Same as in section 7.2.1 of this method.

7.3.2 *Desiccant.* Anhydrous calcium sulfate, indicating type. Alternatively, other types of desiccants may be used, subject to the approval of the Administrator.

7.3.3 *Methylene chloride.* Same as section 7.2.2 of this method.

8.0 Sample Collection, Preservation, Storage, and Transport

Note: The complexity of this method is such that, in order to obtain reliable results, testers should be trained and experienced with the test procedures.

8.1 Sampling.

8.1.1 *Pretest preparation.* It is suggested that sampling equipment be maintained according to the procedures described in APTD–0576.

8.1.1.1 Weigh several 200- to 300-g portions of silica gel in air-tight containers to the nearest 0.5 g. Record the total weight of the silica gel plus container, on each container. As an alternative, the silica gel need not be preweighed, but may be weighed directly in its impinger or sampling holder just prior to train assembly.

8.1.1.2 A batch of glass fiber filters, no more than 50 at a time, should be placed in a soxhlet extraction apparatus and extracted using methylene chloride for at least 16 hours. After extraction check filters visually against light for irregularities, flaws, or pinhole leaks. Label the shipping containers (glass or plastic petri dishes), and keep the filters in these containers at all times except during sampling and weighing.

8.1.1.3 Desiccate the filters at 20 ± 5.6 C (68 ± 10 °F) and ambient pressure for at least 24 hours, and weigh at intervals of at least 6 hours to a constant weight, i.e., <0.5-mg change from previous weighing; record results to the nearest 0.1 mg. During each weighing the filter must not be exposed to the laboratory atmosphere for a period greater than 2 minutes and a relative humidity above 50 percent. Alternatively (unless otherwise specified by the Administrator), the filters may be oven dried at 104 °C (220 °F) for 2 to 3 hours, desiccated for 2 hours, and weighed. Procedures other than those described, which account for relative humidity effects, may be used, subject to the approval of the Administrator.

8.1.2 *Preliminary determinations.*

8.1.2.1 Select the sampling site and the minimum number of sampling points according to Method 1, 40 CFR part 60, appendix A or as specified by the Administrator. Determine the stack pressure, temperature, and the range of velocity heads using Method 2, 40 CFR part 60, appendix A; it is recommended that a leak-check of the pitot lines (see section 8.1 of Method 2, 40 CFR part 60, appendix A) be performed. Determine the moisture content using Approximation Method 4 (section 1.2 of Method 4, 40 CFR part 60, appendix A) or its alternatives for the purpose of making isokinetic sampling rate settings. Determine the stack gas dry molecular weight, as described in section 8.6 of Method 2, 40 CFR part 60, appendix A; if integrated Method 3 sampling is used for molecular weight determination, the integrated bag sample shall be taken simultaneously with, and for the same total length of time as, the particulate sample run.

8.1.2.2 Select a nozzle size based on the range of velocity heads, such that it is not necessary to change the nozzle size in order to maintain isokinetic sampling rates. During the run, do not change the nozzle size. Ensure that the proper differential pressure gauge is chosen for the range of velocity heads encountered (see section 8.2 of Method 2, 40 CFR part 60, appendix A).

8.1.2.3 Select a suitable probe liner and probe length such that all traverse points can be sampled. For large stacks, consider sampling from opposite sides of the stack to reduce the required probe length.

8.1.2.4 Select a total sampling time greater than or equal to the minimum total sampling time specified in the test procedures for the specific industry such that:

(1) The sampling time per point is not less than 2 minutes (or some greater time interval as specified by the Administrator); and

(2) The sample volume taken (corrected to standard conditions) will exceed the required minimum total gas sample volume. The latter is based on an approximate average sampling rate.

8.1.2.5 The sampling time at each point shall be the same. It is recommended that the number of minutes sampled at each point be an integer or an integer plus one-half minute, in order to avoid timekeeping errors.

8.1.2.6 In some circumstances, e.g., batch cycles, it may be necessary to sample for shorter times at the traverse points and to obtain smaller gas sample volumes. In these cases, the Administrator's approval must first be obtained.

8.1.3 *Preparation of sampling train.*

8.1.3.1 During preparation and assembly of the sampling train, keep all openings where contamination can occur covered until just prior to assembly or until sampling is about to begin. Place 100 ml of water in each of the first two impingers, leave the third impinger empty, and transfer approximately 200 to 300 g of preweighed silica gel from its container to the fourth impinger. More silica gel may be used, but care should be taken to ensure that it is not entrained and carried out from the impinger during sampling. Place the container in a clean place for later use in the sample recovery. Alternatively, the weight of the silica gel plus impinger may be determined to the nearest 0.5 g and recorded.

8.1.3.2 Using a tweezer or clean disposable surgical gloves, place a labeled (identified) and weighed filter in the filter holder. Be sure that the filter is properly centered and the gasket properly placed so as to prevent the sample gas stream from circumventing the filter. Check the filter for tears after assembly is completed.

8.1.3.3 When glass liners are used, install the selected nozzle using a Viton A O-ring when stack temperatures are less than 260°C (500°F) and an asbestos string gasket when temperatures are higher. See APTD–0576 for details. Mark the probe with heat resistant tape or by some other method to denote the proper distance into the stack or duct for each sampling point.

8.1.3.4 Set up the train as in Figure 5–1 of Method 5, 40 CFR part 60, appendix A, using (if necessary) a very light coat of silicone grease on all ground glass joints, greasing only the outer portion (see APTD–0576) to avoid possibility of contamination by the silicone grease. Subject to the approval of the Administrator, a glass cyclone may be used between the probe and filter holder when the total particulate catch is expected to exceed 100 mg or when water droplets are present in the stack gas.

8.1.3.5 Place crushed ice around the impingers.

8.1.4 *Leak-check procedures.*

8.1.4.1 Pretest leak-check. A pretest leak-check is recommended, but not required. If the pretest leak-check is conducted, the following procedure should be used.

8.1.4.1.1 After the sampling train has been assembled, turn on and set the filter and probe heating systems at the desired operating temperatures. Allow time for the temperatures to stabilize. If a Viton A O-ring or other leak-free connection is used in assembling the probe nozzle to the probe liner, leak-check the train at the sampling site by plugging the nozzle and pulling a 380 mm (15 in.) Hg vacuum.

Note: A lower vacuum may be used, provided that it is not exceeded during the test.

8.1.4.1.2 If an asbestos string is used, do not connect the probe to the train during the

leak-check. Instead, leak-check the train by first plugging the inlet to the filter holder (cyclone, if applicable) and pulling a 380 mm (15 in.) Hg vacuum. (See Note in section 8.1.4.1.1 of this method). Then connect the probe to the train, and leak-check at approximately 25 mm (1 in.) Hg vacuum; alternatively, the probe may be leak-checked with the rest of the sampling train, in one step, at 380 mm (15 in.) Hg vacuum. Leakage rates in excess of 4 percent of the average sampling rate or 0.00057 m^3/min (0.02 cfm), whichever is less, are unacceptable.

8.1.4.1.3 The following leak-check instructions for the sampling train described in APTD–0576 and APTD–0581 may be helpful. Start the pump with the bypass valve fully open and the coarse adjust valve completely closed. Partially open the coarse adjust valve, and slowly close the bypass valve until the desired vacuum is reached. *Do not* reverse the direction of the bypass valve as this will cause water to back up into the filter holder. If the desired vacuum is exceeded, either leak-check at this higher vacuum or end the leak-check as shown below, and start over.

8.1.4.1.4 When the leak-check is completed, first slowly remove the plug from the inlet to the probe, filter holder, or cyclone (if applicable), and immediately turn off the vacuum pump. This prevents the water in the impingers from being forced backward into the filter holder and the silica gel from being entrained backward into the third impinger.

8.1.4.2 Leak-checks during sample run. If, during the sampling run, a component (e.g., filter assembly or impinger) change becomes necessary, a leak check shall be conducted immediately before the change is made. The leak-check shall be done according to the procedure outlined in section 8.1.4.1 of this method, except that it shall be done at a vacuum equal to or greater than the maximum value recorded up to that point in the test. If the leakage rate is found to be no greater than 0.00057 m^3/min (0.02 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable, and no correction will need to be applied to the total volume of dry gas metered; if, however, a higher leakage rate is obtained, either record the leakage rate and plan to correct the sample volume as shown in section 12.3 of this method, or void the sample run.

Note: Immediately after component changes, leak-checks are optional; if such leak-checks are done, the procedure outlined in section 8.1.4.1 of this method should be used.

8.1.4.3 Post-test leak-check. A leak-check is mandatory at the conclusion of each sampling run. The leak-check shall be performed in accordance with the procedures outlined in section 8.1.4.1 of this method, except that it shall be conducted at a vacuum equal to or greater than the maximum value reached during the sampling run. If the leakage rate is found to be no greater than 0.00057 m^3/min (0.02 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable, and no correction need be applied to the total volume of dry gas metered. If, however, a higher leakage rate is obtained, either record the leakage rate and correct the sample volume as shown in section 12.3 of this method, or void the sampling run.

8.1.5 *Sampling train operation.* During the sampling run, maintain an isokinetic sampling rate (within 10 percent of true isokinetic unless otherwise specified by the Administrator) and a temperature around the filter of 120±14° C (248 ± 25° F), or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator.

8.1.5.1 For each run, record the data required on a data sheet such as the one shown in Figure 5–2 of Method 5, 40 CFR part 60, appendix A. Be sure to record the initial reading. Record the DGM readings at the beginning and end of each sampling time increment, when changes in flow rates are made, before and after each leak-check, and when sampling is halted. Take other readings indicated by Figure 5–2 of Method 5, 40 CFR part 60, appendix A at least once at each sample point during each time increment and additional readings when significant changes (20 percent variation in velocity head readings) necessitate additional adjustments in flow rate. Level and zero the manometer. Because the manometer level and zero may drift due to vibrations and temperature changes, make periodic checks during the traverse.

8.1.5.2 Clean the portholes prior to the test run to minimize the chance of sampling deposited material. To begin sampling, remove the nozzle cap, verify that the filter and probe heating systems are up to temperature, and that the pitot tube and probe are properly positioned. Position the nozzle at the first traverse point with the tip pointing directly into the gas stream. Immediately start the pump, and adjust the flow to isokinetic conditions. Nomographs are available, which aid in the rapid adjustment of the isokinetic sampling rate without excessive computations. These nomographs are designed for use when the Type S pitot tube coefficient (C_p) is 0.85±0.02, and the stack gas equivalent density (dry molecular weight) is equal to 29±4. APTD–0576 details the procedure for using the nomographs. If C_p and M_d are outside the above stated ranges, do not use the nomographs unless appropriate steps (see Reference 7 in section 17.0 of this method) are taken to compensate for the deviations.

8.1.5.3 When the stack is under significant negative pressure (height of impinger stem), take care to close the coarse adjust valve before inserting the probe into the stack to prevent water from backing into the filter holder. If necessary, the pump may be turned on with the coarse adjust valve closed.

8.1.5.4 When the probe is in position, block off the openings around the probe and porthole to prevent unrepresentative dilution of the gas stream.

8.1.5.5 Traverse the stack cross-section, as required by Method 1, 40 CFR part 60, appendix A or as specified by the Administrator, being careful not to bump the probe nozzle into the stack walls when sampling near the walls or when removing or inserting the probe through the portholes; this minimizes the chance of extracting deposited material.

8.1.5.6 During the test run, make periodic adjustments to keep the temperature around the filter holder at the proper level; add more ice and, if necessary, salt to maintain a temperature of less than 20° C (68° F) at the condenser/silica gel outlet. Also, periodically check the level and zero of the manometer.

8.1.5.7 If the pressure drop across the filter becomes too high, making isokinetic sampling difficult to maintain, the filter may be replaced in the midst of the sample run. It is recommended that another complete filter assembly be used rather than attempting to change the filter itself. Before a new filter assembly is installed, conduct a leak-check (see section 8.1.4.2 of this method). The total PM weight shall include the summation of the filter assembly catches.

8.1.5.8 A single train shall be used for the entire sample run, except in cases where simultaneous sampling is required in two or more separate ducts or at two or more different locations within the same duct, or, in cases where equipment failure necessitates a change of trains. In all other situations, the use of two or more trains will be subject to the approval of the Administrator.

8.1.5.9 Note that when two or more trains are used, separate analyses of the front-half and (if applicable) impinger catches from each train shall be performed, unless identical nozzle sizes were used in all trains, in which case, the front-half catches from the individual trains may be combined (as may the impinger catches) and one analysis of the front-half catch and one analysis of the impinger catch may be performed.

8.1.5.10 At the end of the sample run, turn off the coarse adjust valve, remove the probe and nozzle from the stack, turn off the pump, record the final DGM reading, and then conduct a post-test leak-check, as outlined in section 8.1.4.3 of this method. Also leak-check the pitot lines as described in section 8.1 of Method 2, 40 CFR part 60, appendix A. The lines must pass this leak-check, in order to validate the velocity head data.

8.1.6 *Calculation of percent isokinetic.* Calculate percent isokinetic (see calculations, section 12.11 of this method) to determine whether a run was valid or another test run should be made. If there was difficulty in maintaining isokinetic rates because of source conditions, consult the Administrator for possible variance on the isokinetic rates.

8.2 Sample recovery.

8.2.1 Proper cleanup procedure begins as soon as the probe is removed from the stack at the end of the sampling period. Allow the probe to cool.

8.2.1.1 When the probe can be safely handled, wipe off all external PM near the tip of the probe nozzle, and place a cap over it to prevent losing or gaining PM. Do not cap off the probe tip tightly while the sampling train is cooling down. This would create a vacuum in the filter holder, thus drawing water from the impingers into the filter holder.

8.2.1.2 Before moving the sample train to the cleanup site, remove the probe from the sample train, wipe off the silicone grease, and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Wipe off the silicone grease from

the filter inlet where the probe was fastened, and cap it. Remove the umbilical cord from the last impinger, and cap the impinger. If a flexible line is used between the first impinger or condenser and the filter holder, disconnect the line at the filter holder, and let any condensed water or liquid drain into the impingers or condenser. After wiping off the silicone grease, cap off the filter holder outlet and impinger inlet. Either ground-glass stoppers, plastic caps, or serum caps may be used to close these openings.

8.2.1.3 Transfer the probe and filter-impinger assembly to the cleanup area. This area should be clean and protected from the wind so that the chances of contaminating or losing the sample will be minimized.

8.2.1.4 Save a portion of the acetone and methylene chloride used for cleanup as blanks. Take 200 ml of each solvent directly from the wash bottle being used, and place it in glass sample containers labeled ''acetone blank'' and ''methylene chloride blank'' respectively.

8.2.1.5 Inspect the train prior to and during disassembly, and note any abnormal conditions. Treat the samples as follows:

8.2.1.5.1 *Container No. 1.* Carefully remove the filter from the filter holder, and place it in its identified petri dish container. Use a pair of tweezers and/or clean disposable surgical gloves to handle the filter. If it is necessary to fold the filter, do so such that the PM cake is inside the fold. Using a dry Nylon bristle brush and/or a sharp-edged blade, carefully transfer to the petri dish any PM and/or filter fibers that adhere to the filter holder gasket. Seal the container.

8.2.1.5.2 *Container No. 2.*

8.2.1.5.2.1 Taking care to see that dust on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover PM or any condensate from the probe nozzle, probe fitting, probe liner, and front half of the filter holder by washing these components with acetone and placing the wash in a glass container.

8.2.1.5.2.2 Perform the acetone rinse as follows: Carefully remove the probe nozzle, and clean the inside surface by rinsing with acetone from a wash bottle and brushing with a Nylon bristle brush. Brush until the acetone rinse shows no visible particles, after which make a final rinse of the inside surface with acetone. Brush and rinse the inside parts of the Swagelok fitting with acetone in a similar way until no visible particles remain.

8.2.1.5.2.3 Rinse the probe liner with acetone by tilting and rotating the probe while squirting acetone into its upper end so that all inside surfaces will be wetted with acetone. Let the acetone drain from the lower end into the sample container. A funnel (glass or polyethylene) may be used to aid in transferring liquid washes to the container. Follow the acetone rinse with a probe brush. Hold the probe in an inclined position, squirt acetone into the upper end as the probe brush is being pushed with a twisting action through the probe; hold a sample container underneath the lower end of the probe, and catch any acetone and particulate matter that is brushed from the probe. Run the brush through the probe three times or more until no visible PM is carried out with the acetone or until none remains in the probe liner on visual inspection. With stainless steel or other metal probes, run the brush through in the above prescribed manner at least six times since metal probes have small crevices in which particulate matter can be entrapped. Rinse the brush with acetone and quantitatively collect these washings in the sample container. After the brushing, make a final acetone rinse of the probe as described in this section. It is recommended that two people clean the probe to minimize sample losses. Between sampling runs, keep brushes clean and protected from contamination.

8.2.1.5.2.4 After ensuring that all joints have been wiped clean of silicone grease, clean the inside of the front half of the filter holder by rubbing the surfaces with a Nylon bristle brush and rinsing with acetone. Rinse each surface three times or more if needed to remove visible particulate. Make a final rinse of the brush and filter holder. Carefully rinse out the glass cyclone, also (if applicable).

8.2.1.5.2.5 After rinsing the nozzle, probe and front half of the filter holder with acetone, the entire procedure is to be repeated with methylene chloride and saved in a separate Container No. 2M.

8.2.1.5.2.6 After acetone and methylene chloride washings and particulate matter have been collected in the proper sample container, tighten the lid on the sample container so that acetone and methylene chloride will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to determine whether leakage occurred during transport. Label each container to identify clearly its contents.

8.2.1.5.3 *Container No. 3.* Note the color of the indicating silica gel to determine whether it has been completely spent, and make a notation of its condition. Transfer the silica gel from the fourth impinger to its original container, and seal. A funnel may make it easier to pour the silica gel without spilling. A rubber policeman may be used as an aid in removing the silica gel from the impinger. It is not necessary to remove the small amount of dust particles that may adhere to the impinger wall and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use any water or other liquids to transfer the silica gel. If a balance is available in the field, follow the procedure for Container No. 3 in section 11.3 of this method.

8.2.1.5.4 *Impinger water.* Treat the impingers as follows:

8.2.1.5.4.1 Make a notation of any color or film in the liquid catch. Measure the liquid that is in the first three impingers to within 1 ml by using a graduated cylinder or by weighing it to within 0.5 g by using a balance (if one is available). Record the volume or weight of liquid present. This information is required to calculate the moisture content of the effluent gas.

8.2.1.5.4.2 Following the determination of the volume of liquid present, rinse the back half of the train with water and add it to the impinger catch and store it in a container labeled 3W(water).

8.2.1.5.4.3 Following the water rinse, rinse the back half of the train with acetone to remove the excess water to enhance subsequent organic recovery with methylene chloride and quantitatively recover to a container labeled 3S(solvent) followed by at least three sequential rinsings with aliquots of methylene chloride. Quantitatively recover to the same container labeled 3S. Record separately the amount of both acetone and methylene chloride used to the nearest 1 ml or 0.5 gram.

Note: Because the subsequent analytical finish is gravimetric it is okay to recover both solvents to the same container. This would not be recommended if other analytical finishes were required.

8.3 Transport. Whenever possible, containers should be shipped in such a way that they remain upright at all times.

9.0 Quality Control

9.1 The following quality control procedures are suggested to check the volume metering system calibration values at the field test site prior to sample collection. These procedures are optional.

9.1.1 *Meter orifice check.* Using the calibration data obtained during the calibration procedure described in section 5.3 of this method, determine the $\Delta H_@$ for the metering system orifice. The $\Delta H_@$ is the orifice pressure differential in units of in. H_2O that correlates to 0.75 cfm of air at 528°R and 29.92 in. Hg. The $\Delta H_@$ is calculated as follows:

$$\Delta H_@ = 0.0319\ \Delta H \frac{T_m \Theta^2}{P_{bar} Y^2 V_m^2}$$

where

ΔH=Average pressure differential across the orifice meter, in. H_2O;
T_m=Absolute average DGM temperature, °R;
P_{bar}=Barometric pressure, in. Hg;
θ=Total sampling time, min;
Y=DGM calibration factor, dimensionless;
V_m=Volume of gas sample as measured by DGM, dcf;
0.0319=(0.0567 in. Hg/°R) (0.75 cfm)^2.

Before beginning the field test (a set of three runs usually constitutes a field test), operate the metering system (i.e., pump, volume meter, and orifice) at the $\Delta H_@$ pressure differential for 10 minutes. Record the volume collected, the DGM temperature, and the barometric pressure. Calculate a DGM calibration check value, Y_c, as follows:

$$Y_c = \frac{10}{V_m}\left[\frac{0.0319\ T_m}{P_{bar}}\right]^{\frac{1}{2}}$$

where

Y_c=DGM calibration check value, dimensionless;
10=Run time, min.

Compare the Y_c value with the dry gas meter calibration factor Y to determine that: $0.97\ Y<Y_c< 1.03Y$. If the Y_c value is not within this range, the volume metering system should be investigated before beginning the test.

9.2 Calibrated critical orifice. A calibrated critical orifice, calibrated against a wet test meter or spirometer and designed to be inserted at the inlet of the sampling meter

box, may be used as a quality control check by following the procedure of section 7.2 of this method.

9.3 Miscellaneous quality control measures. [Reserved]

10.0 Calibration and Standardization.

Note: Maintain a laboratory log of all calibrations.

10.1 Probe nozzle. Probe nozzles shall be calibrated before their initial use in the field. Using a micrometer, measure the ID of the nozzle to the nearest 0.025 mm (0.001 in.). Make three separate measurements using different diameters each time, and obtain the average of the measurements. The difference between the high and low numbers shall not exceed 0.1 mm (0.004 in.). When nozzles become nicked, dented, or corroded, they shall be reshaped, sharpened, and recalibrated before use. Each nozzle shall be permanently and uniquely identified.

10.2 Pitot tube assembly. The Type S pitot tube assembly shall be calibrated according to the procedure outlined in section 10.1 of Method 2, 40 CFR part 60, appendix A.

10.3 Metering system.

10.3.1 *Calibration prior to use.* Before its initial use in the field, the metering system shall be calibrated as follows: Connect the metering system inlet to the outlet of a wet test meter that is accurate to within 1 percent. Refer to Figure 5–5 of Method 5, 40 CFR part 60, appendix A. The wet test meter should have a capacity of 30 liters/rev (1 ft^3/rev). A spirometer of 400 liters (14 ft^3) or more capacity, or equivalent, may be used for this calibration, although a wet test meter is usually more practical. The wet test meter should be periodically calibrated with a spirometer or a liquid displacement meter to ensure the accuracy of the wet test meter. Spirometers or wet test meters of other sizes may be used, provided that the specified accuracies of the procedure are maintained. Run the metering system pump for about 15 minutes with the orifice manometer indicating a median reading as expected in field use to allow the pump to warm up and to permit the interior surface of the wet test meter to be thoroughly wetted. Then, at each of a minimum of three orifice manometer settings, pass an exact quantity of gas through the wet test meter, and note the gas volume indicated by the DGM. Also note the barometric pressure, and the temperatures of the wet test meter, the inlet of the DGM, and the outlet of the DGM. Select the highest and lowest orifice settings to bracket the expected field operating range of the orifice. Use a minimum volume of 0.15 m^3 (5 cf) at all orifice settings. Record all the data on a form similar to Figure 5–6 of Method 5, 40 CFR part 60, appendix A, and calculate Y, the DGM calibration factor, and $\Delta H_@$, the orifice calibration factor, at each orifice setting as shown on Figure 5–6 of Method 5, 40 CFR part 60, appendix A. Allowable tolerances for individual Y and $\Delta H_@$ values are given in Figure 5–6 of Method 5, 40 CFR part 60, appendix A. Use the average of the Y values in the calculations in section 12 of this method.

10.3.1.1. Before calibrating the metering system, it is suggested that a leak-check be conducted. For metering systems having diaphragm pumps, the normal leak-check procedure will not detect leakages within the pump. For these cases the following leak-check procedure is suggested: make a 10-minute calibration run at 0.00057 m^3/min (0.02 cfm); at the end of the run, take the difference of the measured wet test meter and DGM volumes; divide the difference by 10, to get the leak rate. The leak rate should not exceed 0.00057 m^3/min (0.02 cfm).

10.3.2 *Calibration after use.* After each field use, the calibration of the metering system shall be checked by performing three calibration runs at a single, intermediate orifice setting (based on the previous field test), with the vacuum set at the maximum value reached during the test series. To adjust the vacuum, insert a valve between the wet test meter and the inlet of the metering system. Calculate the average value of the DGM calibration factor. If the value has changed by more than 5 percent, recalibrate the meter over the full range of orifice settings, as previously detailed.

Note: Alternative procedures, e.g., rechecking the orifice meter coefficient, may be used, subject to the approval of the Administrator.

10.3.3 *Acceptable variation in calibration.* If the DGM coefficient values obtained before and after a test series differ by more than 5 percent, the test series shall either be voided, or calculations for the test series shall be performed using whichever meter coefficient value (i.e., before or after) gives the lower value of total sample volume.

10.4 Probe heater calibration.

Note: The probe heating system shall be calibrated before its initial use in the field. Use a heat source to generate air heated to selected temperatures that approximate those expected to occur in the sources to be sampled. Pass this air through the probe at a typical sample flow rate while measuring the probe inlet and outlet temperatures at various probe heater settings. For each air temperature generated, construct a graph of probe heating system setting versus probe outlet temperature. The procedure outlined in APTD–0576 can also be used. Probes constructed according to APTD–0581 need not be calibrated if the calibration curves in APTD–0576 are used. Also, probes with outlet temperatures monitoring capabilities do not require calibration.

10.5 Temperature sensors. Use the procedure in section 10.3 of Method 2, 40 CFR part 60, appendix A to calibrate in-stack temperature sensors. Dial thermometers, such as are used for the DGM and condenser outlet, shall be calibrated against mercury-in-glass thermometers.

10.6 Leak check of metering system shown in Figure 5–1 of Method 5, 40 CFR part 60, appendix A. That portion of the sampling train from the pump to the orifice meter should be leak checked prior to initial use and after each shipment. Leakage after the pump will result in less volume being recorded than is actually sampled. The following procedure is suggested (see Figure 5–4 of Method 5, 40 CFR part 60, appendix A): Close the main valve on the meter box. Insert a one-hole rubber stopper with rubber tubing attached into the orifice exhaust pipe. Disconnect and vent the low side of the orifice manometer. Close off the low side orifice tap. Pressurize the system to 13 to 18 cm (5 to 7 in.) water column by blowing into the rubber tubing. Pinch off the tubing, and observe the manometer for one minute. A loss of pressure on the manometer indicates a leak in the meter box; leaks, if present, must be corrected.

10.7 Barometer. Calibrate against a mercury barometer.

11.0 Analytical Procedure

11.1 Record the data required on a sheet such as the one shown in Figure 315–1 of this method. Handle each sample container as follows:

11.1.1 *Container No. 1.*

11.1.1.1 PM analysis. Leave the contents in the shipping container or transfer the filter and any loose PM from the sample container to a tared glass weighing dish. Desiccate for 24 hours in a desiccator containing anhydrous calcium sulfate. Weigh to a constant weight, and report the results to the nearest 0.1 mg. For purposes of this section, the term ''constant weight'' means a difference of no more than 0.5 mg or 1 percent of total weight less tare weight, whichever is greater, between two consecutive weighings, with no less than 6 hours of desiccation time between weighings (overnight desiccation is a common practice).

FIGURE 315–1.—PARTICULATE AND MCEM ANALYSES

Particulate Analysis	
Plant	
Date	
Run No	
Filter No	
Amount liquid lost during transport.	
Acetone blank volume (ml)	
Acetone blank concentration (Eq. 315–4) (mg/mg).	
Acetone wash blank (Eq. 315–5), (mg)	

	Final weight (mg)	Tare weight (mg)	Weight gain (mg)
Container No. 1			
Container No. 2			
Total			
Less acetone blank			
Weight of particulate matter			

Moisture Analysis

	Final volume (mg)	Initial volume (mg)	Liquid collected (mg)
Impingers	Note 1	Note 1	
Silica gel			
Total			

Note 1: Convert volume of water to weight by multiplying by the density of water (1 g/ml).

MCEM Analysis

Container No.	Final weight (mg)	Tare of aluminum dish (mg)	Weight gain	Acetone wash volume (ml)	Methylene chloride wash volume (ml)
1					
2+2M					
3W					
3S					
Total			Σm_{total}	Σv_{aw}	Σv_{tw}

Less acetone wash blank (mg) (not to exceed 1 mg/l of acetone used)	$w_a = c_a \rho_a \Sigma v_{aw}$
Less methylene chloride wash blank (mg) (not to exceed 1.5 mg/l of methylene chloride used).	$w_t = c_t \rho_t \Sigma v_{tw}$
Less filter blank (mg) (not to exceed . . . mg/filter)	F_b
MCEM weight (mg)	$m_{MCEOM} = \Sigma m_{total} - w_a - w_t - f_b$

If a third weighing is required and it agrees within ±0.5 mg, then the results of the second weighing should be used. For quality assurance purposes, record and report each individual weighing; if more than 3 weighings are required, note this in the results for the subsequent MCEM results.

11.1.1.2 MCEM analysis. Transfer the filter and contents quantitatively into a beaker. Add 100 ml of methylene chloride and cover with aluminum foil. Sonicate for 3 minutes then allow to stand for 20 minutes. Set up the filtration apparatus. Decant the solution into a clean Allihin tube. Immediately pressure filter the solution through the tube into another clean dry beaker. Continue decanting and pressure filtration until all the solvent is transferred. Rinse the beaker and filter with 10–20 mls of methylene chloride, decant into the Allihin tube and pressure filter. Place the beaker on a low temperature hot plate (maximum 40°C) and slowly evaporate almost to dryness. Transfer the remaining last few milliliters of solution quantitatively from the beaker (using at least three aliquots of methylene chloride rinse) to a tared clean dry aluminum dish and evaporate to complete dryness. Remove from heat once solvent is evaporated. Re-weigh the dish after a 30-minute equilibrium in the balance room and determine the weight to the nearest 0.1 mg. Conduct a methylene chloride blank run in an identical fashion.

11.1.2 *Container No. 2.*

11.1.2.1 PM analysis. Note the level of liquid in the container, and confirm on the analysis sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Measure the liquid in this container either volumetrically to ±1 ml or gravimetrically to ±0.5 g. Transfer the contents to a tared 250-ml beaker, and evaporate to dryness at ambient temperature and pressure. Desiccate for 24 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

11.1.2.2 MCEM analysis. Add 25 mls of methylene chloride to the beaker and cover with aluminum foil. Sonicate for 3 minutes then allow to stand for 20 minutes, combine with contents of Container No. 2M, and pressure filter and evaporate as described for Container 1 in section 11.1.1.2 of this method.

Notes for MCEM analysis:

1. Light finger pressure only is necessary on 24/40 adaptor. A Chemplast adapter #15055–240 has been found satisfactory.

2. Avoid aluminum dishes made with fluted sides as these may promote solvent ''creep'' resulting in possible sample loss.

3. If multiple samples are being run, rinse the Allihin tube twice between samples with 5 mls of solvent using pressure filtration. After the second rinse, continue the flow of air until the glass frit is completely dry. Clean the Allihin tubes thoroughly after filtering 5 or 6 samples.

11.1.3 *Container No. 3.* Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g using a balance. This step may be conducted in the field.

11.1.4 *Container 3W (impinger water).*

11.1.4.1 MCEM analysis. Transfer the solution into a 1000 ml separatory funnel quantitatively with methylene chloride washes. Add enough solvent to total approximately 50 mls, if necessary. Shake the funnel for one minute, allow the phases to separate and drain the solvent layer into a 250 ml beaker. Repeat the extraction twice again. Evaporate with low heat (less than 40°C) until near dryness. Transfer the remaining few milliliters of solvent quantitatively with small solvent washes into a clean dry tared aluminum dish and evaporate to dryness. Remove from heat once solvent is evaporated. Re-weigh the dish after a 30-minute equilibration in the balance room and determine the weight to the nearest 0.1 mg.

11.1.5 *Container 3S (solvent).*

11.1.5.1 MCEM analysis. Transfer the mixed solvent to 250 ml beaker(s). Evaporate and weigh following the procedures detailed for container 3W in section 11.1.4 of this method.

11.1.6 *Blank containers.* Measure the distilled water, acetone, or methylene chloride in each container either volumetrically or gravimetrically. Transfer

the ''solvent'' to a tared 250-ml beaker, and evaporate to dryness at ambient temperature and pressure. (Conduct a solvent blank on the distilled deionized water blank in an identical fashion to that described in section 8.4.4.1 of this method.) Desiccate for 24 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

Note: The contents of Containers No. 2, 3W, and 3M as well as the blank containers may be evaporated at temperatures higher than ambient. If evaporation is done at an elevated temperature, the temperature must be below the boiling point of the solvent; also, to prevent ''bumping,'' the evaporation process must be closely supervised, and the contents of the beaker must be swirled occasionally to maintain an even temperature. Use extreme care, as acetone and methylene chloride are highly flammable and have a low flash point.

12.0 Data Analysis and Calculations

12.1. Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

12.2 Average dry gas meter temperature and average orifice pressure drop. See data sheet (Figure 5–2 of Method 5, 40 CFR part 60, appendix A).

12.3 Dry gas volume. Correct the sample volume measured by the dry gas meter to standard conditions (20°C, 760 mm Hg or 68°F, 29.92 in. Hg) by using Equation 315–1.

$$V = V_m Y \frac{T_{std}\left(P_{bar} + \frac{\Delta H}{13.6}\right)}{T_m P_{std}} = V = K_1 V_m Y \frac{P_{bar} + \left(\frac{\Delta H}{13.6}\right)}{T_m} \qquad (\text{Eq. } 315-1)$$

where

K_1=0.3858°K/mm Hg for metric units;
=17.64°R/in. Hg for English units.

Note: Equation 315–1 can be used as written unless leakage rate observed during any of the mandatory leak checks (i.e., the post-test leak check or leak checks conducted prior to component changes) exceeds L_a. If L_p or L_i exceeds L_a, Equation 315–1 must be modified as follows:

(a) Case I. No component changes made during sampling run. In this case, replace V_m in Equation 315–1 with the expression:

$$\left[V_m - \left(L_p - L_a\right)\theta\right]$$

(b) Case II. One or more component changes made during the sampling run. In this case, replace V_m in Equation 315–1 by the expression:

$$\left[V_m - \left(L_1 - L_a\right)\Theta_1 - \sum_{i=2}^{n}\left(L_i - L_a\right)\Theta_i - \left(L_p - L_a\right)\Theta_p\right]$$

and substitute only for those leakage rates (L_i or L_p) which exceed L_a.

12.4 Volume of water vapor.

$$V_{w(std)} = V_{lc}\frac{\rho_w R T_{std}}{M_w P_{std}} = K_2 V_{lc} \qquad (\text{Eq. } 315-2)$$

where

K_2=0.001333 m^3/ml for metric units;
=0.04706 ft^3/ml for English units.

12.5 Moisture content.

$$B_{ws} = \frac{V_{w(std)}}{V_{m(std)} + V_{w(std)}} \qquad (\text{Eq. } 315-3)$$

Note: In saturated or water droplet-laden gas streams, two calculations of the moisture content of the stack gas shall be made, one from the impinger analysis (Equation 315–3), and a second from the assumption of saturated conditions. The lower of the two values of B_{ws} shall be considered correct. The procedure for determining the moisture content based upon assumption of saturated conditions is given in section 4.0 of Method 4, 40 CFR part 60, appendix A. For the purposes of this method, the average stack gas temperature from Figure 5–2 of Method 5, 40 CFR part 60, appendix A may be used to make this determination, provided that the accuracy of the in-stack temperature sensor is ±1°C (2°F).

12.6 Acetone blank concentration.

$$C_a = \frac{M_a}{V_a \rho_a} \qquad (\text{Eq. } 315-4)$$

12.7 Acetone wash blank.

$$W_a = C_a V_{aw} \rho_a \qquad (\text{Eq. } 315-5)$$

12.8 Total particulate weight. Determine the total particulate matter catch from the sum of the weights obtained from Containers 1 and 2 less the acetone blank associated with these two containers (see Figure 315–1).

Note: Refer to section 4.1.5 of this method to assist in calculation of results involving two or more filter assemblies or two or more sampling trains.

12.9 Particulate concentration.

$$c_s = K_3\, m_n / V_{m(std)} \qquad (\text{Eq. } 315-6)$$

where

K=0.001 g/mg for metric units;
=0.0154 gr/mg for English units.

12.10 Conversion factors. Use the factors in Table 315–1 to convert from English to metric units.

12.11 Isokinetic variation.

12.11.1 *Calculation from raw data.*

$$I = \frac{100\, T_s\left[K_4 V_{lc} + \left(\frac{V_m Y}{T_m}\right)\left(P_{bar} + \frac{\Delta H}{13.6}\right)\right]}{60\, \Theta\, v_s P_s A_n} \qquad (\text{Eq. } 315-7)$$

where

K_4=0.003454 [(mm Hg)(m^3)]/[(ml) (°K)] for metric units;

=0.002669 [(in. H g)(ft^3)]/[(ml) (°R)] for English units.

12.11.2 *Calculation from intermediate values.*

$$I = \frac{T_s V_{m(std)} P_{std} 100}{T_{std} v_s \Theta A_n P_s 60 \left(1 - B_{ws}\right)} = K_5 \frac{T_s V_{m(std)}}{P_s v_s A_n \Theta \left(1 - B_{ws}\right)} \qquad \text{(Eq. 315-8)}$$

where

K_5=4.320 for metric units;

=0.09450 for English units.

TABLE 315–1.—CONVERSION FACTORS

From	To	Multiply by
ft^3	m^3	0.02832
gr	mg	64.80004
gr/ft^3	mg/m^3	2288.4
gr	lb	1.429×10^{-4}
mg	g	0.001

12.13 Stack gas velocity and volumetric flow rate. Calculate the average stack gas velocity and volumetric flow rate, if needed, using data obtained in this method and the equations in sections 5.2 and 5.3 of Method 2, 40 CFR part 60, appendix A.

12.14 MCEM results. Determine the MCEM concentration from the results from Containers 1, 2, 2M, 3W and 3S less the acetone, methylene chloride, and filter blanks value as determined in the following equation.

$$m_{mcem} = \Sigma m_{total} - w_a - w_t - f_b$$

13.0 Method Performances

13.1 Acceptable results. If 90 percent ≤ I ≤ 110 percent, the results are acceptable. If the PM or MCEM results are low in comparison to the standard, and ''I'' is over 110 percent or less than 90 percent, the Administrator may opt to accept the results. Reference 4 in the Bibliography may be used to make acceptability judgments. If ''I'' is judged to be unacceptable, reject the results, and repeat the test.

14.0 Pollution Prevention. [Reserved]

15.0 Waste Management. [Reserved]

16.0 Alternative Procedures

16.1 Dry gas meter as a calibration standard. A DGM may be used as a calibration standard for volume measurements in place of the wet test meter specified in section 5.3 of this method, provided that it is calibrated initially and recalibrated periodically as follows:

16.1.1 *Standard dry gas meter calibration.*

16.1.1.1 The DGM to be calibrated and used as a secondary reference meter should be of high quality and have an appropriately sized capacity, e.g., 3 liters/rev (0.1 ft^3/rev). A spirometer (400 liters or more capacity), or equivalent, may be used for this calibration, although a wet test meter is usually more practical. The wet test meter should have a capacity of 30 liters/rev (1 ft^3/rev) and capable of measuring volume to within 1.0 percent; wet test meters should be checked against a spirometer or a liquid displacement meter to ensure the accuracy of the wet test meter. Spirometers or wet test meters of other sizes may be used, provided that the specified accuracies of the procedure are maintained.

16.1.1.2 Set up the components as shown in Figure 5–7 of Method 5, 40 CFR part 60, appendix A. A spirometer, or equivalent, may be used in place of the wet test meter in the system. Run the pump for at least 5 minutes at a flow rate of about 10 liters/min (0.35 cfm) to condition the interior surface of the wet test meter. The pressure drop indicated by the manometer at the inlet side of the DGM should be minimized [no greater than 100 mm H_2O (4 in. H_2O) at a flow rate of 30 liters/min (1 cfm)]. This can be accomplished by using large diameter tubing connections and straight pipe fittings.

16.1.1.3 Collect the data as shown in the example data sheet (see Figure 5–8 of Method 5, 40 CFR part 60, appendix A). Make triplicate runs at each of the flow rates and at no less than five different flow rates. The range of flow rates should be between 10 and 34 liters/min (0.35 and 1.2 cfm) or over the expected operating range.

16.1.1.4 Calculate flow rate, Q, for each run using the wet test meter volume, V_w, and the run time, q. Calculate the DGM coefficient, Y_{ds}, for each run. These calculations are as follows:

$$Q = K_1 \frac{P_{bar} V_w}{\left(t_w + t_{std}\right) \Theta}$$

$$Y_{ds} = \frac{V_w \left(t_{ds} + t_{std}\right) P_{bar}}{V_{ds} \left(t_w + t_{std}\right) \left(P_{bar} + \frac{\Delta p}{13.6}\right)}$$

where

K_1=0.3858 for international system of units (SI); 17.64 for English units;

V_w=Wet test meter volume, liter (ft^3);

V_{ds}=Dry gas meter volume, liter (ft^3);

t_{ds}=Average dry gas meter temperature, °C (°F);

t_{std}=273° C for SI units; 460° F for English units;

t_w=Average wet test meter temperature, °C (°F);

P_{bar}=Barometric pressure, mm Hg (in. Hg);

Δp=Dry gas meter inlet differential pressure, mm H_2O (in. H_2O);

θ=Run time, min.

16.1.1.5 Compare the three Y_{ds} values at each of the flow rates and determine the maximum and minimum values. The difference between the maximum and minimum values at each flow rate should be no greater than 0.030. Extra sets of triplicate runs may be made in order to complete this requirement. In addition, the meter coefficients should be between 0.95 and 1.05. If these specifications cannot be met in three sets of successive triplicate runs, the meter is not suitable as a calibration standard and should not be used as such. If these specifications are met, average the three Y_{ds} values at each flow rate resulting in five average meter coefficients, Y_{ds}.

16.1.1.6 Prepare a curve of meter coefficient, Y_{ds}, versus flow rate, Q, for the DGM. This curve shall be used as a reference when the meter is used to calibrate other DGM's and to determine whether recalibration is required.

16.1.2 *Standard dry gas meter recalibration.*

16.1.2.1 Recalibrate the standard DGM against a wet test meter or spirometer annually or after every 200 hours of operation, whichever comes first. This requirement is valid provided the standard DGM is kept in a laboratory and, if transported, cared for as any other laboratory instrument. Abuse to the standard meter may cause a change in the calibration and will require more frequent recalibrations.

16.1.2.2 As an alternative to full recalibration, a two-point calibration check may be made. Follow the same procedure and equipment arrangement as for a full recalibration, but run the meter at only two flow rates [suggested rates are 14 and 28 liters/min (0.5 and 1.0 cfm)]. Calculate the meter coefficients for these two points, and compare the values with the meter calibration curve. If the two coefficients are within 1.5 percent of the calibration curve values at the same flow rates, the meter need not be recalibrated until the next date for a recalibration check.

16.2 Critical orifices as calibration standards. Critical orifices may be used as calibration standards in place of the wet test meter specified in section 5.3 of this method, provided that they are selected, calibrated, and used as follows:

16.2.1 *Selection of critical orifices.*

16.2.1.1 The procedure that follows describes the use of hypodermic needles or stainless steel needle tubing which have been found suitable for use as critical orifices. Other materials and critical orifice designs may be used provided the orifices act as true critical orifices; i.e., a critical vacuum can be obtained, as described in section 7.2.2.2.3 of this method. Select five critical orifices that are appropriately sized to cover the range of flow rates between 10 and 34 liters/min or the expected operating range. Two of the critical orifices should bracket the expected

operating range. A minimum of three critical orifices will be needed to calibrate a Method 5 DGM; the other two critical orifices can serve as spares and provide better selection for bracketing the range of operating flow rates. The needle sizes and tubing lengths shown in Table 315–2 give the approximate flow rates indicated in the table.

16.2.1.2 These needles can be adapted to a Method 5 type sampling train as follows: Insert a serum bottle stopper, 13- by 20-mm sleeve type, into a ½ inch Swagelok quick connect. Insert the needle into the stopper as shown in Figure 5–9 of Method 5, 40 CFR part 60, appendix A.

16.2.2 *Critical orifice calibration.*

The procedure described in this section uses the Method 5 meter box configuration with a DGM as described in section 2.1.8 of this method to calibrate the critical orifices. Other schemes may be used, subject to the approval of the Administrator.

TABLE 315–2.—APPROXIMATE FLOW RATES

Gauge/length (cm)	Flow rate (liters/min)	Gauge/ length (cm)	Flow rate (liters/min)
12/7.6	32.56	14/2.5	19.54
12/10.2	30.02	14/5.1	17.27
13/2.5	25.77	14/7.6	16.14
13/5.1	23.50	15/3.2	14.16
13/7.6	22.37	15/7.6	11.61
13/10.2	20.67	15/10.2	10.48

16.2.2.1 Calibration of meter box. The critical orifices must be calibrated in the same configuration as they will be used; i.e., there should be no connections to the inlet of the orifice.

16.2.2.1.1 Before calibrating the meter box, leak check the system as follows: Fully open the coarse adjust valve, and completely close the by-pass valve. Plug the inlet. Then turn on the pump, and determine whether there is any leakage. The leakage rate shall be zero; i.e., no detectable movement of the DGM dial shall be seen for 1 minute.

16.2.2.1.2 Check also for leakages in that portion of the sampling train between the pump and the orifice meter. See section 5.6 of Method 5, 40 CFR part 60, appendix A for the procedure; make any corrections, if necessary. If leakage is detected, check for cracked gaskets, loose fittings, worn 0-rings, etc., and make the necessary repairs.

16.2.2.1.3 After determining that the meter box is leakless, calibrate the meter box according to the procedure given in section 5.3 of Method 5, 40 CFR part 60, appendix A. Make sure that the wet test meter meets the requirements stated in section 7.1.1.1 of this method. Check the water level in the wet test meter. Record the DGM calibration factor, Y.

16.2.2.2 Calibration of critical orifices. Set up the apparatus as shown in Figure 5–10 of Method 5, 40 CFR part 60, appendix A.

16.2.2.2.1 Allow a warm-up time of 15 minutes. This step is important to equilibrate the temperature conditions through the DGM.

16.2.2.2.2 Leak check the system as in section 7.2.2.1.1 of Method 5, 40 CFR part 60, appendix A. The leakage rate shall be zero.

16.2.2.2.3 Before calibrating the critical orifice, determine its suitability and the appropriate operating vacuum as follows: Turn on the pump, fully open the coarse adjust valve, and adjust the by-pass valve to give a vacuum reading corresponding to about half of atmospheric pressure. Observe the meter box orifice manometer reading, DH. Slowly increase the vacuum reading until stable reading is obtained on the meter box orifice manometer. Record the critical vacuum for each orifice. Orifices that do not reach a critical value shall not be used.

16.2.2.2.4 Obtain the barometric pressure using a barometer as described in section 2.1.9 of this method. Record the barometric pressure, P_{bar}, in mm Hg (in. Hg).

16.2.2.2.5 Conduct duplicate runs at a vacuum of 25 to 50 mm Hg (1 to 2 in. Hg) above the critical vacuum. The runs shall be at least 5 minutes each. The DGM volume readings shall be in increments of complete revolutions of the DGM. As a guideline, the times should not differ by more than 3.0 seconds (this includes allowance for changes in the DGM temperatures) to achieve ±0.5 percent in K′. Record the information listed in Figure 5–11 of Method 5, 40 CFR part 60, appendix A.

16.2.2.2.6 Calculate K′ using Equation 315–9.

$$K' = \frac{K_1 V_m Y \left(P_{bar} + \frac{\Delta H}{13.6} \right) T_{amb}^{\frac{1}{2}}}{P_{bar} T_m \Theta} \qquad (\text{Eq. } 315-9)$$

where

K′=Critical orifice coefficient, [m³)(°K)½]/[(mm Hg)(min)] {[(ft³)(°R)½)]/[(in. Hg)(min)]};

T_{amb}=Absolute ambient temperature, °K (°R).

Average the K′ values. The individual K′ values should not differ by more than ±0.5 percent from the average.

16.2.3 *Using the critical orifices as calibration standards.*

16.2.3.1 Record the barometric pressure.

16.2.3.2 Calibrate the metering system according to the procedure outlined in sections 7.2.2.2.1 to 7.2.2.2.5 of Method 5, 40 CFR part 60, appendix A. Record the information listed in Figure 5–12 of Method 5, 40 CFR part 60, appendix A.

16.2.3.3 Calculate the standard volumes of air passed through the DGM and the critical orifices, and calculate the DGM calibration factor, Y, using the equations below:

$$V_{m(std)} = K_1 V_m \left[P_{bar} + (\Delta H/13.6) \right] / T_m \qquad (\text{Eq. } 315-10)$$

$$V_{cr(std)} = K' \left(P_{bar} \Theta \right) / T_{amb}^{\frac{1}{2}} \qquad (\text{Eq. } 315-11)$$

$$Y = V_{cr(std)} / V_{m(std)} \qquad \text{(Eq. 315-12)}$$

where

$V_{cr(std)}$=Volume of gas sample passed through the critical orifice, corrected to standard conditions, dscm (dscf).

K′=0.3858 °K/mm Hg for metric units
=17.64 °R/in. Hg for English units.

16.2.3.4 Average the DGM calibration values for each of the flow rates. The calibration factor, Y, at each of the flow rates should not differ by more than ±2 percent from the average.

16.2.3.5 To determine the need for recalibrating the critical orifices, compare the DGM Y factors obtained from two adjacent orifices each time a DGM is calibrated; for example, when checking orifice 13/2.5, use orifices 12/10.2 and 13/5.1. If any critical orifice yields a DGM Y factor differing by more than 2 percent from the others, recalibrate the critical orifice according to section 7.2.2.2 of Method 5, 40 CFR part 60, appendix A.

17.0 References.

1. Addendum to Specifications for Incinerator Testing at Federal Facilities. PHS, NCAPC. December 6, 1967.

2. Martin, Robert M. Construction Details of Isokinetic Source-Sampling Equipment. Environmental Protection Agency. Research Triangle Park, NC. APTD–0581. April 1971.

3. Rom, Jerome J. Maintenance, Calibration, and Operation of Isokinetic Source Sampling Equipment. Environmental Protection Agency. Research Triangle Park, NC. APTD–0576. March 1972.

4. Smith, W.S., R.T. Shigehara, and W.F. Todd. A Method of Interpreting Stack Sampling Data. Paper Presented at the 63rd Annual Meeting of the Air Pollution Control Association, St. Louis, MO. June 14–19, 1970.

5. Smith, W.S., et al. Stack Gas Sampling Improved and Simplified With New Equipment. APCA Paper No. 67–119. 1967.

6. Specifications for Incinerator Testing at Federal Facilities. PHS, NCAPC. 1967.

7. Shigehara, R.T. Adjustment in the EPA Nomograph for Different Pitot Tube Coefficients and Dry Molecular Weights. Stack Sampling News *2*:4–11. October 1974.

8. Vollaro, R.F. A Survey of Commercially Available Instrumentation for the Measurement of Low-Range Gas Velocities. U.S. Environmental Protection Agency, Emission Measurement Branch. Research Triangle Park, NC. November 1976 (unpublished paper).

9. Annual Book of ASTM Standards. Part 26. Gaseous Fuels; Coal and Coke; Atmospheric Analysis. American Society for Testing and Materials. Philadelphia, PA. 1974. pp. 617–622.

10. Felix, L.G., G.I. Clinard, G.E. Lacy, and J.D. McCain. Inertial Cascade Impactor Substrate Media for Flue Gas Sampling. U.S. Environmental Protection Agency. Research Triangle Park, NC 27711. Publication No. EPA–600/7–77–060. June 1977. 83 p.

11. Westlin, P.R. and R.T. Shigehara. Procedure for Calibrating and Using Dry Gas Volume Meters as Calibration Standards. Source Evaluation Society Newsletter. *3*(1):17–30. February 1978.

12. Lodge, J.P., Jr., J.B. Pate, B.E. Ammons, and G.A. Swanson. The Use of Hypodermic Needles as Critical Orifices in Air Sampling. J. Air Pollution Control Association. *16*:197–200. 1966.

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September 26, 1996

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.
Performance-Oriented Packaging Standards; Final Transitional Provisions; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 178

[Docket No. HM–181H; Amdt Nos. 171–147, 172–150, 173–255, 178–117]

RIN 2137–AC66

Performance-Oriented Packaging Standards; Final Transitional Provisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is incorporating into the Hazardous Materials Regulations (HMR) a number of changes, based on agency initiative, petitions for rulemaking and comments received at public meetings, to the classification of certain hazardous materials which are poisonous by inhalation and to provisions for the manufacture, use and reuse of hazardous materials packagings. These regulatory changes are intended to improve safety, reduce compliance costs for offerors and transporters of hazardous materials, make the regulations easier to use, and correct errors.

DATES: *Effective date.* The effective date of these amendments is January 1, 1997.

Compliance date. Because the amendments adopted herein generally clarify and relax certain provisions scheduled to go into effect on October 1, 1996, RSPA is authorizing immediate voluntary compliance. However, persons voluntarily complying with these regulations should be aware that petitions for reconsideration may be received and, as a result of RSPA's evaluation of those petitions, the amendments adopted in this final rule could be subject to further revision.

Incorporation by reference. The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register as of January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Beth Romo, telephone (202) 366–8553, Office of Hazardous Materials Standards, or Bill Gramer, telephone (202) 366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, Washington DC, 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1990, RSPA published a final rule [Docket HM–181; 55 FR 52402], which comprehensively revised the HMR with respect to hazard communication, classification, and packaging requirements based on the United Nations (UN) Recommendations on the Transport of Dangerous Goods (UN Recommendations). A document responding to petitions for reconsideration and containing editorial and substantive revisions to the final rule was published on December 20, 1991 [56 FR 66124]. On October 1, 1992, under Dockets HM–181 and HM–189, RSPA issued editorial and technical corrections to the regulations published in 1991. On September 24, 1993, RSPA issued a final rule under Docket HM–181F [58 FR 50224] which made changes to the HMR based on agency initiative and petitions for rulemaking received since the December 20, 1991 response to petitions for reconsideration. That final rule primarily revised requirements with a mandatory compliance date of October 1, 1993, as provided in the transitional provisions in § 171.14(b)(4).

RSPA published a notice of proposed rulemaking (NPRM) on June 26, 1996, under Docket HM–181H [61 FR 33216] to address most remaining issues associated with the implementation of Docket HM–181 provisions and certain other issues arising from a final rule issued December 29, 1994, under Docket HM–215A [59 FR 67390]. These issues were raised through petitions for rulemaking and agency initiative.

RSPA proposed changes to numerous requirements with a compliance date of October 1, 1996. Although these changes focus primarily on provisions concerning hazard classification and the maintenance and use of performance packaging, RSPA also proposed changes to intermediate bulk container (IBC) requirements, portable tank requirements, and regulated medical waste provisions adopted under Dockets HM–181E and HM–181G, respectively. Several current exemptions were proposed for conversion into regulations of general applicability, and an approval concerning design qualification and periodic testing was proposed for incorporation into the HMR.

II. Summary of Comments to the NPRM

RSPA received nearly 40 comments in response to the proposed rule. The comments were submitted by chemical manufacturing companies, trade associations, packaging manufacturers, drum reconditioners, and various organizations representing the medical waste industry. Commenters were uniformly supportive of RSPA's efforts to address remaining issues associated with Docket HM–181 and other issues arising from the Docket HM–215A final rule. Certain issues proposed in the notice received little or no comment. Other issues, such as drum reuse provisions, display packs for ORM-D materials, an exception proposed for certain Division 6.2 waste materials, and winter filling limits for tank cars, were the focus of many of the comments. Several commenters requested amendments to the HMR other than those proposed as part of this initiative. Most of these suggestions are beyond the scope of the proposed changes in this rule and are under review.

The Hazardous Materials Advisory Council (HMAC) expressed concern that the proposed rule frequently cited a petition for rulemaking [P–1169] without proposing adoption or discussing other provisions identified by HMAC in their April 13, 1993 petition. HMAC also claimed that another petition [P–1232], addressing outage requirements for materials poisonous by inhalation, merited consideration because it appeared to be within the scope of the Docket HM–181H rulemaking.

Petition P–1169 contained 25 separate issues that HMAC submitted to RSPA for consideration to amend the HMR. Of the 25 issues identified in that petition, RSPA has adopted a majority, including seven issues in this rulemaking. The few remaining issues will appear in upcoming proposed rulemaking actions (such as HM–215B) or are presently under review.

Under Docket HM–181, RSPA adopted a five percent outage requirement for poisonous by inhalation hazard materials in bulk packagings. Chemical manufacturers and associations, such as HMAC, opposed this requirement, claiming that any safety benefit is offset by additional shipments and resultant costs. RSPA believes a change in outage requirements is beyond the scope of this rulemaking.

III. Summary of Regulatory Changes by Section

Listed below is a section-by-section summary of changes and, as applicable, a discussion of comments received.

Part 171

Section 171.7. The table of material incorporated by reference is amended by adding a new entry referencing a publication issued by the Department of Health and Human Services for defining biosafety levels and adding two new ASTM steel standards referenced in § 178.601.

Section 171.14. All transitional provisions reflecting a compliance date of October 1, 1996, or earlier are

removed. One commenter representing the agricultural chemical industry asked RSPA to establish a five-year delayed compliance date for products in DOT specification and non-specification packagings filled before October 1, 1996. The commenter described a lengthy process for agricultural chemicals moving through a distribution chain to end users and then frequent product returns several years after the original sale. According to the commenter, an additional five-year compliance period would provide sufficient time for the industry to eliminate any non-specification and DOT-specification packagings which would not otherwise be authorized after October 1, 1996.

RSPA provided a five-year transition period from October 1, 1991 to October 1, 1996 for users of these packagings to deplete inventory and phase in UN performance packagings. RSPA believes this five-year transition period has afforded industry sufficient time to prepare for the October 1, 1996 compliance date. However, RSPA recognizes that an extensive distribution process that includes procedures for return of products to distributors warrants limited relief to allow the transportation of materials in previously authorized and filled packages to end users or for their return, repackaging, or disposal. From an overall transportation safety perspective, it is RSPA's view that it is safer to allow one final shipment of these previously authorized and filled packagings than to compel the transfer of materials, such as pesticides, into packagings required by the HMR as of October 1, 1996.

Therefore, RSPA is adding a provision to authorize non-bulk packagings, other than cylinders, which were filled prior to October 1, 1996 in conformance with regulations in effect on September 30, 1996, to be offered for transportation and transported domestically until October 1, 1999. RSPA believes a three-year delay in compliance affords sufficient time for these packagings to be eliminated from a distribution system. It is emphasized that this provision *does not* authorize the filling of packagings, only offering and transportation of packagings filled prior to October 1, 1996.

In addition, three other transition provisions are retained for packages filled prior to October 1, 1991, new placard specifications, and authorization for use of fiber drums.

Part 172

Section 172.101. The text preceding the § 172.101 Hazardous Materials Table (HMT) sets forth procedures for using the HMT. To clarify procedures contained in paragraph (c)(12)(iii) for selecting a proper shipping name for a material that meets the definition of more than one hazard class, RSPA proposed to replace the phrase ''identified * * * by a specific description'' with ''identified * * * specifically by name'' and include an example. All three commenters addressing this issue supported this proposed change, stating that it will clarify the procedure for selecting a proper shipping name.

In addition, RSPA is adding as proposed a new paragraph (c)(10)(iii) which clarifies the process for selecting a proper shipping name for a mixture of two or more hazardous materials in the same hazard class. Currently, paragraph (c)(10)(i) contains a provision for selecting a proper shipping name for a mixture of a hazardous material and non-hazardous material, and paragraph (c)(12)(ii) prescribes the proper shipping name selection process for a material meeting more than one hazard class.

Section 172.101; the Hazardous Materials Table (HMT). A new entry to provide for the domestic transportation of black powder for small arms reclassed as a Division 4.1 is added as proposed. This revision is based on comparable provisions for smokeless powder, small arms cartridges and power device cartridges. In conjunction with this change, a new Special Provision 70 and new non-bulk packaging section § 173.170 is added.

In the HMT, the entries ''Chlorosilanes, n.o.s.'', with identification numbers UN 2986, UN 2987, and UN 2988, are not authorized to be shipped in DOT Specification Intermodal (IM) portable tanks. Based on a petition for rulemaking requesting that RSPA authorize IM portable tanks for all chlorosilanes and that the use of IM portable tanks for these materials will not compromise safety and would be consistent with other specific authorizations, RSPA is adopting the proposal to authorize certain IM portable tanks for all chlorosilanes. RSPA is adding special provisions in Column (7) for ''Chlorosilanes, n.o.s.'', with identification numbers UN 2986, UN 2987, and UN 2988, to permit the transport of these materials in IM portable tanks.

Bulk packaging references for three Type F organic peroxides (UN 3110, UN 3119, and UN 3120) are revised by changing ''None'' to ''225'' in Column (8C) to indicate that these materials are authorized in bulk packagings. In addition, for the entries ''Organic Peroxide, type F, liquid (or solid), temperature controlled'' (UN 3119 and UN 3120), in Column (8A), the packaging exception reference ''152'' is removed for each entry to indicate that these temperature controlled organic peroxides are not eligible for packaging exceptions. One commenter noted that even though § 173.225 is authorized in Column (8C) of the Hazardous Materials Table, this authorization alone will not allow bulk packaging for organic peroxide, type F, solid. A note in Column 8 of the Organic Peroxide Table, in conjunction with the technical name of the material, indicates whether the material is authorized to be packaged in a bulk packaging.

More than 30 entries classed as Division 4.3 (dangerous when wet) solids in Packing Groups II and III are amended by revising Column (8A) to authorize § 173.151 as a packaging exception section. One commenter asked RSPA to authorize a packaging exception section for three additional Division 4.3 materials that exhibit similar characteristics and do not pose an unreasonable risk in transportation. After reviewing these materials, RSPA agrees and is adding them to the list of entries that are authorized a packaging exception in § 173.151.

Revisions to Classification and Hazard Zone Identification for Certain Materials Poisonous by Inhalation. Based on acute inhalation toxicity data and related information obtained by RSPA, the HMT is amended to change the hazard zone for some materials poisonous by inhalation, and to add other materials to the list of materials poisonous by inhalation. For certain materials this revision imposes more stringent hazard communication and packaging requirements. The Docket HM–181H NPRM contains a more complete description of the data on which these revisions are based. The materials are listed as follows:

a. Hydrogen cyanide, solution in alcohol (with not more than 45 percent hydrogen cyanide) (UN3294). Based on the toxicity and volatility of hydrogen cyanide, the packing group assigned and the dilution factor for this solution of hydrogen cyanide, RSPA is identifying hydrogen cyanide, solution in alcohol *with not more than 45 percent hydrogen cyanide* as a Hazard Zone B inhalation hazard. A new special provision ''25'' is assigned to this entry to authorize a one-year delay for compliance with new packaging requirements.

b. Metal carbonyls, n.o.s. (UN3281). The acute toxicity of metal carbonyls may differ from one compound to another. Those toxic by inhalation may fall into Hazard Zone A or Hazard Zone B. Others may not be toxic by inhalation, but may exhibit oral and/or dermal toxicity, which places them in

Division 6.1, Packing Group I. Therefore, RSPA is adding special provision ''5'' to Column 7 of the entry for metal carbonyls, n.o.s. at the Packing Group I level.

c. Methanesulfonyl chloride (UN3246). As proposed, RSPA is identifying methanesulfonyl chloride as a Hazard Zone B inhalation hazard. A new special provision ''25'' is assigned to this entry to authorize a one-year delay for compliance with new packaging requirements.

d. Methyl vinyl ketone (UN1251). As proposed, RSPA is identifying methyl vinyl ketone as a Hazard Zone A inhalation hazard. Also, to be consistent with the UN Recommendations (Eighth revised edition), RSPA is adding the plus (+) symbol to Column 1 of the entry for methyl vinyl ketone. A new special provision ''25'' is assigned to this entry to authorize a one-year delay for compliance with new packaging requirements.

e. Nitriles, toxic, flammable, n.o.s. (UN3275). This generic entry covers Division 6.1, Packing Groups I and II toxic, flammable nitriles that are not specifically listed by name but exhibit acute oral, dermal and/or inhalation toxicity. The acute toxicity of these nitriles may differ from one compound to another. Those toxic by inhalation may fall into Hazard Zone A or Hazard Zone B. Other nitriles may not be toxic by inhalation, but may exhibit oral and/or dermal toxicity which places them in Division 6.1, Packing Group I. Therefore, RSPA is adding special provision ''5'' to Column 7 of the entry for nitriles, toxic, flammable, n.o.s. at the Packing Group I level.

f. Nitriles, toxic, n.o.s. (UN3276). This generic entry covers Division 6.1, Packing Groups I, II and III toxic nitriles that are not specifically listed by name but exhibit acute oral, dermal and/or inhalation toxicity. The acute toxicity of these nitriles may differ from one compound to another. Those toxic by inhalation may fall into Hazard Zone A or Hazard Zone B. Other nitriles may not be toxic by inhalation, but may exhibit oral and/or dermal toxicity which places them in Division 6.1, Packing Group I. Therefore, RSPA is adding special provision ''5'' to Column 7 of the entry for nitriles, toxic, n.o.s. at the Packing Group I level.

g. Organoarsenic compound, n.o.s. (UN3280). This generic entry covers Division 6.1, Packing Groups I, II and III toxic organoarsenic compounds that are not specifically listed by name but exhibit acute oral, dermal and/or inhalation toxicity. The acute toxicity of these organoarsenic compounds may differ from one compound to another. Those toxic by inhalation may fall into Hazard Zone A or Hazard Zone B. Others may not be toxic by inhalation, but may exhibit oral and/or dermal toxicity which places them in Division 6.1, Packing Group I. Therefore, RSPA is adding special provision ''5'' to Column 7 of the entry for organoarsenic compound, n.o.s. at the Packing Group I level.

h. Organophosphorus compound, toxic, flammable, n.o.s. (UN3279). This generic entry covers Division 6.1, Packing Groups I and II toxic, flammable organophosphorus compounds that are not specifically listed by name but may exhibit acute oral, dermal and/or inhalation toxicity. The acute toxicity of these organophosphorus compounds may differ from one compound to another. Those toxic by inhalation may fall into Hazard Zone A or Hazard Zone B. Others may not be toxic by inhalation, but may exhibit oral and/or dermal toxicity which places them in Division 6.1, Packing Group I. Therefore, RSPA is adding special provision ''5'' to Column 7 of the entry for organophosphorus compound, toxic, flammable, n.o.s. at the Packing Group I level.

i. Organophosphorus compound, toxic, n.o.s. (UN3278). This generic entry covers Division 6.1, Packing Groups I, II and III toxic organophosphorus compounds that are not listed by name but exhibit acute oral, dermal and/or inhalation toxicity. The acute toxicity of these organophosphorus compounds may differ from one compound to another. Those toxic by inhalation may fall into Hazard Zone A or Hazard Zone B. Others may not be toxic by inhalation, but may exhibit oral and/or dermal toxicity which places them in Packing Group I. Therefore, RSPA is adding special provision ''5'' to Column 7 of this entry for organophosphorus compound, toxic, n.o.s. at the Packing Group I level.

j. Phosphorus pentafluoride (UN2198). As proposed, RSPA is identifying phosphorus pentafluoride as a Hazard Zone B inhalation hazard.

k. Tungsten hexafluoride (UN2196). As proposed, RSPA is identifying tungsten hexafluoride as a Hazard Zone B inhalation hazard.

Section 172.102. As noted in the discussion on revisions for materials poisonous by inhalation, RSPA is authorizing a one-year delay for compliance with new packaging requirements by assigning a new special provision ''25'' to three commodities.

Special Provision B59, which authorizes AAR 207A tank cars for phosphorus pentasulfide, is revised as proposed to reference the use of water-tight, sift-proof, closed-top, metal-covered hopper cars.

A new special provision (N42) is added as proposed to authorize a UN 1A1 steel drum for stabilized benzyl chloride. One comment was received in response to this proposal and strongly supported the addition of N42, which allows use of phenolic-lined steel drums with a minimum thickness of 1.3 mm (0.050 inch) which have been tested and certified to a Packing Group I level at a specific gravity of 1.8. The commenter cited a history of shipping benzyl chloride in phenolic-lined 17C and UN 1A1 steel drums since 1981 without incident and without failure of the phenolic lining.

Section 172.302. In the general marking requirements for bulk packagings, markings on portable tanks with capacities of less than 3,785 L (1,000 gallons) must be at least 6.0 mm (0.24 inch) wide and at least 25 mm (one inch) high. RSPA proposed a revision of paragraph (b)(2) to decrease to 4 mm (0.16 inch) the minimum width of markings required on portable tanks having a capacity less than 3,785 L (1,000 gallons). RSPA also proposed reducing both the minimum height and width of markings required on IBCs to 25 mm (one inch). Commenters were uniformly supportive of both proposals, and they are adopted as proposed. RSPA is not adopting one commenter's recommendation to amend Appendix B to Subpart B of Part 107 to allow a marking height of one inch for certain small portable tanks authorized under an exemption.

Section 172.504. RSPA is removing the second sentence of paragraph (f)(8) which allows a CLASS 9 placard to be substituted for a COMBUSTIBLE LIQUID placard for material meeting both Combustible liquid and Class 9 hazard classes. Several commenters agreed that this provision created potential confusion and misunderstanding between documentation and marking requirements describing a Combustible liquid and the application of CLASS 9 placards.

Part 173

Section 173.24a. RSPA proposed to amend paragraph (a)(3) to clarify that cushioning material used to protect inner packagings must not be adversely affected (e.g., disintegrate) if there is leakage of a hazardous material from the inner packagings. A degradation of cushioning materials could significantly reduce the effectiveness of a packaging to a point that it would not conform with its marked performance standard

or meet general packaging requirements. This clarification is consistent with international air transport provisions contained in the International Civil Aviation Organization's (ICAO) Technical Instructions. Commenters supported this proposed revision; however, the Fibre Box Association expressed concern that the proposal might be interpreted to mean corrugated cushioning and corrugated packaging of liquids will not be allowed. The Fibre Box Association stated that the phrase ''having protective properties [significantly] impaired in event of leakage'' is too vague.

The proposed change was not intended to preclude the use of fiberboard cushioning or packaging for liquids. Although there is no established criteria for evaluating degradation of cushioning material, RSPA agrees that the phrase ''significantly impaired'' should be revised. RSPA believes ''significantly weakened'' more accurately conveys the intent of this provision and is revising this phrase accordingly.

Currently, paragraphs (b)(1) and (b)(2) provide filling limits for single and composite packagings, but no such limits are provided for combination packagings. As proposed, RSPA is revising paragraph (b)(2) of this section to prescribe filling limits for all non-bulk packagings, including combination packagings. This provision prohibits combination packagings from being filled with a hazardous material to a gross mass greater than the maximum gross mass marked on the packaging.

Section 173.28. RSPA proposed adding a formula in paragraph (b)(4) for calculating an equivalent minimum thickness for stainless steel drums. This formula is consistent with the formula contained in § 178.705 for calculating minimum wall thicknesses for metal IBCs. The Association of Container Reconditioners (ACR) opposed this proposed change and stated that this issue is too complex for adoption at this time. ACR believes that by reducing the minimum thickness of stainless steel to the equivalent strength of carbon steel, the rationale for waiving leakproofness testing for stronger steel is eliminated. ACR requested that, if this proposal is adopted, a drum manufacturer's use of this equivalence formula be communicated through a particular unique mark, thus advising persons responsible for reuse or reconditioning of this equivalence formula being used.

RSPA is confident that the equivalence formula adopted in this final rule provides an equivalent level of safety and drum integrity. The language in the paragraph (b)(7) leakproofness testing waiver for stainless steel drums requires a thickness of one and one-half times the thickness prescribed for reuse, thus precluding use of any thinner drums.

An adjustment to Footnote 1, which specifies a minimum thickness of 0.82 mm body and 1.11 mm head and corresponds with ISO 3574, is adopted as proposed. Commenters supporting this proposed change included ACR, several chemical manufacturing companies, the Association of Waste Hazardous Materials Transporters, and a drum manufacturer. Two commenters, a different drum manufacturer and the Steel Shipping Container Institute (SSCI), opposed this proposal, stating that this request from ACR was driven by economic considerations, not safety. SSCI claimed that technology for determining minimum thicknesses is readily available. The drum manufacturer opposing this change stated that if the footnote adjustment was adopted as proposed, RSPA should provide a transition period for drum manufacturers to deplete their inventory of material rendered obsolete by this change.

RSPA is making this adjustment to Footnote 1 to standardize minimum thickness requirements with breakpoints commonly recognized by international standards, not to provide any economic benefit to industry. RSPA also is revising Footnote 1 to authorize metal drums or jerricans constructed with a minimum thickness of 0.82 mm body and 1.09 mm heads until December 31, 1996. After that date, drums must be constructed with heads meeting a minimum thickness of 1.11 mm. This delay will provide drum manufacturers additional time to deplete existing inventory and build an inventory of new material.

Paragraph (b)(7)(iv)(C) is revised as proposed to clarify that there are established conditions which must be met before an approval is granted by the Associate Administrator for Hazardous Materials Safety to allow relief from leakproofness testing for a packaging constructed of a material or thickness not otherwise authorized in the exception.

Paragraph (c)(2) prescribes reconditioning requirements for non-bulk packagings other than metal drums. In the NPRM, RSPA proposed a revision to this paragraph to clarify that repairing or replacing a bung or removable gasket in a plastic closed head (UN 1H1) drum is not considered reconditioning. Both SSCI and ACR opposed this proposed change, stating that replacing gaskets or closures on a plastic drum *is* plastic drum reconditioning. SSCI claimed that a change in the material of a drum is reconditioning or remanufacturing, and that changing location, type or size of gasket material or properties affecting the performance of the gasket is considered design type changes requiring complete design qualification testing. The SSCI also warned that this proposal downplays the significance of gaskets in minimizing leaks and will shift drum purchases from steel to plastic drums to save costs in reconditioning and leaktesting. In RSPA's view, simply ''replacing'' a bung or gasket in a plastic closed head drum is not reconditioning. In this final rule, RSPA is clarifying in paragraph (c)(2) that repair or replacement of a bung or a removable gasket in a plastic closed head (UN 1H1) drum with a bung or gasket that is of the same design and material as the original bung or gasket, and provides equivalent performance, is not considered reconditioning and does not subject the drum to reconditioning marking requirements or to leakproofness testing requirements if it is otherwise excepted from leakproofness testing.

Section 173.32. As proposed, RSPA is reinstating pressure testing requirements for DOT 57 portable tanks in paragraph (e)(2)(i). RSPA also is amending paragraph (d) to allow plastic discharge valves for certain stainless steel DOT 57 tanks constructed before October 1, 1996. Allowing a plastic discharge valve on these tanks eliminates the need for an existing exemption, DOT–E–10916, and permits continued use of thousands of portable tanks with a proven safety record. Two comments were received in response to the proposal, both supporting revisions to this section.

RSPA is adding a new paragraph (t) which allows the remarking of certain portable tanks currently authorized under DOT exemptions as DOT 51 portable tanks. These portable tanks were in full conformance with the requirements for DOT 51 portable tanks, including the ASME Code ''U'' stamp, except for the location of fill and discharge outlets.

The changes adopted in this final rule relating to the location of outlets on DOT 51 portable tanks will allow for the elimination of numerous exemptions based on the design and excellent safety record of these portable tanks. RSPA believes that as a minimum, the following exemptions will be affected:

DOT–E 6518
DOT–E 8196
DOT–E 9401
DOT–E 9402

DOT–E 9632
DOT–E 9718
DOT–E 10032
DOT–E 10171
DOT–E 10193
DOT–E 10291
DOT–E 10567
DOT–E 11239
DOT–E 11275
DOT–E 11313
DOT–E 11331
DOT–E 11539
DOT–E 11589
DOT–E 11604
DOT–E 11658
DOT–E 11661

Persons holding other exemptions which they believe are impacted by changes adopted by this final rule should contact RSPA.

Section 173.115. Paragraph (b)(1) is revised as proposed to reflect the correct conversion of 280 kPa to read ''280 kPa (40.6 psia)'' for informational purposes.

Section 173.120 and Appendix H to Part 173. Based on requests from industry and comments supporting this proposed revision, RSPA is adding a new paragraph (b)(3) to specify a procedure for testing combustible liquids with a flash point above 60.5° C (141° F) and below 93°C (200° F) for the ability to sustain combustion. Appendix H to Part 173 is revised to provide additional test temperatures in paragraph 5.(h) for combustible liquids that closely parallel the approach for flammable liquids.

Sections 173.121, 173.125, and 173.127. As proposed, RSPA is adopting a clarification of the methods for determining packing groups described in §§ 173.121(a), 173.125(a), and 173.127(b) for Class 3, Class 4, and Class 5 materials, respectively.

Section 173.133. RSPA is revising as proposed the wording ''more than one packing group and hazard zone'' in paragraph (b)(1) to read ''more than one packing group or hazard zone''. One commenter expressed support for the proposed change, stating that it will clarify the determination of applicable packing groups.

Section 173.134. Paragraph (a)(4) limits the definition of regulated medical waste to exclude discarded cultures and stocks of infectious substances. In this final rule, paragraph (b) is revised as proposed by adding a new paragraph (b)(4) authorizing discarded cultures and stocks in Biosafety Levels 1, 2 and 3, as defined in HHS Publication No. (CDC) 93–8395, *Biosafety in Microbiological and Biomedical Laboratories*, 3rd Edition, May 1993, Section II to be described and packaged as regulated medical waste rather than infectious substances. Packagings must conform to Packing Group II performance requirements. Transport of these materials is limited to private or contract motor freight carriers in dedicated service to the transportation of medical waste. Commenters uniformly supported this proposed change. One commenter referenced a recent Center for Disease Control proposed list of infectious substances capable of causing substantial harm to human health. This commenter believed all discarded cultures and stocks of infectious substances not on this proposed list should be eligible for regulation as regulated medical waste. Another commenter believed RSPA should provide even more relief for these materials by allowing them to be packaged in OSHA-authorized containers conforming to DOT's general packaging standards, and also should allow private carriers transporting these types of cultures and stocks to backhaul non-food products if trailers are properly disinfected. It is RSPA's view that these suggested changes are beyond the scope of this rulemaking.

Section 173.151. A new paragraph (d) is added as proposed to incorporate limited quantity provisions for Division 4.3 (dangerous when wet) solid materials in Packing Groups II and III. This amendment aligns the HMR with limited quantity exceptions contained in the UN Recommendations.

Section 173.156. Paragraph (b)(2) is revised as proposed to remove the 30 kg (66 pounds) weight restriction for ORM-D materials packaged in ''display packs'' which are offered for transportation, or transported, by highway or rail between a manufacturer, a distribution center, and a retail outlet. These display packs are inner receptacles of ORM-D materials which are secured in corrugated fiberboard trays and then stacked and placed within a strong outer container. Each outer container is strapped to a wooden pallet with steel or polyester strapping to form an integral part of the packaging. All commenters addressing this issue supported the proposal; however, several commenters requested that the net weight of each display pack be raised from 250 kg (550 pounds) to 525 kg (1155 pounds) to reflect the weight limit authorized in an exemption recently granted for this type of packaging. RSPA believes that display packs should be limited to 250 kg (550 pounds) net weight until satisfactory experience is gained under the exemption at the higher weight.

RSPA proposed an exception for transportation of ORM-D materials to disposal facilities in paragraph (b)(1) to allow discarded consumer commodities to be transported from manufacturing, distribution or retail facilities to a disposal facility when packaged in large boxes or overpacks exceeding 30 kg (66 pounds). RSPA received comments supporting this proposal from The Conference on the Safe Transportation of Hazardous Articles (petitioner for this change) and the National Wholesale Druggists' Association. The Association of Waste Hazardous Materials Transporters opposed the proposal, stating it has the potential for abuse. This commenter believed the proposal was not in the public interest and will create confusion about the regulatory status of discarded material, which may be subject to regulation as either a solid waste or hazardous waste.

RSPA does not agree. However, based on further review of this proposal, RSPA is revising the proposed provision to require that the transportation of discarded consumer commodities to a disposal facility must be from a single point of origin. RSPA believes that limiting the consolidation of discarded consumer commodities in one shipping unit from one offeror establishes an appropriate condition for such transportation, taking into account other requirements such as §§ 173.24 and 173.24a.

Section 173.158. Paragraph (d) is revised as proposed to authorize additional packagings for nitric acid in concentrations of 90 percent or greater when offered for transportation or transported by rail, highway or water. A combination packaging consisting of a 1A2, 1B2, 1D, 1G, 1H2, 3H2 or 4G outer packaging with inner glass packagings of 2.5 L (0.66 gallons) or less capacity cushioned with a non-reactive, absorbent material and packed within a leak-tight packaging of metal or plastic is authorized.

In addition, RSPA is revising paragraph (f)(1) as proposed to authorize 6HH1 and 6HA1 composite packagings with PFA Teflon inner receptacles for nitric acid concentrations of 70 percent or less. These composite packagings are authorized under the provisions of three exemptions and have demonstrated an equivalent level of safety.

Section 173.170. RSPA is adding a new non-bulk packaging section for black powder for small arms when transported domestically and reclassed as Division 4.1. For consistency with comparable provisions for smokeless powder for small arms, RSPA is revising approval procedures as proposed in the NPRM by requiring that black powder must be examined and approved for Division 4.1 classification and the

complete package must be of the same type as that approved under § 173.56.

Section 173.183. As proposed, RSPA is adding a packaging authorization to allow the use of polypropylene inner packagings for nitrocellulose base film.

Section 173.225. Paragraph (a) is amended as proposed to specify that inner plastic packagings of a combination packaging used for transporting organic peroxides must be constructed of new resin. The one commenter responding to this proposal, the Organic Peroxide Producers Safety Division of the Society of the Plastics Industry, petitioned for the change. RSPA agrees with the commenter that most regulated organic peroxides are too sensitive to contamination to be stored in packages manufactured from ''resin of unknown history.''

Section 173.306. Paragraph (i)(1) is removed as proposed and paragraphs (i)(2) through (i)(4) are redesignated accordingly as paragraphs (i)(1) through (i)(3). In addition, RSPA is revising the introductory text of paragraph (i) to clarify that flammability of aerosols is based on obtaining a positive test result from any of the three methods contained in this paragraph. This approach is consistent with the ICAO Technical Instructions.

Section 173.314. RSPA is adopting a seasonal filling limit for tank cars containing anhydrous ammonia and liquefied petroleum gas based on winter filling reference temperatures of 29°C (85°F), 32°C (90°F), and 38°C (100°F), for insulated tanks, thermally-protected and jacketed tanks, and noninsulated tanks, respectively. These filling limits would authorize a winter filling limit greater than that authorized in the HM–181 final rule. RSPA believes that these filling limits will ensure safety in transit while providing economic relief from the requirements adopted in the HM–181 final rule. Commenters uniformly supported this proposed change. The National Industrial Transportation League stated this change strikes an appropriate balance between safety and efficiency by avoiding the necessity for increasing the number of tank car shipments (and corresponding risk of spills) in winter months to achieve the same overall volume. The National Propane Gas Association also supported this proposal for tank cars and indicated its intent to submit a proposal to RSPA later this year for adoption of seasonal filling limits for cargo tanks.

Part 178

Sections 178.245 and 178.245–1. RSPA is making several editorial changes for clarity and one significant change to allow DOT Specification 51 portable tanks to have openings at locations other than the top or one end of the tank under certain circumstances. Commenters supported the proposal to allow bottom outlets on tank containers, citing safety and economic benefits.

Section 178.245–4. As proposed, RSPA is adding a new paragraph (e) to require that a DOT 51 portable tank in an ISO framework for containerized transportation must meet the requirements specified in 49 CFR Parts 450–453.

Section 178.245–6. The first sentence of paragraph (a) is amended as proposed to require the nameplate to be in close proximity to the ASME plate.

Section 178.270–12. RSPA is amending paragraph (a) as proposed to notify manufacturers, owners and approval agencies of the requirements for the number and type of closures required for filling and discharge connections located below the normal liquid level of IM portable tanks.

Section 178.601. Paragraph (g)(8) is added to list changes in one or more design elements which would constitute a different drum design type. Commenters supported the addition of this paragraph, but recommended revisions to be consistent with an approval issued to SSCI. RSPA agrees and is revising these provisions accordingly.

Section 178.705. As proposed, a correction is made to the constant in the equivalence thickness formula for U.S. Standard Units in paragraph (c)(1)(iv)(B) to ensure that the resulting thickness is in inches.

Paragraph (c)(2) of this section specifies pressure relief devices for metal IBCs. RSPA proposed adding a new sentence in paragraph (c)(2)(ii) to clarify that the specified start-to-discharge pressure requirements do not apply to fusible links unless these links are the sole source of pressure relief for the IBC. RSPA's proposal did not change any existing UN requirements, but simply clarified that the start-to discharge pressure requirements in 178.705(c)(2)(ii) did not apply to fusible devices if such devices are used in addition to other venting devices. If fusible devices are the sole means for providing venting relief capacity, an IBC marked ''31A'' must not exceed 65 kPa (9 psig) at the fusible device operating temperature.

Several commenters requested that RSPA not adopt this amendment as proposed. It appears commenters are requesting an exception from start-to-discharge pressure requirements when fusible devices are the sole means of pressure relief capacity. This exception would not be consistent with pressure relief requirements for IBCs in the UN Recommendations. The UN Recommendations specify pressure relief capabilities for an IBC regardless of the type of pressure relief device utilized. To maintain international consistency, such an exception should first be proposed and adopted in the UN Recommendations.

RSPA is adopting this amendment in paragraph (c)(2)(ii) essentially as proposed, but is replacing the phrase ''fusible links'' with ''fusible devices'' to more accurately describe these devices. This revision is based on a comment by the Rigid Intermediate Bulk Container Association.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

The economic impact of this final rule is expected to result in only minimal costs to certain persons subject to the HMR and may result in modest cost savings to a small number of persons subject to the HMR and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents pertaining to hazardous material, and requirements respecting the number, content, and placement of such documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacturing, fabrication, marking, maintenance,

reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be January 1, 1997. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This final rule responds to petitions for rulemaking. It is intended to provide clarification of the regulations and relax certain requirements. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In the § 171.7(a)(3) Table, three new entries are added in alphabetical order to read as follows:

§ 171.7 Reference material.

(a) *Matter incorporated by reference* * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society for Testing and Materials	
* * * * * * *	
ASTM A 366/A 366M–91 (1993)e1 Standard Specification for Steel, Sheet, Carbon, Cold-Rolled, Commercial Quality	178.601
* * * * * * *	
ASTM A 568/A 568M–95 Standard Specification for Steel, Sheet, Carbon, and High-Strength, Low-Alloy, Hot-Rolled and Cold-Rolled, General Requirements for	178.601
* * * * * * *	
Health and Human Services	
Centers for Disease Control and Prevention, 1600 Clifton Road N.E., Atlanta GA 30333. Also available from: Superintendent of Documents, Government Printing Office (GPO), HHS Publication No. (CDC) 93–8395, Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, May 1993, Section II	173.134
* * * * * * *	

* * * * *

3. In § 171.14, as amended at 61 FR 7959, effective October 1, 1996, paragraph (a) introductory text through paragraph (a)(2)(i) and paragraph (b) are removed, paragraphs (a)(2)(ii) and (a)(2)(iii) are redesignated as paragraphs (b) and (c) and a new paragraph (a) is added to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(a) *Previously filled packages*—(1) *Packages filled prior to October 1, 1991.* Notwithstanding the marking and labeling provisions of subparts D and E, respectively, of part 172, and the packaging provisions of part 173 and subpart B of Part 172 of this subchapter, a package may be offered for transportation and transported prior to October 1, 2001, if it—

(i) Conforms to the old requirements of this subchapter in effect on September 30, 1991;

(ii) Was filled with a hazardous material prior to October 1, 1991;

(iii) Is marked ''Inhalation Hazard'' if appropriate, in accordance with § 172.313 of this subchapter or Special Provision 13, as assigned in the § 172.101 Table; and

(iv) Is not emptied and refilled on or after October 1, 1991.

(2) *Non-bulk packages filled prior to October 1, 1996.* Notwithstanding the packaging provisions of subpart B of Part 172 and the packaging provisions of part 173 of this subchapter with respect to UN standard packagings, a non-bulk package other than a cylinder may be offered for transportation and transported domestically prior to October 1, 1999, if it—

(i) Conforms to the requirements of this subchapter in effect on September 30, 1996;

(ii) Was filled with a hazardous material prior to October 1, 1996; and

(iii) Is not emptied and refilled on or after October 1, 1996.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

4. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 172.101, a new paragraph (c)(10)(iii) is added to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(10) * * *

(iii) A mixture or solution not identified in the Table by a specific description, comprised of two or more hazardous materials in the same hazard class, shall be described using an appropriate shipping description (e.g., ''Flammable liquid, n.o.s.''). Some mixtures may be more appropriately described according to their application, such as ''Coating solution'' or ''Extracts, flavoring liquid'' rather than by an n.o.s. entry. Under the provisions of subparts C and D of this part, the technical names of at least two components most predominately contributing to the hazards of the mixture or solution may be required in association with the proper shipping name.

* * * * *

§ 172.101 [Amended]

6. In addition, in § 172.101, in paragraph (c)(12), the following changes are made:

a. In paragraph (c)(12)(ii), in the last sentence, the wording ''technical name of the constituent'' is revised to read ''technical name of one or more constituents''.

b. In paragraph (c)(12)(iii), in the first sentence, the wording ''by a specific description,'' is revised to read ''specifically by name (e.g., acetyl chloride),''.

7. In § 172.101, the Hazardous Materials Table, as amended at 61 FR 18932 and 61 FR 27172 effective October 1, 1996, is amended by adding in alphabetical order or revising the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Nos.	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	[ADD:]												
D	Black powder for small arms.	4.1	NA0027	I	4.1	70	None	170	None	Forbidden	Forbidden	E	
	*		*		*	*	*		*	*			
	[REVISE:]												
	Hydrogen cyanide, solution in alcohol *with not more than 45 percent hydrogen cyanide.*	6.1	UN3294	I	6.1, 3	2,25,B9, B14,B32, B74, T38, T43,T45.	None	227	244	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
	Methanesulfonyl chloride.	6.1	UN3246	I	6.1, 8	2,25, B9, B14,B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
+	Methyl vinyl ketone.	3	UN1251	II	3, 6.1	1,25,B9, B14,B30, B72,T38, T43, T44.	None	226	244	Forbidden	Forbidden	B	40
	*		*		*	*	*		*	*			

§ 172.101 [Amended]

8. In addition, in § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entry ''Benzyl chloride'', in column (7), Special Provision ''N43'' is revised to read ''N42''.

b. For the entry ''Chlorosilanes, corrosive, flammable, n.o.s.'', in Column (7), Special Provisions '',T18, T26'' are added following ''B100''.

c. For the entry ''Chlorosilanes, corrosive, nos.'', in Column (7), Special Provisions, ''T8, T26'' are added following ''B2''.

d. For the entry, ''Chlorosilanes, water-reactive, flammable, corrosive, n.o.s.'', in Column (7), Special Provisions '',T24, T26'' are added following ''A2''.

e. For the entries ''Organic peroxide type F, liquid, temperature controlled'' and ''Organic peroxide type F, solid, temperature controlled'', in Column (8A), the reference ''225'' is removed each place it appears and ''None'' added in each place, and in Column (8C), the

reference ''None'' is removed each place it appears and ''225'' added in each place.

f. For the entry ''Organic peroxide type F, solid'', in Column (8C), the reference ''None'' is removed and ''225'' is added in its place.

g. For the entry ''Phosphorus pentafluoride'', in Column (7), the wording ''1'' is removed and ''2, B9, B14'' is added in its place; in Column (8B) ''302'' is revised to read ''302, 304''; and in Column (8C), ''None'' is revised to read ''314, 315''.

h. For the entry ''Tungsten hexafluoride'', in Column (7), special provision ''3'' is revised to read ''2''.

i. For the entries ''Metal carbonyls, n.o.s., UN3281, PG I''; ''Nitriles, toxic, flammable, n.o.s., UN3275, PG I''; ''Nitriles, toxic, n.o.s., UN3276, PG I''; ''Organoarsenic compound, n.o.s., UN3280, PG I''; ''Organophosphorus compound, toxic, flammable, n.o.s., UN3279, PG I''; and ''Organophosphorus compound, toxic, n.o.s., UN3278, PG I'', in Column (7), Special Provision ''5'' is added.

j. For each of the following entries, in Column (8A), the word ''None'' is removed and ''151'' added in its place:

Alkali metal amides
Alkaline earth metal alloys, n.o.s.
Aluminum carbide
Aluminum ferrosilicon powder (both entries)
Aluminum powder, uncoated (both entries)
Aluminum processing by-products (both entries)
Aluminum silicon powder, uncoated
Barium
Calcium
Calcium carbide, in PG II
Calcium cyanamide *with more than 0.1 percent of calcium carbide*
Calcium manganese silicon
Calcium silicide (both entries)
Cerium, *turnings or gritty powder*
Ferrosilicon *with 30 percent or more but less than 90 percent silicon*
Lithium ferrosilicon
Lithium hydride, fused solid
Lithium silicon
Magnesium granules, coated *particle size not less than 149 microns*
Magnesium powder *or* Magnesium alloys, powder
Magnesium silicide
Maneb stabilized or Maneb preparations, stabilized *against self-heating*
Metal hydrides, water-reactive, n.o.s., in PG II
Metallic substance, water-reactive, n.o.s., in PG II and III
Phosphorous pentasulfide, *free from yellow or white phosphorous*
Sodium aluminum hydride
Water-reactive solid, corrosive, n.o.s., in PG II and III
Water-reactive solid, flammable, n.o.s., in PG II and III
Water-reactive solid, n.o.s., in PG II and III
Water-reactive solid, toxic, n.o.s., in PG II and III
Zinc ashes

9. In § 172.102, in paragraph (c)(1) Special Provisions 25 and 70 are added, in paragraph (c)(3) Special Provision B59 is revised, and in paragraph (c)(5), Special Provision N42 is added, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

* * * * *

25 Until October 1, 1997, this material may be transported or offered for transportation in a packaging authorized under the regulations in effect on September 30, 1996.

* * * * *

70 Black powder that has been classed in accordance with the requirements of § 173.56 of this subchapter may be reclassed and offered for domestic transportation as a Division 4.1 material if it is offered for transportation and transported in accordance with the limitations and packaging requirements of § 173.170 of this subchapter.

* * * * *

(3) * * *

* * * * *

B59 Water-tight, sift-proof, closed-top, metal-covered hopper cars are also authorized provided that the lading is covered with a nitrogen blanket.

* * * * *

(5) * * *

* * * * *

N42 1A1 drums made of carbon steel with thickness of body and heads of not less than 1.3 mm (0.050 inch) and with a corrosion-resistant phenolic lining are authorized for stabilized benzyl chloride if tested and certified to the Packing Group I performance level at a specific gravity of not less than 1.8.

* * * * *

10. In § 172.302, paragraph (b) is revised to read as follows:

§ 172.302 General marking requirements for bulk packagings.

* * * * *

(b) *Size of markings.* Except as otherwise provided, markings required by this subpart on bulk packagings must—

(1) Have a width of at least 6.0 mm (0.24 inch) and a height of at least 100 mm (3.9 inches) for rail cars;

(2) Have a width of at least 4.0 mm (0.16 inch) and a height of at least 25 mm (one inch) for portable tanks with capacities of less than 3,785 L (1,000 gallons) and intermediate bulk containers; and

(3) Have a width of at least 6.0 mm (0.24 inch) and a height of at least 50 mm (2.0 inches) for cargo tanks and other bulk packagings.

* * * * *

§ 172.504 [Amended]

11. In § 172.504, the last sentence of paragraph (f)(8) is removed.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5102–5127; 49 CFR 1.53.

13. In § 173.24a, the last sentence of paragraph (a)(3) and paragraph (b)(2) are revised, to read as follows:

§ 173.24a Additional general requirements for non-bulk packagings and packages.

(a) * * *

(3) * * * Cushioning material must not be capable of reacting dangerously with the contents of the inner packagings or having its protective properties significantly weakened in the event of leakage.

* * * * *

(b) * * *

(2) Except as otherwise provided in this section, a non-bulk packaging may not be filled with a hazardous material to a gross mass greater than the maximum gross mass marked on the packaging.

* * * * *

§ 173.24b [Amended]

14. In § 173.24b, in the first sentence in paragraph (b), the wording ''stainless steel is steel'' is revised to read ''the reference stainless steel is stainless steel''.

15. In § 173.28, paragraphs (b)(4) and (b)(7)(iv)(C) are revised and a new sentence is added in paragraph (c)(2) following the first sentence, to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(b) * * *

(4) Metal and plastic drums and jerricans used as single packagings or the outer packagings of composite packagings are authorized for reuse only when they are marked in a permanent manner (e.g., embossed) in millimeters with the nominal (for metal packagings) or minimum (for plastic packagings)

thickness of the packaging material, as required by § 178.503(a)(9) of this subchapter, and—

(i) Except as provided in paragraph (b)(4)(ii) of this section, conform to the following minimum thickness criteria:

Maximum capacity not over	Minimum thickness of packaging material	
	Metal drum or jerrican	Plastic drum or jerrican
20 L	0.63 mm (0.025 inch).	1.1 mm (0.043 inch).
30 L	0.73 mm (0.029 inch).	1.1 mm (0.043 inch).
40 L	0.73 mm (0.029 inch).	1.8 mm (0.071 inch).
60 L	0.92 mm (0.036 inch).	1.8 mm (0.071 inch).
120 L	0.92 mm (0.036 inch).	2.2 mm (0.087 inch).
220 L	0.92 mm (0.036 inch) [1].	2.2 mm (0.087 inch).
450 L	1.77 mm (0.070 inch).	5.0 mm (0.197 inch).

[1] Metal drums or jerricans constructed with a minimum thickness of 0.82 mm body and 1.09 mm heads are authorized until December 31, 1996. After that date, metal drums or jerricans constructed with a minimum thickness of 0.82 mm body and 1.11 heads are authorized.

(ii) For stainless steel drums and jerricans, conform to a minimum wall thickness as determined by the following equivalence formula:

Formula for Metric Units

$$e_1 = \frac{21.4 \times e_0}{\sqrt[3]{(Rm_1 \times A_1)}}$$

Formula for U.S. Standard Units

$$e_1 = \frac{21.4 \times e_0}{\sqrt[3]{(Rm_1 \times A_1) / 145}}$$

where:

e_1=required equivalent wall thickness of the metal to be used (in mm or, for U.S. Standard units, use inches).

e_0=required minimum wall thickness for the reference steel (in mm or, for U.S. Standard units, use inches).

Rm_1=guaranteed minimum tensile strength of the metal to be used (in N/mm^2 or for U.S. Standard units, use pounds per square inch).

A_1=guaranteed minimum elongation (as a percentage) of the metal to be used on fracture under tensile stress (see paragraph (c)(1) of this section).

* * * * *

(7) * * *

(iv) * * *

(C) another material or thickness when approved under the conditions established by the Associate Administrator for Hazardous Materials Safety for reuse without retesting.

(c) * * *

(2) * * * For a UN 1H1 plastic drum, replacing a removable gasket or closure device with a replacement of the same design and material which provides equivalent performance does not constitute reconditioning. * * *

* * * * *

§ 173.28 [Amended]

16. In addition, in § 173.28, in the first sentence of paragraph (c)(2), the wording ''or a UN 1H1 plastic drum'' is added immediately following the wording ''other than a metal drum''.

17. In § 173.32, in paragraph (d) a new third sentence is added at the end of the paragraph, in paragraph (e)(2)(i), the second sentence is revised, and a new paragraph (t) is added, to read as follows:

§ 173.32 Qualification, maintenance and use of portable tanks other than Specification IM portable tanks.

* * * * *

(d) * * * A stainless steel portable tank internally lined with polyethylene, which was constructed on or before October 1, 1996, and complies with all requirements of Specification 57 except that it is equipped with a polypropylene discharge ball valve and polypropylene secondary discharge opening closure, may be marked as a Specification 57 portable tank and used in accordance with the provisions of this section.

(e) * * *

(2) * * *

(i) * * * Each Specification 57 tank must be leak tested by a minimum sustained air pressure of at least three pounds per square inch gage applied to the entire tank. * * *

* * * * *

(t) *Exemption portable tanks based on DOT 51 portable tanks.* (1) The owner of a portable tank constructed in accordance with and used under an exemption issued prior to August 31, 1996, that was in conformance with the requirements for Specification DOT 51 portable tanks with the exception of the location of fill and discharge outlets, shall examine the portable tank and its design to determine if it meets the new outlet requirements contained in § 178.245–1(d) of this subchapter. If the owner determines that the portable tank is in compliance with all the requirements of § 178.245 of this subchapter, the exemption number stenciled on the portable tank shall be removed and the specification plate (or a plate placed adjacent to the specification plate) shall be durably marked ''DOT 51—E*****'' (where ***** is to be replaced by the exemption number).

(2) During the period the portable tank is in service, and for one year thereafter, the owner of the portable tank must retain on file at its principal place of business a copy of the last exemption in effect.

§ 173.115 [Amended]

18. In § 173.115, in paragraph (b)(1), the wording ''(41 psia)'' is revised to read ''(40.6 psia)''.

19. In § 173.120, a new paragraph (b)(3) is added to read as follows:

§ 173.120 Class 3—Definitions.

* * * * *

(b) * * *

(3) A combustible liquid which does not sustain combustion is not subject to the requirements of this subchapter as a combustible liquid. A procedure for determining if a material sustains combustion when heated under test conditions and exposed to an external source of flame is provided in Appendix H of this part.

* * * * *

§ 173.121 [Amended]

20. In § 173.121, in the second sentence of paragraph (a), the wording ''or indicates that the packing group is to be determined on the basis of the grouping criteria for Class 3,'' is removed.

21. In § 173.125, paragraph (a) is revised to read as follows:

§ 173.125 Class 4—Assignment of packing group.

(a) The packing group of a Class 4 material is assigned in Column (5) of the § 172.101 Table. When the § 172.101 Table provides more than one packing group for a hazardous material, the packing group shall be determined on the basis of test results following test methods given in appendix E of this part and by applying the appropriate criteria given in this section.

* * * * *

22. In § 173.127, the section heading is revised, paragraph (b)(1) is removed, paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(1) and (b)(2), and the paragraph (b) heading and the newly designated paragraph (b)(1) introductory text are revised to read as follows:

§ 173.127 Class 5, Division 5.1—Definition and assignment of packing groups.

* * * * *

(b) *Assignment of packing group.* (1) The packing group of a Division 5.1 material shall be as assigned in Column (5) of the § 172.101 Table. When the § 172.101 Table provides more than one packing group for a hazardous material,

the packing group shall be determined on the basis of test results following test methods given in appendix F of this part and by applying the following criteria:

* * * * *

§ 173.133 [Amended]

23. In § 173.133, in paragraph (a) introductory text, in the second sentence, the wording ''more than one packing group and hazard zone'' is revised to read ''more than one packing group or hazard zone''.

24. In § 173.134, the introductory text of paragraph (b)(3)(ii) is revised and a new paragraph (b)(4) is added to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions, exceptions and packing group assignments.

* * * * *

(b) * * *

(3) * * *

(ii) For other than a waste culture or stock of an infectious substance, the specific packaging requirements of § 173.197, if packaged in a rigid non-bulk packaging conforming to—

* * * * *

(4) A waste culture or stock of infectious substances may be offered for transportation and transported as a regulated medical waste when the culture or stock—

(i) Conforms to Biosafety Level 1, 2 or 3, as defined in HHS Publication No. (CDC) 93–8395, *Biosafety in Microbiological and Biomedical Laboratories.* 3rd Edition, May 1993, Section II;

(ii) Is packaged in accordance with requirements specified in § 173.197; and

(iii) Is transported by a private or contract carrier using a vehicle dedicated to the transportation of medical waste.

* * * * *

25. In § 173.151, the section heading is revised and a new paragraph (d) is added to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(d) *Limited quantities of Division 4.3 (dangerous when wet) material.* Limited quantities of Division 4.3 (dangerous when wet) solids in Packing Groups II and III are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

(1) For Division 4.3 solids in Packing Group II, inner packagings not over 0.5 kg (1.1 pound) net capacity each, packed in strong outer packagings; and

(2) For Division 4.3 solids in Packing Group III, inner packagings not over 1 kg (2.2 pounds) net capacity each, packed in strong outer packagings.

26. In § 173.156, paragraph (b) is revised to read as follows.

§ 173.156 Exceptions for ORM materials.

* * * * *

(b) *ORM–D.* Packagings for ORM–D materials are specified according to hazard class in §§ 173.150 through 173.155 and in § 173.306. In addition to other exceptions specified for ORM–D materials in this part:

(1) Strong outer packagings as specified in this part, the marking requirements specified in § 172.316 of this subchapter, and the 30 kg (66 pounds) gross weight limitation are not required for materials classed as ORM–D when—

(i) Unitized in cages, carts, boxes or similar overpacks;

(ii) Offered for transportation or transported by:

(A) Rail;

(B) Private or contract motor carrier; or

(C) Common carrier in a vehicle under exclusive use for such service; and

(iii) Transported to or from a manufacturer, a distribution center, or a retail outlet, or transported to a disposal facility from one offeror.

(2) The 30 kg (66 pounds) gross weight limitation does not apply to materials classed as ORM–D when offered for transportation, or transported, by highway or rail between a manufacturer, a distribution center, and a retail outlet provided—

(i) Inner packagings conform to the quantity limits for inner packagings specified in §§ 173.150(b), 173.152(b), 173.154(b), 173.155(b) and 173.306 (a) and (b), as appropriate;

(ii) The inner packagings are packed into corrugated fiberboard trays to prevent them from moving freely;

(iii) The trays are placed in a fiberboard box which is banded and secured to a wooden pallet by metal, fabric, or plastic straps, to form a single palletized unit;

(iv) The package conforms to the general packaging requirements of subpart B of this part;

(v) The maximum net quantity of hazardous material permitted on one palletized unit is 250 kg (550 pounds); and

(vi) The package is properly marked in accordance with § 172.316 of this subchapter.

27. In § 173.158, paragraph (d) is revised, and paragraph (f)(1) is amended by adding a second sentence at the end of the paragraph to read as follows:

§ 173.158 Nitric acid.

* * * * *

(d) Nitric acid of 90 percent or greater concentration, when offered for transportation or transported by rail, highway, or water may be packaged as follows:

(1) In 4C1, 4C2, 4D or 4F wooden boxes with inner packagings consisting of glass bottles further individually overpacked in tightly closed metal packagings. Glass bottles must be of 2.5 L (0.66 gallon) or less capacity and cushioned with a non-reactive, absorbent material within the metal packagings.

(2) In combination packagings with 1A2, 1B2, 1D, 1G, 1H2, 3H2 or 4G outer packagings with inner glass packagings of 2.5 L (0.66 gallons) or less capacity cushioned with a non-reactive, absorbent material and packed within a tightly closed intermediate packaging of metal or plastic.

(f) * * *

(1) * * * 6HH1 and 6HA1 composite packaging with plastic inner receptacles meeting the compatibility requirements § 173.24(e) (e.g., PFA Teflon) are authorized.

* * * * *

28. Section 173.170 is added to read as follows:

§ 173.170 Black powder for small arms.

Black powder for small arms that has been classed in Division 1.1 may be reclassed as a Division 4.1 material, for domestic transportation by motor vehicle, rail freight, and cargo vessel only, subject to the following conditions:

(a) The powder must be examined and approved for Division 1.1 and Division 4.1 classification in accordance with §§ 173.56 and 173.58;

(b) The total quantity of black powder in one motor vehicle, rail car, or freight container may not exceed 45.4 kg (100 pounds) net mass, and no more than four freight containers may be on board one cargo vessel;

(c) The black powder must be packed in inner metal or heavy wall conductive plastic receptacles not over 450 g (15.9 ounces) net capacity each, with no more than 25 cans in one outer UN 4G fiberboard box. The inner packagings must be arranged and protected so as to

prevent simultaneous ignition of the contents. The complete package must be of the same type which has been examined as required in § 173.56;

(d) Each completed package must be marked ''BLACK POWDER FOR SMALL ARMS'' and ''NA 0027''; and

(e) Each package must bear the FLAMMABLE SOLID label.

§ 173.183 [Amended]

29. In § 173.183, in paragraphs (a) and (b), the wording '', polypropylene canister,'' is added immediately following the wording ''closed metal can'' each place it appears.

30. In § 173.225, in paragraph (a), a new sentence is added as the penultimate sentence to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

(a) * * * No used material, other than production residues or regrind from the same production process, may be used in plastic packagings. * * *

* * * * *

31. In § 173.306, paragraph (i)(1) is removed, paragraphs (i)(2) through (i)(4) are redesignated as paragraphs (i)(1) through (i)(3), respectively, and the introductory text in paragraph (i) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(i) An aerosol is flammable if a positive test result is obtained using any of the following test methods:

* * * * *

32. In § 173.314, as amended at 61 FR 28676, effective October 1, 1996, in the paragraph (c) table, Note 2 is revised and Notes 9 and 10 are added, to read as follows:

§ 173.314 Compressed gases in tank cars and multi-unit tank cars.

* * * * *

(c) * * *

Notes:

* * * * *

2. The liquefied gas must be loaded so that the outage is at least two percent of the total capacity of the tank at the reference temperature of 46° C (115° F) for a noninsulated tank; 43° C (110° F) for a tank having a thermal protection system incorporating a metal jacket that provides an overall thermal conductance at 15.5° C (60° F) of no more than 10.22 kilojoules per hour per square meter per degree Celsius (0.5 Btu per hour/per square foot/per degree F) temperature differential; and 41° C (105° F) for an insulated tank having an insulation system incorporating a metal jacket that provides an overall thermal conductance at 15.5° C (60° F) of no more than 1.5333 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour/per square foot/per degree F) temperature differential.

* * * * *

9. For a liquefied petroleum gas, the liquefied gas must be loaded so that the outage is at least one percent of the total capacity of the tank at the reference temperature of 46° C (115° F) for a noninsulated tank; 43° C (110° F) for a tank having a thermal protection system incorporating a metal jacket that provides an overall thermal conductance at 15.5° C (60° F) of no more than 10.22 kilojoules per hour per square meter per degree Celsius (0.5 Btu per hour/per square foot/per degree F) temperature differential; and 41° C (105° F) for an insulated tank having an insulation system incorporating a metal jacket that provides an overall thermal conductance at 15.5° C (60° F) of no more than 1.5333 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour/per square foot/per degree F) temperature differential.

10. For liquefied petroleum gas and anhydrous ammonia, during the months of November through March (winter), the following reference temperatures may be used: 38° C (100° F) for a noninsulated tank; 32° C (90° F) for a tank having a thermal protection system incorporating a metal jacket that provides an overall thermal conductance at 15.5° C (60° F) of no more than 10.22 kilojoules per hour per square meter per degree Celsius (0.5 Btu per hour/per square foot/per degree F) temperature differential; and 29° C (85° F) for an insulated tank having an insulation system incorporating a metal jacket and insulation that provides an overall thermal conductance at 15.5° C (60° F) of no more than 1.5333 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour/per square foot/per degree F) temperature differential. The winter reference temperatures may only be used for a tank car shipped directly to a consumer for unloading and not stored in transit. The offeror of the tank must inform each customer that the tank car was filled based on winter reference temperatures. The tank must be unloaded as soon as possible after March in order to retain the specified outage and to prevent a release of hazardous material which might occur due to the tank car becoming liquid full at higher temperatures.

* * * * *

§ 173.314 [Amended]

33. In addition, in § 173.314, in the paragraph (c) table, as amended at 61 FR 28676, effective October 1, 1996, the following changes are made:

a. For the entry ''Ammonia, anhydrous, or ammonia solutions >50 percent ammonia'', in Column 2, the wording ''Note 2'' is removed and ''Notes 2, 10'' added in its place.

b. For the entry ''Division 2.1 materials not specifically provided in this table'' in Column 2, the wording ''Note 3'' is removed and the wording ''Notes 9, 10'' added in its place.

Appendix H to Part 173—[Amended]

34. In Appendix H to Part 173, the second sentence of paragraph 5.(b) is revised and in paragraph 5.(h), a second sentence is added at the end of the paragraph to read as follows:

Appendix H to Part 173—Method of Testing for Sustained Combustibility

* * * * *

5. * * *

(b) * * * For the appropriate test temperature, see paragraph 5.(h) of this appendix. * * *

* * * * *

(h) * * * In the case of a material which has a flash point above 60.5° C (141° F) and below 93° C (200° F), if sustained combustion interpreted in accordance with paragraph 6. of this appendix is not found at a test temperature of 5° C (9° F) above its flash point, repeat the complete procedure with new test portions, but at a test temperature of 20° C (36° F) above its flash point.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

35. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

36. Section 178.245–1 is revised to read as follows:

§ 178.245–1 Requirements for design and construction.

(a) Tanks must be seamless or welded steel construction or combination of both and have a water capacity in excess of 454 kg (1,000 pounds). Tanks must be designed, constructed, certified and stamped in accordance with the ASME Code.

(b) Tanks must be postweld heat treated and radiographed as prescribed in the ASME Code except that each tank constructed in accordance with part UHT of the ASME Code must be postweld heat treated. Where postweld heat treatment is required, the tank must be treated as a unit after completion of all the welds in and/or to the shell and heads. The method must be as prescribed in the ASME Code. Welded attachments to pads may be made after postweld heat treatment is made. A tank used for anhydrous ammonia must be postweld heat treated. The postweld heat treatment must be as prescribed in the ASME Code, but in no event at less than 1050° F tank metal temperature. Additionally, tanks constructed in accordance with part UHT of the ASME Code must conform to the following requirements:

(1) Welding procedure and welder performance tests must be made

annually in accordance with section IX of the ASME Code. In addition to the essential variables named therein, the following must be considered to be essential variables: number of passes, thickness of plate, heat input per pass, and manufacturer's identification of rod and flux. The number of passes, thickness of plate and heat input per pass may not vary more than 25 percent from the procedure qualification. Records of the qualification must be retained for at least 5 years by the tank manufacturer and made available to duly identified representatives of the Department of Transportation or the owner of the tank.

(2) Impact tests must be made on a lot basis. A lot is defined as 100 tons or less of the same heat and having a thickness variation no greater than plus or minus 25 percent. The minimum impact required for full-sized specimens shall be 20 foot-pounds (or 10 foot-pounds for half-sized specimens) at 0° F Charpy V-Notch in both the longitudinal and transverse direction. If the lot test does not pass this requirement, individual plates may be accepted if they individually meet this impact requirement.

(c) Except as provided in paragraph (d) of this section, all openings in the tank shall be grouped in one location, either at the top of the tank or at one end of the tank.

(d) The following openings may be installed at locations other than on the top or end of the tank:

(1) The openings for liquid level gauging devices, pressure gauges, or for safety devices, may be installed separately at the other location or in the side of the shell;

(2) One plugged opening of 2-inch National Pipe Thread or less provided for maintenance purposes may be located elsewhere;

(3) An opening of 3-inch National Pipe Size or less may be provided at another location, when necessary, to facilitate installation of condensing coils; or

(4) Filling and discharge connections may be installed below the normal liquid level of the tank if the tank design conforms to the following requirements:

(i) The tank must be permanently mounted in a full framework for containerized transport. For each tank design, a prototype tank, must fulfill the requirements of parts 450 through 453 of this title for compliance with the requirements of Annex II of the International Convention for Safe Containers.

(ii) Each filling and discharge connection must be equipped with an internal self-closing stop-valve capable of closing within 30 seconds of actuation. Each internal self-closing stop-valve must be protected by a shear section or sacrificial device located outboard of the valve. The shear section or sacrificial device must break at no more than 70 percent of the load that would cause failure of the internal self-closing stop- valve.

(iii) Each internal self-closing stop-valve must be provided with remote means of automatic closure, both thermal and mechanical. The thermal means of automatic closure must actuate at a temperature of not over 250° F.

(e) Each uninsulated tank used for the transportation of compressed gas, as defined in § 173.300 of this subchapter, must have an exterior surface finish that is significantly reflective, such as a light reflecting color if painted, or a bright reflective metal or other material if unpainted.

37. In § 178.245–4, a new paragraph (e) is added to read as follows:

§ 178.245–4 Tank mountings.

* * * * *

(e) A DOT 51 portable tank that meets the definition of ''container'' in § 450.3(a)(3) of this title must meet the requirements of parts 450 through 453 of this title, in addition to the requirements of this subchapter.

§ 178.245–6 [Amended]

38. In § 178.245–6, in the first sentence of paragraph (a), the wording ''on one of the heads of the tank'' is revised to read ''in close proximity to the ASME ''U'' stamp certification''.

39. In § 178.270–12, in paragraph (a), the first two sentences are revised to read as follows:

§ 178.270–12 Valves, nozzles, piping, and gauging devices.

(a) All tank nozzles, except those provided for filling and discharge connections below the normal liquid level of the tank, relief devices, thermometer wells, and inspection openings, must be fitted with manually operated stop valves located as near the shell as practicable either internal or external to the shell. Each filling and discharge connection located below the normal liquid level of the tank must be equipped with an internal discharge valve. * * *

* * * * *

40. In § 178.601, the word ''or'' is removed at the end of paragraph (c)(4)(iv), the period at the end of paragraph (c)(4)(v) is removed and ''; or'' added in its place and new paragraphs (c)(4)(vi) and (g)(8) are added to read as follows:

§ 178.601 General requirements.

* * * * *

(c) * * *

(4) * * *

(vi) For a steel drum, variations in design elements which do not constitute a different design type under the provisions of paragraph (g)(8) of this section.

* * * * *

(g) * * *

(8) For a steel drum with a capacity greater than 50 L (13 gallons) manufactured from low carbon, cold-rolled sheet steel meeting ASTM designations A366/A366M or A568/A568M, variations in elements other than the following design elements are considered minor and do not constitute a different drum design type, or ''different packaging'' as defined in paragraph (c) of this section for which design qualification testing and periodic retesting are required. Minor variations authorized without further testing include changes in the identity of the supplier of component material made to the same specifications, or the original manufacturer of a DOT specification or UN standard drum to be remanufactured. A change in any one or more of the following design elements constitutes a different drum design type:

(i) The packaging type and category of the original drum and the remanufactured drum, i.e., 1A1 or 1A2;

(ii) The style, (i.e., straight-sided or tapered);

(iii) Except as provided in paragraph (g)(3) of this section, the rated (marked) capacity and outside dimensions;

(iv) The physical state for which the packaging was originally approved (e.g., tested for solids or liquids);

(v) An increase in the marked level of performance of the original drum (i.e., to a higher packing group, hydrostatic test pressure, or specific gravity to which the packaging has been tested);

(vi) Type of side seam welding;

(vii) Type of steel;

(viii) An increase greater than 10% or any decrease in the steel thickness of the head, body, or bottom;

(ix) End seam type, (e.g., triple or double seam);

(x) A reduction in the number of rolling hoops which equal or exceed the diameter over the chimes;

(xi) The location, type or size, and material of closures (other than the cover of UN 1A2 drums); and

(xii) For UN 1A2 drums:

(A) Gasket material (e.g., plastic), or properties affecting the performance of the gasket;

(B) Configuration or dimensions of the gasket;

(C) Closure ring style including bolt size, (e.g., square or round back, 0.625'' bolt); and

(D) Closure ring thickness.

* * * * *

41. In § 178.705, in paragraph (c)(2)(ii), a new sentence is added after the first sentence to read as follows.

§ 178.705 Standards for metal intermediate bulk containers.

* * * * *

(c) * * *

(2) * * *

(ii) * * * This does not apply to fusible devices unless such devices are the only source of pressure relief for the IBC. * * *

§ 178.705 [Amended]

42. In addition, in § 178.705, in paragraph (c)(1)(iv)(B), in the second formula, the Formula for U.S. Standard units, the number ''544'' is revised to read ''21.4''.

Issued in Washington, DC on September 18, 1996 under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 96–24398 Filed 9–25–96; 8:45 am]

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Thursday
September 26, 1996

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing; Assessment of the Reasonable Revitalization Potential of Certain Public Housing Required by Law; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4120–N–01]

Office of the Assistant Secretary for Public and Indian Housing; Assessment of the Reasonable Revitalization Potential of Certain Public Housing Required by Law

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice implements section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Section 202 requires PHAs to identify certain distressed public housing developments that will be required to be replaced with tenant-based assistance if they cannot be revitalized by any reasonable means. In that eventuality, households in occupancy would be offered tenant-based or project-based assistance and would be relocated, if sufficient housing will not be maintained, rehabilitated, or replaced on the current site, to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice.

DATES: Effective date: September 30, 1996.

Comment due date: November 25, 1996. HUD expects to receive significant comments. HUD may determine to make changes in the Notice based upon comments received, but the Notice will go into effect September 30, 1996. This is in keeping with the directive in Section 202 that HUD establish standards to permit implementation in Fiscal 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Director, Special Actions, Public and Indian Housing, Room 4116, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0713. For hearing or speech impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0210. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

General Requirement and Scope

Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub.L. 104–134, approved April 26, 1996) (''OCRA'') requires PHAs to identify certain distressed public housing developments that will be required to be addressed. Households in occupancy would be offered tenant-based or project-based assistance (that can include other public housing units) and would be relocated, if sufficient housing will not be maintained, rehabilitated, or replaced on the current site, to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory.

As explained further below, this requirement covers developments that (1) are on the same or contiguous sites, (2) contain at least 300 units, (3) have a vacancy rate of at least ten percent for units not in funded, on-schedule modernization programs, (4) are more expensive than tenant-based assistance, and (5) cannot be revitalized through reasonable programs. These developments must be removed from the public housing inventory within five years, or up to ten years where HUD extends the deadline because five years is impracticable. Plans to do so must be developed in consultation with affected public housing residents and the local government containing the public housing. The term ''developments,'' as used in the statute and in this Notice, includes applicable portions of developments. Tenant-based assistance or relocation to other public or assisted housing (of the tenant's choice) must be offered to public housing residents whose developments will be removed from the inventory.

HUD field offices will assist PHAs by notifying them which, if any, of their developments, according to HUD records, contain at least 300 units and 10 percent vacancies not in funded, on-schedule modernization. HUD's records indicate that approximately 130 developments across the country meet this description, including a significant number that already are taking necessary revitalization actions. Notwithstanding HUD's determination of a list of developments and notification to PHAs or lack thereof, however, PHAs are responsible for determining all developments or portions of developments that fall within the definition contained in section 202.

Purpose and Overview

Section 202 expresses Congress' intent that the continued operation of large, obsolete public housing developments which provide unfit living environments for families will not be tolerated where these developments are more costly than tenant-based assistance and no reasonable revitalization program can be carried out. For various reasons, including previous Federal rules such as the one-for-one replacement law and also because of local factors, some public housing developments with excessive costs, obsolete designs, and unsuitable environments remain in operation today. Section 202 requires that appropriate action be taken with respect to such developments by PHAs or, if necessary, as required by HUD.

Section 202 includes both a ''cost relative to tenant-based assistance'' test and a ''susceptible to reasonable revitalization program'' test. The Department recognizes that any projected cost comparison between public housing and tenant-based assistance is inexact, and that the viability and susceptibility to revitalization of particular properties may depend on many factors which vary greatly by locality. HUD will administer this mandate accordingly.

Costs of tenant-based assistance are compared to public housing operating costs per occupied unit. The most recent actual costs initially are to be used, rather than projections of such costs per unit after reductions in density and modernization. As noted above, a development is subject to required removal from the public housing inventory only if its costs are higher than tenant-based assistance costs *and* it cannot be made viable with a reasonable

revitalization plan. Thus, a development with excessive current costs per occupied unit might still pass the ''reasonable revitalization'' test by a strong indication that revitalization can be accomplished within reasonable cost constraints, can be funded from a realistic source of funds, can sustain structural soundness and full occupancy for at least twenty years, will not exceed reasonable standards of density and concentration of extremely low-income families, and will not suffer from site impairments that should disqualify the site's continued use as public housing.

HUD expects that the various objective and subjective tests regarding costs and viability will improve as experience grows, and this will be taken into account in the initial administration of section 202. However, where a development's costs are clearly excessive and its living environment not likely to be made acceptable through a reasonable and realistic revitalization plan, as discussed later, PHAs and HUD must promptly take the necessary conversion steps.

Time Frames

Section 202 requires HUD to establish standards to permit implementation in fiscal year 1996. Accordingly, this Notice contains standards which HUD will require for assessments under this section until such time as HUD decides to take further regulatory action. These standards track section 202(a) of the Act.

During the next sixty days, HUD will accept public comments which may be used in connection with further regulatory action. Notwithstanding the above, the standards in this Notice are effective September 30, 1996.

In keeping with the directive regarding implementation in fiscal 1996, the following deadlines will apply. PHAs shall take not more than 90 days from September 30, 1996 (i.e., until December 29, 1996) to accomplish Standards A to D set out below to identify developments or portions thereof covered by this section, and PHAs shall take not more than 150 days from September 30, 1996 (i.e., until February 27, 1997) to accomplish Part E of the Standards set out below to identify developments or portions thereof covered by this section. PHAs shall submit applicable tenant-based assistance conversion plans within an additional 180 days (i.e., as soon as practicable thereafter, but at least by August 26, 1997).

Standards for Identifying Developments

Until further notice, PHAs shall use the following standards for identifying developments or portions thereof which are subject to section 202's requirement that PHAs develop and carry out plans for the removal over time from the public housing inventory. These standards track section 202(a) of the Act; the Act's language is italicized. The development or portions thereof must:

(A) Be on the same or contiguous sites. This standard and standard (B) refer to the actual number and location of units, irrespective of HUD development project numbers. (OCRA Sec. 202(a)(1)).

(B) Total 300 or more dwelling units. (OCRA Sec. 202(a)(2)).

(C) Have a vacancy rate of at least ten percent for dwelling units not in funded, on-schedule modernization. For this purpose, PHAs and HUD shall use the data the PHA relied upon for its last Public Housing Management Assessment Program (PHMAP) certification, except in exceptional circumstances that are brought to HUD's attention by the PHA. (OCRA Sec. 202(a)(3)).

(D) Have an estimated cost of continued operation and modernization of the developments as public housing in excess of the cost of providing tenant-based assistance under section 8 of the United States Housing Act of 1937 for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development cost required for modernization). (OCRA Sec. 202(a)(5)).

The estimated cost of the continued operation and modernization as public housing shall be calculated as the sum of total operating, modernization (backlog), and accrual costs, with costs expressed on a monthly per occupied unit basis for the most recent period for which reliable data are available (typically, the most recent period with actual operating cost data). This shall be compared to the estimated Section 8 monthly cost per unit of providing the same bedroom distribution of occupied units. The Section 8 cost shall be the unit-weighted average of the Fair Market Rents plus the administrative fee during the period of the cost comparison. At the end of this Notice, the required methodology for the cost comparison of paragraph D is detailed in an appendix (''Appendix: Detailing the Cost Comparison of Part D'').

If the cost of continuing to administer the development as public housing exceeds the Section 8 cost, as calculated under the required methodology, then the development must undergo a further test, as described in (E), below.

(E) Be identified as distressed housing that the PHA cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of household income. (OCRA Sec. 202(a)(4)).

A fundamental aspect of this standard is the definition of long-term viability. For this purpose, HUD will consider twenty years to be ''long term''. Twenty years is in keeping with the expected life of modernization improvements, as reflected by the length of annual contributions contracts covering modernization grant awards. See section 14(b)(2) of the United States Housing Act, as amended.

The term ''viability'' is defined in current modernization regulations as including achievement of structural/system soundness and full occupancy at reasonable cost. See 24 CFR 968.315(e)(4). Experience has shown, however, that achievement of physical soundness and full occupancy is not always enough to achieve the housing program's goal, as stated in the Housing Act of 1949, of ''a decent home and a suitable living environment''. Section 202's inclusion of ''density reduction'' and ''achievement of a broader range of household income'', as measures to be taken in pursuit of long-term viability, indicate Congress' understanding that excessive density and concentration of very-low-income households are additional serious impediments to the viability of public housing.

Accordingly, section 202(a)(4) shall be applied in the following fashion:

PHAs are charged with identifying ''distressed housing''. For this purpose, all developments (including portions thereof) that meet the standards of paragraphs (A), (B), and (C) above (at least 300 units on contiguous sites with at least 10% vacancies in units not in funded, on-schedule modernization) shall be considered ''distressed housing'', unless the PHA demonstrates and HUD approves that any such developments are not ''distressed''. Therefore, PHAs must conduct the analysis required by this paragraph for all developments that meet the standards of paragraphs (A), (B), and (C) above.

PHAs will meet the test for assuring long-term viability of identified housing only if it is probable that, after reasonable investment, for at least twenty years the development can sustain structural/system soundness and full occupancy; will not be excessively densely configured relative to standards for similar (typically family) housing in the community; will not constitute an excessive concentration of very low-income families; and has no other site impairments which clearly should disqualify the site from continuation as

public housing (taking into account the liberalized standards for location of replacement housing authorized by Congress in section 18(f) of the U.S. Housing Act of 1937, added by the fiscal 1995 rescissions act (Public Law 104–19) and continued in effect by the OCRA).

PHAs will be able to show that distressed developments can achieve long-term viability through reasonable revitalization, density reduction, or achievement of a broader range of household income if such proposed actions meet the following requirements.

Proposed revitalization costs must be reasonable. First, such costs must not exceed, and ordinarily would be substantially less than, 90 percent of HUD's total development cost limit for the units proposed to be revitalized (100 percent of the total development cost limit for new construction initiatives), unless HUD approves in extraordinary circumstances a higher cost as reasonable. Of course, costs approaching this magnitude only would be considered either for new construction or where the resulting quality will approach new construction. The revitalization cost estimate used in the PHA's most recent comprehensive plan for modernization is to be used for this purpose, unless a PHA demonstrates or HUD determines that another cost estimate is clearly more realistic.

Second, the proposed revitalization plan must indicate how unusually high current operating expenses (e.g. security, supportive services, maintenance, utilities) will be reduced as a result of post-revitalization changes in occupancy, density and building configuration, income mix and management. The plan must make a realistic projection of overall operating costs per occupied unit in the revitalized development, and use this estimate together with the estimate of modernization costs and accrual needs to develop a per unit monthly cost of continuing the development as public housing. That per unit monthly cost of public housing must be compared to the Section 8 cost for the same number of units, using the method provided in the Appendix.

If the overall projected cost of the revitalized development substantially exceeds the Section 8 cost (even if the cost of revitalization is a lower percentage of the TDC than the limits stated above), the PHA must be able to demonstrate that the revitalization plan meets the other standards contained in this Notice and that there are special circumstances why keeping the revitalized development as public housing is desirable despite its cost relative to tenant-based assistance. Such special circumstances must include at least some elements of the following: substantial leveraging of private investment that will benefit the community; acute need for replacement housing or its equivalent to create a viable neighborhood on the public housing site; creation of a substantially better living environment for very low-income households than tenant-based assistance could provide; and development of housing likely to remain viable for far past twenty years.

The source of funding for such a revitalization program must be identified within the PHA's five-year comprehensive plan for modernization, or from other resources already available or likely to be available to the PHA within the necessary time frame. If the resources assumed are rehabilitation with HOPE VI grants, this assumption must be stated and shown to be reasonable. Where more than one development in a Housing Authority is being reviewed at this stage, the sources of funding of each of these developments should be shown side-by-side and relative to total funding resources.

Density reduction measures would have to result in a public housing community with a density approaching that which prevails in the community for similar types of housing, or a lower density.

Measures generally will be required to broaden the range of resident incomes to include over time a significant number of working households (for example, at least twenty-five percent in the 30–50% of median area income range) when the site (1) is large in terms of units or acreage and (2) exclusively or predominantly serves families with extremely low incomes (not significantly above the median for the public housing program, or 17% of the area median income). Measures to achieve a broader range of household incomes must be realistic in view of the site's location. Evidence of such realism typically would include some mix of incomes of other households located in the same census tract or neighborhood, or unique advantages of the public housing site.

For purposes of judging appropriateness of density reduction and broader range of income measures, PHAs should consider the overall size of the public housing site and its number of dwelling units. The concerns these measures would address generally are greater as the site's size and number of dwelling units increases.

Developments with HOPE VI implementation grants that have approved HOPE VI revitalization plans will be treated as having shown the ability to achieve long-term viability with reasonable revitalization plans. Future HUD actions to approve or deny proposed HOPE VI implementation grant revitalization plans will be taken with consideration of the standards for section 202. Developments with HOPE VI planning grants are fully subject to section 202 standards and requirements.

When a future (not yet funded) HOPE VI grant is the projected major source of revitalization funding and when a substantial portion of the units under the revitalization plan will be demolished, the Housing Authority should proceed with the next stage of the notice, which is the plan for removal of development units from the public housing inventory, unless the Housing Authority provides an alternative deadline for implementation and reasons for delay that HUD approves.

Plan for Removal of Units From Public Housing Inventories; Implementation

With respect to identified developments, within the time frame stated at the beginning of this Notice, PHAs must develop the required plan for removal of units from the public housing inventory. The plan should consider relocation alternatives for households in occupancy, including other public housing and Section 8 tenant-based assistance, and shall provide for relocation from the units as soon as practicable. For planning purposes, PHAs shall assume that HUD will be able to provide in a timely fashion any necessary Section 8 certificates. The plan shall include:

(1) a listing of the public housing units to be removed from the inventory;

(2) the number of households to be relocated, by bedroom size;

(3) identification and obligation status of any previously approved CIAP, modernization, or major reconstruction funds for the distressed development and PHA recommendations concerning transfer of these funds to Section 8 or use for on-site rehabilitation or alternative uses;

(4) the relocation resources that will be necessary, including a request for any necessary Section 8 and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing;

(5) a schedule for relocation and removal of units from the public housing inventory;

(6) provision for notifying families residing in the development, in a timely fashion, that the development shall be

removed from the public housing inventory; informing such families that they will receive tenant-based or project-based assistance; providing any necessary counselling with respect to the relocation, including a request for any necessary counseling funds; and assuring that such families are relocated as necessary to other decent, safe, sanitary and affordable housing which is, to the maximum extent possible, housing of their choice; and

(7) a record indicating compliance with the statute's requirements for consultation with applicable public housing tenants of the affected development and the unit of local government where the public housing is located.

Section 18 of the United States Housing Act of 1937 shall not apply to demolition of developments removed from PHA inventories under this section, but shall apply to any proposed dispositions of such developments or their sites. HUD's review of any such disposition application will take into account that the development has been required to be removed from the PHA's inventory.

HUD Enforcement Authority

Section 202 provides HUD authority to ensure that certain distressed developments are properly identified and removed from PHA inventories. Specifically, HUD may direct a PHA to cease additional spending in connection with a development which meets or is likely to meet the statutory criteria, except as necessary to ensure decent, safe and sanitary housing until an appropriate course of action is approved; identify developments which fall within the statutory criteria where a PHA has failed to do so properly; take appropriate actions to ensure the removal of developments from the inventory where the PHA has failed to adequately develop or implement a plan to do so; and authorize or direct the transfer of capital funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects funds) to tenant-based assistance or appropriate site revitalization for the agency. Because the greatest short-term financial risk to the government would be a PHA's commitment of substantial additional capital funds to developments required by section 202 to be removed from the inventory (e.g., for substantial rehabilitation that is far beyond measures needed to ensure decent, safe and sanitary housing until an appropriate course of action is approved), HUD expects that if any of the enforcement mechanisms are used in the coming months the limitation on spending commitments is the most likely. HUD field offices are being directed to undertake reviews of the developments preliminarily subject to section 202 to determine whether (1) the developments are likely to meet the standards of section 202 for required conversion to tenant-based assistance and (2) there are proposed capital commitments in the immediate future that require further scrutiny in this regard.

In addition, HUD will be deploying teams of consultants to make independent viability assessments of approximately fifty of the Nation's most problematic developments. The consultants will be directed to consider the views of affected PHAs, residents and others, but to form their own conclusions.

A substantial number of developments covered by this section are likely to be assessed by the consultants. PHA responsibilities under this section are independent of any activities of the consultants. HUD may make adjustments to the timing requirements of this notice, however, where this would accommodate a PHA's request and commitment to rely on the work of the consultants and would not delay the development identification and planning process substantially.

Source of Funding for Conversions of Distressed Public Housing to Vouchers or Certificates During FY 1996

Section 202 specifies that CIAP, Comprehensive Grant modernization, and major reconstruction funds previously obligated for the public housing development subject to removal from the inventory may be transferred to the Section 8 certificate and voucher programs or used for appropriate revitalization.

There may be limited additional Fiscal 1996 certificate or voucher funds available for this purpose (the original Notice of FY 1996 Funding for the Section 8 Rental Voucher Program and Rental Certificate Program, was published on July 19, 1996, 61 FR 37756). PHAs may apply for any such funds, notwithstanding the timing of this Notice, by requesting a specific number of certificates in connection with a particular development, certifying that the development will be subject to section 202 and certifying that the certificates will be needed because at least that many units in the development will be required to be converted to certificates, by October 21, 1996. Any required resolution by the Board of Directors can be submitted subsequent to the application. To expedite the application process, PHAs are encouraged to submit a letter from the Chief Executive Officer of the unit of general local government commenting on the PHA application in accordance with 213 (c) of the Housing and Community Development Act of 1974 (Pub.L. 93–383). Because HUD cannot approve an application until the 30-day comment period is closed, the 213 letter should state that no additional comments will be forthcoming from the unit of general local government.

Conversions to the certificate or voucher program will be funded from the public housing CIAP, Comprehensive Grant modernization, and major reconstruction funds committed to distressed developments if HUD determines that new Section 8 funding is inadequate or inappropriate. Procedures for conversion of public housing funds to the Section 8 program will be provided to field offices at a later date. HUD may leave funds with the original PHA for modernization at other developments or replacement housing if HUD determines that adequate Section 8 resources are otherwise available and the PHA has a need for the funds. Under no circumstances will PHAs that choose to demolish housing that would be required to be converted to certificates or otherwise addressed under section 202 be left worse off than if HUD must require conversion.

PHA Records; Updates

PHAs shall keep records sufficient to indicate that they have reviewed all developments with at least 300 dwelling units on contiguous sites and vacancy rates of ten percent or higher, and have identified any developments that meet the standards contained in section 202(a). PHAs shall submit to HUD field offices the development-by-development results of their reviews and planning on the following schedule:

Results of reviews relative to standards A–D above: on or before December 29, 1996.

Results of reviews relative to standard E above: on or before February 27, 1997.

Conversion plans: on or before August 26, 1997.

PHAs shall conduct an annual review and certify with their Comprehensive Plan Annual Updates that they have reviewed updated information regarding the applicability of these standards on their developments, and submitted to the field offices any necessary supplemental information. Such supplemental information shall include information regarding all developments

newly subject to review in that year under this section, or newly subject to review under part E above, and any changes in the outcome of reviews with respect to any development.

Findings and Certifications

Environmental Finding

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice pertains to the administration of certain distressed public housing developments and does not substantially alter the established roles of the Department, the States, and local governments.

The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for this program are 14.850, 14.855, and 14.857.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This notice pertains to the administration of certain distressed public housing developments and does not substantially alter the requirements of eligibility for the programs involved.

Dated: September 19, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix: Detailing the Cost Comparison of Part D

This Appendix details the required methodology for the cost comparison between public housing and Section 8 assistance. First, the methods of estimating the cost of operating the development as public housing will be detailed, after which the methods of estimating the Section 8 cost of operating the occupied units will be detailed. The text will use a consistent example and a summary table at the end to illustrate the methods.

HUD field offices will provide or arrange for assistance for any PHA that requests assistance to carry out the required calculations. The calculations can be done promptly once operating cost, modernization cost, and occupancy information as described in the rule are made available by the PHA.

The estimated cost of the continued operation and modernization as public housing shall be calculated as the sum of total operating, modernization, and accrual costs, expressed on a monthly per occupied unit basis for the most recent period for which reliable data are available (typically, the most recent period for which actual operating cost data are available).

The development's operating cost (including all overhead costs pro-rated to the development and including utilities and utility allowances) shall be expressed as total operating costs per month, divided by the current number of units occupied by households. For example, if a development currently has 1,000 units occupied by households (out of 1,250 units available under contract) and has $400,000 monthly in non-utility costs (including pro-rated overhead costs) and $200,000 monthly in utility costs paid by the authority and $50,000 monthly in utility allowances that are deducted from tenant rental payments to the authority because tenants paid some utility bills directly to the utility company, then the development's monthly operating cost per occupied unit is $650—the sum of $400, $200, and $50.

PHAs generally have been required to have development-based operating costs for several years under section 6(b)(4)(E) of the United States Housing Act. Where a PHA does not have this information or where HUD or the PHA determine that the per unit operating costs from development-specific data seem unduly low relative to the costs of comparable developments or relative to other evidence, the development's operating cost shall be estimated by first computing the Housing Authority's monthly operating cost per occupied unit and then multiplying that figure by two measures: (1) the ratio of the Housing Authority's occupancy rate to the occupancy rate of the development and (2) the ratio of the bedroom adjustment factor of the development to the bedroom adjustment factor of the Housing Authority. The bedroom adjustment factor, which is based on national rent averages for units grouped by the number of bedrooms and which has been used by HUD to adjust for costs of units when the number of bedrooms vary, assigns to each unit the following factors: .70 for 0-bedroom units, .85 for 1-bedroom units, 1.0 for 2-bedroom units, 1.25 for 3-bedroom units, 1.40 for 4-bedroom units, 1.61 for 5-bedroom units, and 1.82 for 6 or more bedroom units. The bedroom adjustment factor is the unit-weighted average of the distribution. For instance, if the development with one thousand occupied units had in occupancy 500 two-bedroom units and 500 three-bedroom units, then its bedroom adjustment factor would be 1.125—500 times 1.0 plus 500 times 1.25, the sum divided by 1,000). Where necessary, HUD field offices will arrange for assistance in the calculation of the bedroom adjustment factors of the Housing Authority and its affected developments.

As an example of estimating development operating costs from PHA operating costs, suppose that the Housing Authority had a total monthly operating cost per occupied unit of $400 and an occupancy rate of 96 percent and a bedroom adjustment factor of .90, and suppose that the Development had an occupancy rate of 80 percent and a bedroom adjustment factor of 1.125. Then, the development's estimated monthly operating cost per occupied unit would be $600—or $400 times 1.2 (the ratio of 96 to 80), times 1.25 (the ratio of 1.125 to .90). When there is reason to believe that the development has extremely high operating costs not captured by the estimating procedure of this paragraph, HUD may require additional data at the development level to estimate the per-unit operating costs of the development.

The total cost of modernization for the development shall be the estimated cost contained in the PHA's comprehensive plan, unless HUD determines that another cost estimate is clearly more realistic. This total modernization cost is converted into a monthly per occupied unit basis by dividing the total cost by the number of occupied units to

be provided for after modernization and dividing this figure by 180 (i.e. fifteen years of months, where fifteen results from an assumed life of twenty years for the capital investment amortized by a three percent annual rate of real interest to account for the cost of undertaking the capital improvements up front). For example, if the total modernization cost of a development is $30 million and its occupancy by households after modernization is to be 1200 units, its monthly per unit modernization cost will be $139 (i.e., $30 million divided by 1200, for a per unit cost of $25,000, and then divided by 180 for a per unit monthly cost of $139).

The monthly per occupied unit cost of accrual (i.e., replacement needs) will be estimated by using the latest published HUD unit total development cost limits and applying them to the development's location, structure type and bedroom distribution, then multiplying that figure by .02 (representing a fifty year replacement cycle), and dividing this product by 12 to get a monthly cost. For example, if the development is a walkup structure containing five hundred two-bedroom occupied and five hundred three-bedroom occupied units and if HUD's Total Development Cost limit for the area is $70,000 for two-bedroom walkup structures and $92,000 for three-bedroom walkup structures, then the estimated monthly cost of accrual per occupied unit is $135 (the result of multiplying the cost guideline value of $81,000 by .02 and then dividing by 12).

The overall current cost for continuing the development as public housing is the sum of its monthly operating cost per occupied unit, its monthly modernization cost per occupied unit, and its estimated monthly accrual cost per occupied unit. For example, if the operating cost per occupied unit month is $650 and the modernization cost is $139 and the accrual cost is $135, the overall monthly cost per occupied unit is $924.

The overall post-revitalization cost for continuing the development as public housing would use the same methodology, but use post-revitalization operating cost estimates per occupied unit.

The estimated cost of providing tenant-based assistance under Section 8 for all households in occupancy shall be calculated as the unit-weighted averaging of the monthly Fair Market Rents for units of the applicable bedroom size plus the administrative fee applicable to newly funded certificates during the year used for calculating public housing operating costs (e.g., the administrative fee for units funded in FFY 1995 and 1996 is the monthly administrative fee amount in column C of the January 24, 1995 Federal Register). For example, if the development has five hundred occupied two-bedroom units and five hundred occupied three-bedroom units and if the Fair Market Rent in the area is $600 for two bedroom units and is $800 for three bedroom units and if the administrative fee comes to $46 per unit, then the per unit monthly cost of tenant based assistance is $746 ($700 for the unit-weighted average of Fair Market Rents, or 500 times $600 plus 500 times $800 with the sum divided by 1,000, plus $46 for the administrative fee). This Section 8 cost would then be compared to the cost of continuing the public housing development—in the example of this section, the current public housing cost of $924 monthly per occupied unit would exceed the Section 8 cost of $746 monthly per occupied unit and a viability test in Part E would be required.

The cost comparison methods of Part D are summarized in the table below, which uses the example in the text.

Detailing the Cost Comparison of Part D: A Summary Table

Key Data, Development: The development has 1250 units available, of which 1000 (or 80 percent) are occupied by households. All of the units are in walkup buildings. The 1000 occupied units consist of 500 two-bedroom units and 500 three-bedroom units. The total current operating costs attributable to the development are $400,000 per month in non-utility costs, $200,000 in utility costs paid by the PHA, and $50,000 in utility allowance expenses for utilities paid directly by the tenants to the utility company. Also, the modernization cost in the Comprehensive Plan is $30,000,000 and is based upon 1200 occupied units.

Key Data, Area: The unit total development cost limit is $70,000 for two-bedroom walkups and $92,000 for three-bedroom walkups. The two-bedroom Fair Market Rent is $600 and the three-bedroom Fair Market Rent is $800. The applicable monthly administrative fee amount, in column C of the January 24, 1995 Federal Register Notice, is $46.

Preliminary Computation of the Per-Unit Average Total Development Cost of the Development: This results from applying the location's unit total development cost by structure type and number of bedrooms to the occupied units of the development. In this example, five hundred units are valued at $70,000 and five hundred units are valued at $92,000 and the unit-weighted average is $81,000.

The Cost Comparison Can Now Proceed for Developments That Have Operating Cost Data (For developments without such data, the procedure is the same, except that a per-unit PHA-based operating cost estimate is initially used for operating costs. This PHA-based estimate is described after the basic example is given.)

Current Per Unit Monthly Occupied Costs of Public Housing

Operating Cost—$650 (total monthly costs divided by occupied units: in this example, the sum of $400,000 and $200,000 and $50,000—divided by 1,000 units)

Amortized Backlog Modernization Cost—$139 (the modernization cost per unit divided by 180: in this example, $30,000,000 divided by 1200 units and then by 180.)

Estimated Accrual Cost—$135 (the per-unit average total development cost times .02 divided by 12 months: in this example, $81,000 times .02 and then divided by 12)

Total Per Unit Public Housing Costs—$924

Current Per Unit Monthly Occupied Costs of Section 8

Unit-weighted Fair Market Rents—$700 (the unit-weighted average of the Fair Market Rents of occupied bedrooms: in this example, 500 times $600 plus 500 times $800, divided by 1000)

Administrative Fee—$46

Total Per Unit Section 8 Costs—$746

Result: In this example, because current public housing costs exceed current Section 8 costs, a Part E viability test is required.

If Development-Level Operating Costs Are Not Available:

Key PHA Data: PHA total operating costs, the total number of available PHA units, the total number of PHA units occupied by households, and the PHA bedroom distribution of units occupied by households.

Preliminary Computation of the Bedroom Adjustment Factor: This intermediate statistic is the weighted average of occupied units, where each bedroom has this value: .70 for zero-bedroom units, .85 for one bedroom units, 1.0 for two-bedroom units, 1.25 for three bedroom units, 1.40 for four bedroom units, 1.61 for five-bedroom units, and 1.82 for six or more bedroom units. In the example, the bedroom adjustment factor of the development is 1.125: the result of multiplying 500 occupied two-bedroom units by 1.0 and multiplying 500 occupied three-bedroom units by 1.25, summing the products of 500 and 625 to 1125, and dividing this sum by the total of 1000

occupied units: 1125/1000 equals 1.125.)

Estimate Development-level Operating Costs from PHA Costs: Multiply the monthly operating costs per occupied unit of the PHA times two ratios: (1) the ratio of the PHA occupancy rate to the development's occupancy rate and (2) the ratio of the development's bedroom adjustment factor to the PHA's adjustment factor. Suppose the PHA in this example has total monthly operating costs of $4,000,000 and has 10,000 occupied units out of 10,417 available (or an occupancy rate of 96%) and a bedroom adjustment factor of .90. Then the estimated per occupied unit operating costs of the development would be $600—$400 per occupied unit ($4,000,000 divided by 10,000) times 1.20 (the ratio of the PHA occupancy rate of 96 percent to the development occupancy rate of 80 percent) times 1.25 (the ratio of the development's bedroom adjustment factor of 1.125 to the PHA's bedroom adjustment factor of .90). In some cases, HUD may require PHA-based estimates to be replaced by estimates using development-level cost data.

This concludes the summary table for Part III's ''Appendix: Detailing the Cost Comparison of Part D.''

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federal register

Thursday
September 26, 1996

Part VI

Federal Trade Commission

16 CFR Part 2, et al.

Rules of Practice Amendments; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 2, 3, and 4

Rules of Practice Amendments

AGENCY: Federal Trade Commission (FTC).

ACTION: Interim rules with request for comments.

SUMMARY: The FTC is amending its Rules of Practice for adjudicatory proceedings. The amendments are expected to reduce the cost, complexity, and length of FTC adjudicatory proceedings by clarifying and streamlining the agency procedures governing such proceedings.

DATES: These rule amendments are effective on September 26, 1996. Comments must be received on or before November 25, 1996. Dates of Applicability: These amendments will govern all Commission adjudicatory proceedings that are commenced on or after January 1, 1997. They will also govern all Commission adjudicatory proceedings that are currently pending and all proceedings that are commenced before January 1, 1997, except to the extent that, in the opinion of the Administrative Law Judge (ALJ) or the Commission, the application of one or more amended rules in a particular proceeding would not be feasible or would work injustice.

ADDRESSES: Written comments must be submitted in 20 copies to the Office of the Secretary, Room 159, Federal Trade Commission, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580. Individuals filing comments need not submit multiple copies.

FOR FURTHER INFORMATION CONTACT: Cynthia Hogue Levy, (202) 326–2158, Jonathan Luna, (202) 326–2444, or Alex Tang, (202) 326–2447, Attorneys, Office of General Counsel, FTC, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On May 30, 1995, FTC Chairman Robert Pitofsky announced the formation of a special Task Force on Administrative Adjudication (''Task Force'') to review FTC rules and policies governing the conduct of administrative litigation at the Commission (''Part 3 Rules''). The Task Force developed recommendations for clarifying and streamlining current procedures for adjudication before the Commission.

As the Commission has previously recognized, unnecessary delay in adjudications can have a negative impact on the Commission's adjudicatory program and law enforcement mission. The agency's longstanding policy has been that, to the extent practicable and consistent with requirements of law, adjudicative proceedings shall be conducted expeditiously and that both the Administrative Law Judge and litigants shall make every effort to avoid delay at each stage of a proceeding. 16 CFR 3.1. Unnecessarily long proceedings waste Commission and private resources. Delay can extend legal uncertainty for respondents and third parties, and may reduce the efficacy of any remedies resulting from such proceedings. Delay may also lessen the quality of agency decisions when evidence becomes stale. The risk of lengthy proceedings may also undermine administrative adjudication as a valid alternative when parties are deciding whether to settle a matter. While some respondents may benefit, others may feel unduly pressured to settle if they believe that Part 3 litigation will entail a substantial commitment of time and resources. Similarly, the expectation of unnecessarily lengthy administrative litigation may lead Commission staff to recommend Commission acceptance of an unduly limited settlement. The length of time taken in FTC proceedings may also be a factor that some courts consider in deciding whether to grant a preliminary injunction pending the outcome of the Commission's administrative proceeding. *FTC* v. *Freeman Hosp.*, 1995–1, Trade Cas. (CCH) ¶ 71,037 at 74,893 n.8 (D. Mo. 1995), *aff'd*, 69 F. 3d 260 (8th Cir. 1995).

In light of such concerns, the Commission has made several efforts over the years to identify ways to make Part 3 proceedings more efficient without sacrificing the quality of decisionmaking or compromising the procedural rights of parties in such proceedings. In 1985, for example, the Commission adopted various rule changes specifically designed to improve prehearing case management and expedite Part 3 proceedings, including the existing requirement regarding the timely initiation of evidentiary hearings. 50 FR 41485 (Oct. 11, 1985).

More recently, the Commission has made further strides to reduce the time taken to render decisions in adjudicative proceedings.[1] In April 1994, the Commission set internal deadlines for the preparation and issuance of final orders and opinions in appeals from an initial decision. This schedule established deadlines for each of the principal stages of preparation of adjudicative opinions, including separate statements. Under the new schedule it is expected that the drafting process is the usual adjudicative proceeding should generally span approximately eight (8) months (following oral argument before the Commission). To ensure that its adjudicative decisionmaking remains on schedule, the Commission meets quarterly, or more often when necessary, to review the progress of each pending adjudicative matter on appeal before the Commission.

Since implementing a deadline schedule governing its own conduct in the preparation of final orders and opinions in adjudicative proceedings, the Commission has disposed of a backlog of cases pending when the schedule was adopted. Currently, there is one adjudicative proceeding pending before the Commission on appeal.

Building upon these past actions, the Commission has determined to adopt further procedural rule changes as set forth below. The Commission believes that these changes will advance its goal of assuring the public that administrative law enforcement proceedings will be resolved fairly and within a reasonable time.

The Commission also encourages the ALJs to consider implementing other techniques, besides the rule amendments announced in this notice, to expedite action in each adjudicatory proceeding. Efficient adjudication required affirmative case management, and ALJs have broad powers under Rule 3.42(c) that should be used fully to balance the interests in expedition and fairness.

Two techniques for expediting evidentiary hearings particularly merit attention by the ALJs. First, the Commission encourages the ALJs generally to conduct the evidentiary hearing by using consecutive, full trial days. Historical data for the past ten years indicate that while the average evidentiary trial spans over three (3) months, only thirty of those days are actual trial days. Normally conducting proceedings on consecutive days, in most cases, would enable the ALJ and the litigants to use the period designated for trial to its fullest advantage.

[1] In announcing institutional improvements at the agency, then-Chairman Steiger explained that the Commission had determined to take action to address criticisms of delay that were contained in a Task Force Report of the American Bar Association. See Prepared Remarks of Chairman Janet D. Steiger Before Section of Antitrust Law, American Bar Association (Apr. 8, 1994) (referring to Report of the American Bar Association Section of Antitrust Law Special Committee to Study the Role of the Federal Trade Commission, 58 ANTITRUST L.J. 43 (1989)).

Second, in appropriate cases the ALJs should encourage the parties to submit the direct examination of expert witnesses in writing, in lieu of live direct examination, reserving live testimony for the cross-examination. This practice would reduce the time necessary for the presentation of direct testimony but still allow the ALJ to assess the demeanor and credibility of expert witnesses. Submission of direct expert testimony in writing may result in more focused cross-examination and would afford both the parties and the ALJ an opportunity to identify in advance any questions raised by the expert's direct testimony.

The Commission also invites the ALJs to exercise their discretion in regulating the course of adjudicative proceedings in a manner that expedites proceedings, consistent with due process considerations. For instance, ALJs may wish to consider requiring that, in appropriate circumstances, proposed findings of fact and conclusions of law be submitted by the parties before, rather than after, trial. In certain proceedings, this practice could instill more rigor in the litigants' presentation of evidence at trial, while also aiding the ALJ in monitoring the introduction of evidence and in preparing findings of fact and conclusions of law after the evidentiary hearing. ALJs may wish to utilize an alternative procedure, either in conjunction with, or in lieu of, pretrial findings of fact and conclusions of law. For example, an ALJ may require the parties to submit proposed stipulations and contentions to further narrow the legal and factual issues to be presented during the evidentiary hearing. See *e.g., United States* v. *American Telephone & Telegraph Co.,* 552 F. Supp. 131, 140 (D.D.C. 1982).

As a further step in expediting administrative adjudication, the Commission has determined to establish an alternative ''fast track'' schedule that respondents may elect in appropriate administrative proceedings.[2] The option is available when a federal district court has granted a preliminary injunction in a collateral federal court proceeding, brought by the Commission to challenge some or all of the same conduct at issue in the administrative proceeding.[3] Under the fast track schedule, the Commission would issue a final order and opinion within thirteen (13) months after the latest of the following events (''triggering event''): (1) Issuance of an administrative complaint; (2) entry of a preliminary injunction by a federal district court; or (3) the date on which respondent elects the fast track. This deadline may be amended by the Commission only in the following two circumstances: (1) If the Commission's final order or opinion contains material or information designated for *in camera* treatment, thus obliging the agency to provide advance notification of the Commission's intent to disclose that information to submitters of such *in camera* material or information; or (2) if the Commission determines that adherence to the thirteen-month deadline would result in a miscarriage of justice due to circumstances unforeseen at the time of respondent's election of the fast track proceeding.

When the Commission determines to authorize its staff to seek a preliminary injunction in federal court, the agency may also determine to advise the respondent that the respondent may elect the fast track schedule if the federal district court preliminarily enjoins the challenged conduct. Such notice will be provided to the prospective respondent at the time it is notified of the Commission's action authorizing the preliminary injunction motion. The Commission expects that the fast track procedure will be available to respondents in the typical merger challenge; however, certain cases may appear too complex at the outset to be designated as appropriate for the fast track schedule. In such instances, the Commission would not notify the respondent respecting an option to elect the fast track.

The new rule specifies the period of time within which a potential respondent must elect the fast track schedule. In administrative proceedings involving multiple respondents, the fast track schedule will be available only if all respondents elect it.

The Commission expects that the expedited deadlines imposed under the fast track procedures will require active management by the ALJ. Although the new fast track rule specifies certain interim deadlines, the time frames for other interim stages are left to the ALJ's discretion. Thus, the length of time to be allotted for discovery, the evidentiary hearing, and post-trial written submissions are to be set by the ALJ, in keeping with the fast track requirement that the ALJ must file the initial decision within one hundred ninety-five (195) days after the triggering event specified in new § 3.11A. The Commission anticipates that in a typical proceeding governed by the fast track schedule, discovery will be completed within three (3) months, the evidentiary hearing will span no longer than six weeks, and post-trial submissions will be submitted within four weeks following the conclusion of the evidentiary hearing.

The ALJ may in his discretion treat discovery from the preliminary injunction hearing and transcripts of testimony in the preliminary injunction proceeding as if the material had been discovered and presented in the administrative proceeding. The ALJ may limit the number of depositions, witnesses, or document production under his plenary authority. See 16 CFR 3.42(c)(6).

The fast track appellate procedure before the Commission differs from that governing the standard administrative adjudication. In addition to the shorter time frame required for issuance of the Commission's final order and opinion, the fast track procedure requires the simultaneous filing of the parties' initial appeal briefs (rather than the staggered cross-appeal procedure permitted under Rule 3.52(c)). The Commission's final order and opinion in the proceeding will be ready for issuance within one hundred ninety-five (195) days after the filing of the ALJ's initial decision.[4]

The thirteen (13) month deadline contemplated under the new procedural rule compares favorably with the schedules followed by federal district courts in a number of permanent injunction hearings involving mergers. Since 1986, the Department of Justice Antitrust Division has litigated eight merger enforcement actions on the merits in permanent injunction proceedings in federal court.[5] On average, these cases spanned approximately ten (10) months from filing of the complaint to issuance of the district court opinion.See generally *United States* v. *Mercy Health Services,* 902 F. Supp. 968 (N.D. Iowa 1995)—complaint to opinion: 141 days (including ten-day trial); *United States* v. *Nat. L.C.,* and *D.R. Partners D/B/A Donrey Media Group,* 892 F. Supp 1146 (W.D. Ark. 1995)—complaint to

[2] The new procedure could apply to any administrative adjudication specifically designated by the Commission in which the agency also seeks a preliminary injunction to enjoin the same conduct challenged in the administrative complaint. The Commission expects that most such cases will involve challenges to mergers and acquisitions.

[3] If the preliminary injunction is later vacated, the Commission, in its discretion, may take such action as it deems appropriate in the administrative adjudication.

[4] The Commission's final order and opinion will be ready for issuance within the specified time period, except that, if the Commission's order or opinion contains material or information that has been designated for *in camera* treatment, its issuance may be delayed to the extent necessary to provide the submitters of such material or information with advance notice of the Commission's intent to release such information in the final order or opinion in the proceeding.

[5] Some of these cases involved a consolidation of both the preliminary and permanent injunction proceedings.

opinion: ninety-four days (including eight-day trial); *United States* v. *United Tote, Inc.,* 768 F. Supp. 1064 (D. Del. 1991)—complaint to opinion: 422 days [1.2 years] (including six-day trial); *United States* v. *Baker Hughes, Inc.,* 731 F. Supp. 3 (D.D.C. 1990)—complaint to opinion: seventy days (including one-day trial); *United States* v. *The Rank Organisation plc,* 1990–2 Trade Cas. (CCH) ¶69,257 (C.D. Cal. 1990)—complaint to opinion: 141 days (including eight-day trial); *United States* v. *Rockford Memorial Corp.,* 717 F. Supp. 1251 (N.D. Ill. 1989)—complaint to opinion: 267 days (including nineteen-day trial); *United States* v. *Syufy Enterprises,* 712 F. Supp. 1386 (N.D. Cal 1989)—complaint to opinion: 973 days (2.6 years) (including eight-day trial); and *United States* v. *Carilion Health System,* 707 F. Supp. 840 (W.D. Va. 1989)—complaint to opinion: 262 days (including twenty-six day trial). The Commission's new procedures entail a slightly longer period of time than the instances cited, because they contemplate both a trial and an administrative appellate process. Because an initial decision by an ALJ is followed by *de novo* review of the initial decision by the Commission, the longer time frame is necessary. The Commission believes this expedited time frame is both realistic and a reasonable period within which such adjudications should be resolved.

In addition to the rule amendments announced today, the Commission has determined to implement the following two institutional improvements that are intended to make information more readily available to the public regarding both the agency's case management of its adjudicative docket and interlocutory rulings issued by ALJs in adjudicative proceedings. Neither procedure requires amendment to the agency's Rules of Practice. First, the Commission has directed that a quarterly status report reflecting the progress of pending adjudications before ALJs be made publicly available. Such reports would include, *inter alia,* the dates on which milestone events in a particular proceeding occurred (*e.g.,* filing of the administrative complaint, respondent's answer, scheduling conference before the ALJ, issuance of the ALJ's scheduling order, close of discovery, final pretrial conference, commencement and conclusion of the evidentiary hearing, and filing of the ALJ's initial decision). The Commission has concluded that disclosure of information about the agency's adjudication program caseload would increase awareness of the importance of the program and promote public confidence in its efficiency and fairness. Similar status reports are prepared to describe the status of cases pending in federal district courts, in keeping with the provisions of the Civil Justice Reform Act of 1990. 28 U.S.C. 476 (requiring semiannual reporting of, *inter alia,* bench trials and motions that have been submitted for more than six (6) months and the number of cases that have not been terminated within three years after filing).

Second, the Commission has determined to make ALJ interlocutory orders in adjudicative proceedings more readily available to the public. Currently, some, but not all, ALJ interlocutory orders are widely available to the public through legal research resources. Recent technological advances will soon enable the agency to make significant ALJ interlocutory orders available to the public through electronic means via the Internet. Accordingly, the Commission has committed itself to making such interlocutory orders available to the public through such means during the next fiscal year.

The specific rule amendments that the Commission is adopting at this time are as follows:

A. Imposing Tighter Deadlines

1. Rule 3.12(a) is being amended to shorten the dead-line for the filing of an answer after service of the administrative complaint. The rule currently allows thirty (30) days for the filing of the answer. The revised rule shortens this period to twenty (20) days, in conformity with the Federal Rules of Civil Procedure (''Federal Rules''). See Fed. R. Civ. P. 12(a)(1)(A). The Commission believes twenty (20) days should be adequate, since the Commission sees no reason why an FTC complaint should take any longer to answer than does a federal court complaint.

2. Rule 3.21 is being amended to require that the scheduling conference be held within seven (7) calendar days after filing of the answer, and that the scheduling order be issued by the ALJ within two (2) days thereafter. Since respondents in agency adjudications have already been on notice of the Commission's investigation, a week should be sufficient time for the parties to prepare for the preliminary matters to be discussed at the scheduling conference (e.g., general discovery plan, timetable for the proceeding). Similarly, no more than two (2) days, rather than the two (2) weeks currently allowed by the current rule, should be necessary for an ALJ to prepare and issue a scheduling order once the scheduling conference has concluded.

3. Rule 3.51(a) is being amended to require explicitly that the ALJ file an initial decision within one (1) year of service of the administrative complaint. The ALJ is being permitted, however, in extraordinary circumstances to extend this deadline by up to a two-month period, which may be extended upon expiration of that period by additional, consecutive periods of up to two (2) months, provided that for each such extension the ALJ finds that extraordinary circumstances continue to be present. The rule continues to require, however, that the ALJ issue an initial decision within ninety (90) days after the hearing record closes, or thirty (30) days after a default or the granting of a motion for summary decision or waiver by the parties of the filing of proposed findings of fact, conclusions of law, and order. Experience suggests that interim deadlines have not been completely successful in promoting the expeditious resolution of Part III cases. In the Commission's view, a one-year deadline for the initial decision is a realistic time frame for most adjudicative proceedings and would encourage ALJs to exercise more active control in managing cases from start to finish. The pendency of any collateral federal court proceeding that relates to the administrative adjudication will toll the one-year deadline for filing the initial decision. The administrative proceeding may be stayed until resolution of the collateral federal court proceeding.

4. Rules 3.21 and 3.22(d) are being amended to (a) clarify the standard for obtaining extensions of deadlines established in the scheduling order, and (b) prohibit the ALJ from ruling on *ex parte* motions to extend such deadlines. Currently, such modifications are permitted only under a ''good cause'' standard. The rule is being amended to provide further guidance on this standard. Specifically, all motions to extend any deadline or time specified in the scheduling order are required to set forth the total period of extensions previously obtained by the moving party. In making a determination on such motions, ALJs will consider any extensions already granted, the length of the proceedings to date, and the need to conclude the evidentiary hearing and render an initial decision in a timely manner. Currently, Rule 3.22(d) permits the ALJ to rule on *ex parte* motions for extensions of time. Such rulings would no longer be permitted on the basis of *ex parte* motions under the amendments to Rules 3.21 and 3.22(d), as set forth below.

B. Minimizing Discovery Delays

1. Rule 3.21 is being revised to promote greater use of prehearing and status conferences where such conferences are not otherwise explicitly required by the Commission's rules. The Commission believes that such conferences facilitate the overall adjudicatory process by focusing the parties on the issues that are material to the case, promoting the exchange of relevant information, forestalling unnecessary and time-consuming motions, and providing a forum for resolving discovery disputes and exploring settlement options.

2. Rule 3.21 is being amended to require that the counsel for the parties conduct a meeting (preferably, in person) with one another before the scheduling conference and also before their final prehearing conference with the ALJ. (The final prehearing conference is also a new requirement, as discussed *infra*.) The meeting before the scheduling conference is intended to provide the parties with an opportunity to discuss the possibility of settlement and to decide, if possible, on a proposed discovery schedule, the handling of pretrial motions, a preliminary estimate of the time required for the hearing, and a hearing date. This requirement is modeled upon Fed. R. Civ. P. 26(f), which requires that the parties meet before the scheduling conference and order. The meeting before the final prehearing conference is intended for the parties to discuss potential stipulations of law and fact, the admissibility of or objections to evidence, and the organization and exchange of exhibits, witness lists, and designated deposition testimony. This meeting should narrow the issues to be addressed at the final prehearing conference and help the ALJ plan an efficient evidentiary hearing.

3. Current Rule 3.21(a) is being deleted to abolish the requirement that the parties each file a nonbinding statement before the scheduling conference, stating the anticipated issues, theories, and proof of the case. The requirement that parties provide a preliminary assessment of their case theories has not, in practice, demonstrably fulfilled its originally intended purpose in helping the ALJ manage cases and control discovery. 50 FR 41485, 41487 (Oct. 11, 1985). Although nonbinding statements are no longer being required by rule, ALJs will continue to retain their discretion, under the plenary power set forth in Rule 3.42(c), to order that the parties file such statements if they would be useful in a particular case.

4. Rule 3.31 is being revised, after redesignating certain paragraphs, to add a new paragraph (b) requiring that the parties make certain initial disclosures within five (5) days after the answer, without waiting for a formal discovery request. These disclosures would be similar to the initial disclosures required by Fed. R. Civ. P. 26(a)(1) in federal court litigation. In particular, parties will be required to exchange the names, addresses, and telephone numbers of individuals likely to have discoverable information. The parties will also be required to exchange a copy, or a description by category and location, of all documents, data, and other tangible things in possession of the party that are relevant to disputed facts alleged in the pleadings. These initial disclosures are intended to expedite discovery by reducing the need for parties to request basic documents and other information.

5. Rules 3.31, 3.33, 3.34, 3.35, 3.36, 3.37, and other Part III provisions are being revised to eliminate in substantial part the requirement that ALJs pre-authorize requests and subpoenas for depositions, interrogatories, documents, and access for inspection and other purposes before a party may serve such a request or subpoena. The elimination of ALJ pre-authorization includes discovery requests for access to documents in the possession, custody, or control of the Federal Trade Commission or its employees or for subpoenas requesting the appearance of an official or employee of the Commission. Since Rule 3.31 already provides that parties may seek a protective order from a discovery or access request, and Rule 3.34 provides for motions to quash a subpoena, pre-authorization of discovery requests and subpoenas appears to be unnecessary to prevent abuse. See also 16 CFR 3.38A (withholding requested material). This revision is not intended to diminish the ALJ's authority to enlarge or limit the scope of discovery. See, *e.g.*, *Maremont Corp.*, 76 F.T.C. 1061, 1062, (1969) (discovery is primarily the responsibility of the ALJ and the Commission ''ordinarily will not dispute his rulings thereon''). The Commission notes that the Federal Rules of Civil Procedure do not require parties to obtain such authorization before they may make a discovery request. See, *e.g.*, Fed. R. Civ. P. 30(a)(1) (taking testimony by deposition without leave of court). The Commission's rules will continue to require, however, that parties submit a written motion to the ALJ for subpoenas seeking the discovery of documents of other government agencies, or the appearance of employees of such agencies.[6] See 16 CFR 3.36. Likewise, parties must continue to seek the prior approval of the ALJ to compel the attendance of a person to testify at an adjudicative hearing. See 16 CFR 3.34(a).

6. Rule 3.31(b)(1) is being amended and redesignated as 3.31(c)(1) to strengthen the ALJs' authority to prevent abusive discovery tactics by limiting the frequency or extent of discovery under certain conditions (e.g., when it would be cumulative or duplicative). This amendment tracks in relevant part the language of Fed. R. Civ. P. 26(b)(2), which sets forth similar limitations on discovery.

7. Rule 3.31(a) is being amended to encourage simultaneous discovery by requiring its use whenever practicable. While the current rule does not preclude simultaneous discovery, it is practiced only sporadically in adjudicative proceedings. The Commission believes that simultaneous discovery prevents an unprepared party from hindering the overall progress of the case, while it allows a prepared party to move forward expeditiously.

8. Rule 3.31 is also being amended to redesignate existing paragraphs to allow for the addition of a new paragraph (e), explicitly requiring that a party supplement its response to a discovery request when circumstances render the party's previous response incomplete or incorrect. This requirement, which is modeled, in part, on similar requirements in Fed. R. Civ. P. 26(e), is intended to promote greater candor and cooperation among parties by placing an affirmative burden on each party to ensure that its original response remains accurate and complete. Failure to observe this requirement may result in sanctions or an order to comply issued by the ALJ under Rule 3.38.

9. The definition of the term ''documents'' in Rule 3.34(b) is being amended to incorporate technological advances in electronic communications and digital information storage.

10. Rule 3.35(a)(1) is being amended to limit each party to twenty-five (25) interrogatories, consistent with federal court practice. See Fed. R. Civ. P. 33. Limiting the number of interrogatories is intended to improve the efficiency of interrogatory practice and prevent the

[6] The amended Rule 3.36 will continue to require that motions for discovery from other government agencies make a specific showing that the information or material sought cannot reasonably be obtained by other means. By eliminating ALJ pre-approval of discovery from the Commission, the amended rule eliminates the requirement that this showing be made for subpoenas for records of the Commission or for the appearance of Commission employees.

overuse of interrogatories as a means of harassing another party or delaying discovery.

11. Rule 3.35(a)(2) is being amended to establish a uniform thirty-day period for parties to respond to interrogatories. Under the current rule, a respondent may take up to forty-five (45) days to respond from the date that the administrative complaint is served on that respondent, while other parties must respond within thirty (30) days from the date that the interrogatory is served. The amendment would eliminate the 45-day rule for respondents, which appears to have caused some confusion among practitioners. The amendment would also bring the Commission's rules in line with federal court practice, which requires that all parties, including the defendant, in a civil action respond within thirty (30) days of being served with an interrogatory. See Fed. R. Civ. P. 33(b)(3).

C. Minimizing Delay at Trial

1. Rule 3.21 is being amended to require that the ALJ hold a final prehearing conference as close to the commencement of trail as reasonably practicable. See Fed. R. Civ. P. 16(d). At this conference, counsel will be required to submit any proposed stipulations of law, fact, or admissibility of evidence, exchange exhibit and witness lists, and designate testimony to be presented by deposition. The ALJ will also be required to resolve any outstanding evidentiary matters or pending motions (except motions for summary decision), and to establish a final schedule for the evidentiary hearing. In requiring that ''counsel'' personally attend this conference, the Commission intends that at least one attorney for each party (preferably the attorney responsible for trying the case) appear; if not represented by an attorney, the party shall attend on the party's own behalf. Furthermore, as discussed earlier, counsel for the parties will be expected to consult with one another on these matters in a meeting (preferably, in person) prior to the final conference.

2. Rule 3.43(b) is being amended to incorporate relevant language in Rules 403 and 611 of the Federal Rules of Evidence regarding the exclusion of cumulative evidence. The amended rule is intended to make clearer to litigants that the ALJ is empowered to exclude unduly repetitious, cumulative, and marginally relevant materials that merely burden the record and delay the trial. This clarification is intended to enhance the ALJ's ability to assemble a concise and manageable record.

3. Rule 3.21 is being amended to require that the ALJ's scheduling orders include specific instructions on how the parties shall mark their exhibits. Such guidance is currently contained only in the FTC Operating Manual, which is primarily used for staff guidance. Requiring that such specific instructions be included in the scheduling order is intended to make them more directly available to the parties.

D. Filing of Documents and Motions

1. Rule 3.22(a) is being amended to specify that copies of motions filed with the Secretary must also be provided promptly and directly to the ALJ. This amendment is intended to codify a practice that is well-established in many federal courts and that many FTC practitioners already appear to follow.

2. Rule 3.22(b) is being amended to require that all motions in adjudicative proceedings include the name, address, and telephone number of counsel, and attach a draft order containing the proposed relief. A conforming change is also being made to Rule 4.2, regarding filing requirements. The requirement that motions provide contact information and a draft order is intended to facilitate the administrative processing and disposition of motions, and is consistent with federal court practice. See, *e.g.*, Fed. R. Civ. P. 7(b)(1) & 11(a).

3. Rule 3.25(b), governing motions to settle and withdraw a matter from adjudication, is being amended to underscore the requirement that such motions, like all motions in adjudicatory proceedings, be filed with the Office of the Secretary, pursuant to Commission Rule 4.2(a). One ALJ has observed that counsel sometimes submit their Rule 3.25(b) motions directly to him without filing them with the Secretary as required. The amendment complements existing Rule 3.25(c), under which the withdrawal of a matter from adjudication is not triggered until the Secretary receives the appropriate motion.

4. Rule 3.24(a)(1) is being amended to require that a party moving for summary decision include a statement of the material facts as to which the party contends there is no genuine issue. The Commission notes that several local rules of federal courts require such statements. See, *e.g.*, D.D.C. Local Rule 108(h); S.D.N.Y. Local Rule 8(d); C.D. Cal. Local Rule 7.14; S.D. Fla. Local Rule 7.5. Changes are also being made in paragraphs (a)(2) and (a)(3) to make more explicit the existing requirement in paragraph (a)(3) that the opposing party provide a statement setting forth specific facts showing that there remains a genuine issue to be tried. See Fed. R. Civ. P. 56(e). Requiring that the moving and opposing parties provide statements is designed to expedite ALJ review of and rulings on summary decision motions.

5. Rule 3.24(a)(1) is also being amended to permit complaint counsel to move for summary decision in twenty (20), rather than thirty (30), days after the complaint is issued, as specified under the current rule. The change mirrors the proposed amendment to Rule 3.12(a), reducing the time to file an answer to the complaint from thirty (30) to twenty (20) days, as discussed earlier.

6. Rule 3.22(d) is being revised to remove the ALJ's discretion to rule on *ex parte* requests for extensions of time. This change is also reflected in revised Rule 3.21, regarding modification of scheduling orders.

E. Miscellaneous

1. Rule 3.11A is being added to establish an alternative ''fast track'' schedule that respondents in certain administrative proceedings may elect if a federal district court has granted a preliminary injunction in a collateral federal court proceeding brought by the Commission. Under the fast track schedule, the Commission shall, with limited exception, be prepared to issue a final order and opinion in such expedited proceedings within thirteen (13) months after the triggering event.

2. Rule 3.44 is being amended to add new paragraph (c), requiring that ALJs formally close the hearing record immediately upon the close of the evidentiary hearing. A conforming change is also being made to Rules 3.46(a) 3.51(a). The Commission believes that little, if any, useful purpose is served by allowing the record to remain open after completion of the trial, and believes that it may contribute to adjudicatory delay. In requiring that ALJs close the record promptly at the end of the trial, the Commission does not intend, however, to alter or interfere with the procedures under paragraph (b) of the existing rule for post-trial corrections to the record as may be necessary, even after it has closed.

3. Rules 2.8, 2.9, and 2.15 are being revised to terminate the currently prescribed use of ''presiding officials'' in investigational hearings. This practice is neither required by law nor necessary for the protection of witness' rights. By eliminating the use of presiding officials, the Commission seeks to avoid the erroneous perception that investigational hearings are conducted by persons with the same degree of authority and independence

that ALJs have in adjudicative proceedings.

4. Rule 3.55 is being amended to shorten the time period for filing a petition for reconsideration. The current rule allows a party to file such a petition within twenty (20) days after service of the Commission's decision. By comparison, Federal Rule of Appellate Procedure 40 allows only fourteen (14) days, and the Commission believes that this time period should also be adequate for parties to file for reconsideration in a Commission adjudication.

5. Rules 3.22(a) and 3.51 are being amended to delete language describing the procedure for filing documents containing *in camera* material and to substitute cross-references to Rule 3.45, which is also being amended to set forth the relevant *in camera* procedures and obligations in their entirety. These revisions are expected to reduce the confusion that may arise from duplicative instructions and to improve the litigants' understanding and observance of *in camera* procedures.

These rule revisions relate solely to agency practice and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), nor to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). The Paperwork Reduction Act does not apply to these requirements. 44 U.S.C. 3518(c)(ii). Although the rule revisions are effective as stated in the previous section, the Commission welcomes comment on them and will consider further revision, as appropriate.

List of Subjects

16 CFR Part 2

Administrative practice and procedure, Investigations, Reporting and recordkeeping requirements.

16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to justice, Lawyers.

16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A of the Code of Federal Regulations, as follows:

PART 2—NONADJUDICATIVE PROCEDURES

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

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 2.8 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 2.8 Investigational hearings.

* * * * *

(b) Investigational hearings shall be conducted by any Commission member, examiner, attorney, investigator, or other person duly designated under the FTC Act, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. * * *

* * * * *

3. Section 2.9 is amended by revising the last sentence of paragraph (b)(4), all of paragraph (b)(5), and the first and second sentences of paragraph (b)(6) to read as follows:

§ 2.9 Rights of witnesses in investigations.

* * * * *

(b) * * *

(4) * * * Copies of such petitions may be filed as part of the record of the investigation with the person conducting the investigational hearing, but no arguments in support thereof will be allowed at the hearing.

(5) Following completion of the examination of a witness, counsel for the witness may on the record request the person conducting the investigational hearing to permit the witness of clarify any of his or her answers. The grant or denial of such request shall be within the sole discretion of the person conducting the hearing.

(6) The person conducting the hearing shall take all necessary action to regulate the course of the hearing to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language. Such person shall, for reasons stated on the record, immediately report to the Commission any instances where an attorney has allegedly refused to comply with his or her directions, or has allegedly engaged in disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of the hearing. * * *

4. Section 2.15 is amended by revising the last sentence of paragraph (b) to read:

§ 2.15 Orders requiring witnesses to testify or provide other information and granting immunity.

* * * * *

(b) * * * The appeal shall not operate to suspend the hearing unless otherwise determined by the person conducting the hearing or ordered by the Commission.

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

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

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

6. Section 3.11A is added to read as follows:

§ 3.11A Fast Track Proceedings.

(a) *Availability of Fast Track Proceedings.* In certain administrative proceedings that have been designated by the Commission as appropriate for the fast track schedule, respondents may elect to have the proceeding adjudicated under the expedited schedule set forth in this section. In administrative proceedings involving multiple respondents, the fast track schedule shall be available only if all respondents elect it. The Commission shall designate whether the fast track schedule will be available at the time it authorizes Commission staff to seek a preliminary injunction in federal district court and shall provide notice of the defendant's option to elect the fast track procedures in the event that the Commission should initiate an administrative adjudication challenging some or all of the same conduct at issue in the federal court injunctive proceeding. Such notice shall be provided to the prospective respondent at the time it is notified of the Commission's action to authorize the filing of the preliminary injunction motion. In fast track proceedings, the Commission shall be prepared to issue a final order and opinion within thirteen (13) months after the latest of the following events (hereinafter ''triggering event''): Issuance of the Commission's administrative complaint; entry of a preliminary injunction by a federal court in a collateral proceeding against respondent brought by the Commission; or the date on which respondent elects the fast track procedure. The date for issuance of the Commission's final order and opinion in fast track proceedings may be amended by the Commission in the following circumstances: If the Commission's final order or opinion contains material or information designated for *in camera* treatment such that the agency is required to provide advance notification of such disclosure to submitters of *in camera* material or information; or if the Commission determines that adherence to the thirteen-month deadline would result in a miscarriage of justice due to circumstances unforeseen at the time of respondent's election of the fast track

proceeding. Only administrative proceedings challenging conduct that has been preliminarily enjoined by a federal court in a collateral proceeding brought by the Commission shall be subject to the fast track schedule. In the event the preliminary injunction in the collateral federal court proceeding is vacated, the Commission, in its discretion, may take such action as it deems appropriate in the administrative adjudication. Except as modified by this section, the rules contained in Subparts A through I of Part 3 of this chapter shall govern fast track procedures in adjudicative proceedings.

(b) *Election of Fast Track Proceedings.* Respondents making an election under this section shall make such election by the later of either: Three (3) days after service of the administrative complaint challenging the merger or acquisition; or three (3) days after a federal district court grants the Commission's request for a preliminary injunction. Respondents electing fast track proceedings shall do so by filing a notice of election of such expedited proceedings with the Secretary.

(c) *Interim Deadlines in Fast Track Proceedings.* The following deadlines shall govern all fast tract proceedings covered by this section:

(1) The scheduling conference required by § 3.21(b) shall be held not later than three (3) days after the triggering event.

(2) Respondent's answer shall be filed within fourteen (14) days after the triggering event.

(3) The ALJ shall file an initial decision within fifty-six (56) days following the conclusion of the evidentiary hearing. The initial decision shall be filed no later than one hundred ninety-five (195) days after the triggering event, pursuant to paragraph (a) of this section.

(4) Any party wishing to appeal an initial decision to the Commission shall file a notice of appeal with the Secretary within three (3) days after service of the initial decision. The notice shall comply with § 3.52(a) in all other respects.

(5) The appeal shall be in the form of a brief, filed within twenty-one (21) days after service of the initial decision, and shall comply with § 3.52(b) in all other respects.

(6) Within fourteen (14) days after service of the appeal brief, the appellee may file an answering brief which shall comply with § 3.52(c). Cross-appeals, as permitted in § 3.52(c), may not be raised in an appellee's answering brief. All issues raised on appeal must be presented in the party's appeal brief and must be filed within the deadline specified in paragraphs (c)(4) and (c)(5) of this section.

(7) Within five (5) days after service of the appellee's answering brief, the appellant may file a reply brief, in accordance with § 3.52(d) in all other respects.

(d) *Discovery.* Discovery shall be governed by Subpart D of this part. The ALJ may establish limitations on the number of depositions, witnesses, or any document production, pursuant to his plenary authority under § 3.42(c)(6).

7. Section 3.12 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 3.12 Answer to complaint.

(a) *Time for filing.* A respondent shall file an answer within twenty (20) days after being served with the complaint: *Provided, however,* That the filing of a motion for a more definite statement of the charges shall alter this period of time as follows, unless a different time is fixed by the Administrative Law Judge: * * *

* * * * *

8. Section 3.21 is amended by redesignating paragraph (e) as new paragraph (g), revising paragraphs (a) through (d), and adding new paragraphs (e) and (f), to read as follows:

§ 3.21 Prehearing procedures.

(a) *Meeting of the parties before scheduling conference.* An early as practicable before the prehearing scheduling conference described in paragraph (b) of this section, counsel for the parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, and to agree, if possible, on a proposed discovery schedule, a preliminary estimate of the time required for the hearing, and a proposed hearing date, and on any other matters to be determined at the scheduling conference.

(b) *Scheduling conference.* Not later than seven (7) days after the answer is filed by the last answering respondent, the Administrative Law Judge shall hold a scheduling conference. At the scheduling conference, counsel for the parties shall be prepared to address their factual and legal theories, a schedule of proceedings, possible limitations on discovery, and other possible agreements or steps that may aid in the orderly and expeditious disposition of the proceeding.

(c) *Prehearing scheduling order.* (1) Not later than two (2) days after the scheduling conference, the Administrative Law Judge shall enter an order that sets forth the results of the conference and establishes a schedule of proceedings, including a plan of discovery, dates for the submission and hearing of motions, the specific method by which exhibits shall be numbered or otherwise identified and marked for the record, and the time and place of a final prehearing conference and of the evidentiary hearing.

(2) The Administrative Law Judge may grant a motion to extend any deadline or time specified in this scheduling order only upon a showing of good cause. Such motion shall set forth the total period of extensions, if any, previously obtained by the moving party. In determining whether to grant the motion, the Administrative Law Judge shall consider any extensions already granted, the length of the proceedings to date, and the need to conclude the evidentiary hearing and render an initial decision in a timely manner. The Administrative Law Judge shall not rule on *ex parte* motions to extend the deadlines specified in the scheduling order, or modify such deadlines solely upon stipulation or agreement of counsel.

(d) *Meeting prior to final prehearing conference.* Counsel for the parties shall meet before the final prehearing conference described in paragraph (e) of this section to discuss the matters set forth therein in preparation for the conference.

(e) *Final prehearing conference.* As close to the commencement of the evidentiary hearing as practicable, the Administrative Law Judge shall hold a final prehearing conference, which counsel shall attend in person, to submit any proposed stipulations as to law, fact, or admissibility of evidence, exchange exhibit and witness lists, and designate testimony to be presented by deposition. At this conference, the Administrative Law Judge shall also resolve any outstanding evidentiary matters or pending motions (except motions for summary decision) and establish a final schedule for the evidentiary hearing.

(f) *Additional prehearing conferences and orders.* The Administrative Law Judge shall hold additional prehearing and status conferences or enter additional orders as may be needed to ensure the orderly and expeditious disposition of a proceeding. Such conferences shall be held in person to the extent practicable.

(g) *Public access and reporting.* * * *

9. Section 3.22 is amended by revising paragraphs (a) and (d), the last sentence of paragraph (e), and the first full sentence of paragraph (f), to read as follows:

§ 3.22 Motions.

(a) *Presentation and disposition.* During the time a proceeding is before an Administrative Law Judge, all motions therein, except those filed under § 3.26, § 3.42(g), or § 4.17, shall be addressed to and ruled upon, if within his or her authority, by the Administrative Law Judge. The Administrative Law Judge shall certify to the Commission any motion upon which he or she has no authority to rule, accompanied by any recommendation that he or she may deem appropriate. Such recommendation may contain a proposed disposition of the motion or other relevant comments. The Commission may order the ALJ to submit a recommendation or an amplification thereof. Rulings or recommendations containing information granted *in camera* status pursuant to § 3.45 shall be filed in accordance with § 3.45(f). All written motions shall be filed with the Secretary of the Commission, and all motions addressed to the Commission shall be in writing. The moving party shall also provide a copy of its motion to the Administrative Law Judge at the time the motion is filed with the Secretary.

* * * * *

(d) *Motions for extensions.* The Administrative Law Judge or the Commission may waive the requirements of this section as to motions for extensions of time; however, the Administrative Law Judge shall have no authority to rule on *ex parte* motions for extensions of time.

(e) *Rules on motions for dismissal.* * * * When a motion to dismiss is made at the close of the evidence offered in support of the complaint based upon an alleged failure to establish a *prima facie* case, the Administrative Law Judge may defer ruling thereon until immediately after all evidence has been received and the hearing record is closed.

(f) *Statement.* Each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), each motion for sanctions pursuant to § 3.38(b), and each motion for enforcement pursuant to § 3.38(c) shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. * * *

10. Section 3.24 is amended by revising paragraph (a)(1) and adding a sentence between the existing first and second sentences of paragraph (a)(2) to read as follows:

§ 3.24 Summary decisions.

(a) *Procedure.* (1) Any party to an adjudicatory proceeding may move, with or without supporting affidavits, for a summary decision in the party's favor upon all or any part of the issues being adjudicated. The motion shall be accompanied by a separate and concise statement of the material facts as to which the moving party contends there is not genuine issue. Counsel in support of the complaint may so move at any time after twenty (20) days following issuance of the complaint and any party respondent may so move at any time after issuance of the complaint. Any such motion by any party, however, shall be filed in accordance with the scheduling order issued pursuant to § 3.21, but in any case at least twenty (20) days before the date fixed for the adjudicatory hearing.

(2) * * * The opposing party shall include a separate and concise statement of those material facts as to which the opposing party contends there exists a genuine issue for trial, as provided in § 3.24(a)(3). * * *

* * * * *

11. Section 3.25 is amended by adding a new sentence between the first and second sentences of paragraph (b) to read:

§ 3.25 Consent agreement settlements.

* * * * *

(b) * * * Such motion shall be filed with the Secretary of the Commission, as provided in § 4.2. * * *

* * * * *

12. Section 3.31 is amended by: adding a new sentence to the end of paragraph (a); redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (f), and (g), respectively; adding new paragraphs (b) and (e); revising newly redesignated paragraphs (c)(1), (c)(2), the first full sentence of (c)(3), the introductory text of newly redesignated paragraph (c)(4)(i), and newly redesignated paragraph (c)(4)(iii); revising the paragraph heading and adding a new sentence at the end of newly redesignated paragraph (d)(1); and revising newly redesignated paragraph (g), to read as follows:

§ 3.31 General provisions.

(a) * * * The parties shall, to the greatest extent practicable, conduct discovery simultaneously; the fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(b) *Initial disclosures.* Complaint counsel and respondent's counsel shall, within five (5) days of receipt of a respondent's answer to the complaint and without awaiting a discovery request, provide to each other:

(1) The name, and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent, as set forth in § 3.31(c)(1);

(2) A copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the Commission or respondent(s) that are relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent, as set forth in § 3.31(c)(1); unless such information or materials are privileged as defined in § 3.31(c)(2), pertain to hearing preparation as defined in § 3.31(c)(3), pertain to experts as defined in § 3.31(c)(4), or are obtainable from some other source that is more convenient, less burdensome, or less expensive. A party shall make its disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation.

(c) *Scope of discovery.* * * *

(1) *In general; limitations.* Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. Such information may include the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having any knowledge of any discoverable matter. Information may not be withheld from discovery on grounds that the information will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the Administrative Law Judge if he determines that:

(i) The discover sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) The burden and expense of the proposed discovery outweigh its likely benefit.

(2) *Privilege.* The Administrative Law Judge may enter a protective order denying or limiting discovery to preserve the privilege of a witness, person, or governmental agency as governed by the Constitution, any applicable act of Congress, or the principles of the common law as they may be interpreted by the Commission in the light of reason and experience.

(3) *Hearing preparations: Materials.* Subject to the provisions of paragraph (c)(4) of this section, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (c)(1) of this section and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of its case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. * * *

(4) *Hearing preparation: Experts.* (i) Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph (c)(1) of this section and acquired or developed in anticipation of litigation or for hearing, may be obtained only as follows: * * *

(ii) * * *

(iii) The Administrative Law Judge may require as a condition of discovery that the party seeking discovery pay the expert a reasonable fee, but not more than the maximum specified in 5 U.S.C. 3109 unless the parties have stipulated a higher amount, for time spent in responding to discovery under paragraphs (c)(4)(i)(B) and (c)(4)(ii) of this section.

(d) *Protective orders; order to preserve evidence.* (1) * * * Such an order may also be issued to preserve evidence upon a showing that there is substantial reason to believe that such evidence would not otherwise be available for presentation at the hearing.

(2) * * *

(e) *Supplementation of disclosures and responses.* A party who has made an initial disclosure under § 3.31(b) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the Administrative Law Judge or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its initial disclosures under § 3.31(b) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect.

(f) *Stipulations.* * * *

(g) *Ex parte rulings on applications for compulsory process.* Applications for the issuance of subpoenas to compel testimony at an adjudicative hearing pursuant to § 3.34 may be made *ex parte,* and, if so made, such applications and rulings thereon shall remain *ex parte* unless otherwise ordered by the Administrative Law Judge or the Commission.

13. Section 3.33 is amended by revising paragraph (a), the first and second full sentences of paragraph (c), and the introductory text of paragraph (e), and by removing and reserving paragraph (b), to read as follows:

§ 3.33 Depositions.

(a) *In general.* Any party may take a deposition of a named person or of a person or persons described with reasonable particularity, provided that such deposition is reasonably expected to yield information within the scope of discovery under § 3.31(c)(1). Such party may, by motion, obtain from the Administrative Law Judge an order to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence would not otherwise be available for presentation at the hearing. Depositions may be taken before any person having power to administer oaths, either under the law of the United States or of the state or other place in which the deposition is taken, who may be designated by the party seeking the deposition, provided that such person shall have no interest in the outcome of the proceeding. The party seeking the deposition shall serve upon each person whose deposition is sought and upon each party to the proceeding reasonable notice in writing of the time and place at which it will be taken, and the name and address of each person or persons to be examined, if known, and if the name is not known, a description sufficient to identify them.

(b) [Reserved]

(c) *Notice to corporation or other organization.* A party may name as the deponent a public or private corporation, partnership, association, governmental agency other than the Federal Trade Commission, or any bureau or regional office to the Federal Trade Commission, and describe with reasonable particularity the matters on which examination is requested. The organization so names shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. * * *

* * * * *

(e) *Depositions upon written questions.* A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating: * * *

* * * * *

14. Section 3.34 is amended by revising paragraphs (a) and (b), and by revising the paragraph heading and adding a new sentence to the end of existing paragraph (c), to read as follows:

§ 3.34 Subpoenas.

(a) *Subpoenas ad testificandum*—(1) *Prehearing.* The Secretary of the Commission shall issue a subpoena, signed but otherwise in blank, requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena, who shall complete it before service.

(2) *Hearing.* Application for issuance of a subpoena commanding a person to attend and give testimony at an adjudicative hearing shall be made in writing to the Administrative Law Judge. Such subpoena may be issued upon a showing of the reasonable relevancy of the expected testimony.

(b) *Subpoenas duces tecum; subpoenas to permit inspection of premises.* The Secretary of the Commission, upon request of a party, shall issue a subpoena, signed but otherwise in blank, commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things, or commanding a person to permit inspection of premises, at a time and place therein specified. The subpoena shall specify with reasonable particularity the material to be produced. The person commanded by the subpoena need not appear in person at the place of production or inspection unless commanded to appear for a deposition or hearing pursuant to paragraph (a) of this section. As used herein, the term ''documents'' includes writings, drawings, graphs, charts, handwritten notes, film, photographs, audio and video recordings and any such representations stored on a computer, a computer disk, CD–ROM, magnetic or electronic tape, or any other

means of electronic storage, and other data compilations from which information can be obtained in machine-readable form (translated, if necessary, into reasonably usable form by the person subject to the subpoena). A subpoena *duces tecum* may be used by any party for purposes of discovery, for obtaining documents for use in evidence, or for both purposes, and shall specify with reasonable particularity the materials to be produced.

(c) *Motions to quash; limitation on subpoenas to other government agencies.* * * * Nothing in paragraphs (a) and (b) of this section authorizes the issuance of subpoenas requiring the appearance of, or the production of documents in the possession, custody, or control of, an official or employee of a governmental agency other than the Commission, which may be authorized only in accordance with § 3.36.

15. Section 3.35 is amended by revising the first sentence of paragraph (a)(1), the third sentence of paragraph (a)(2), and paragraph (b)(1) to read as follows:

§ 3.35 Interrogatories to parties.

(a) *Availability; procedures for use.* (1) Any party may serve upon any other party written interrogatories, not exceeding twenty-five (25) in number, including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation, partnership, association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. * * *

(2) * * * The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within thirty (30) days after the service of the interrogatories. * * *

(b) *Scope; use at hearing.* (1) Interrogatories may relate to any matters that can be inquired into under § 3.31(c)(1), and the answers may be used to the extent permitted by the rules of evidence.

* * * * *

16. Section 3.36 is revised to read as follows:

§ 3.36 Applications for subpoenas for records, or appearances by officials or employees, of governmental agencies other than the Commission.

(a) *Form.* An application for issuance of a subpoena for the production of documents, as defined in § 3.34(b), or for the issuance of a subpoena requiring access to documents or other tangible things, for the purposes described in § 3.37(a), in the possession, custody, or control of a governmental agency other than the Commission or the officials or employees of such other agency, or for the issuance of a subpoena requiring the appearance of an official or employee of another governmental agency, shall be made in the form of a written motion filed in accordance with the provisions of § 3.22(a). No application for records pursuant to § 4.11 of this chapter or the Freedom of Information Act may be filed with the Administrative Law Judge.

(b) *Content.* The motion shall satisfy the same requirements for a subpoena under § 3.34 or a request for production or access under § 3.37, together with a specific showing that:

(1) the material sought is reasonable in scope;

(2) if for purposes of discovery, the material falls within the limits of discovery under § 3.31(b)(1), or, if for an adjudicative hearing, the material is reasonably relevant; and

(3) the information or material sought cannot reasonably be obtained by other means.

17. Section 3.37 is revised to read as follows:

§ 3.37 Production of documents and things; access for inspection and other purposes.

(a) *Availability; procedures for use.* Any party may serve on another party a request: to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy any designated documents, as defined in § 3.34(b), or to inspect and copy, test, or sample any tangible things which are within the scope of § 3.31(c)(1) and in the possession, custody or control of the party upon whom the request is served; or to permit entry upon designated land or other property in the possession or control of the party upon whom the order would be served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 3.31(c)(1). Each such request shall specify with reasonable particularity the documents or things to be inspected, or the property to be entered. Each such request shall also specify a reasonable time, place, and manner of making the inspection and performing the related acts. A party shall make documents available as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in § 3.34.

(b) *Response; objections.* The response of the party upon whom the request is served shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under § 3.38(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

18. Section 3.38 is amended by revising the section heading and paragraph (a) to read as follows:

§ 3.38 Motion for order compelling disclosure or discovery; sanctions.

(a) *Motion for order to compel.* A party may apply by motion to the Administrative Law Judge for an order compelling disclosure or discovery, including a determination of the sufficiency of the answers or objections with respect to the initial disclosures required by § 3.31(b), a request for admission under § 3.32, a deposition under § 3.33, or an interrogatory under § 3.35.

(1) *Initial disclosures; requests for admission; depositions; interrogatories.* Unless the objecting party sustains its burden of showing that the objection is justified, the Administrative Law Judge shall order that an answer be served or disclosure otherwise be made. If the Administrative Law Judge determines that an answer or other response by the objecting party does not comply with the requirements of these rules, he may order either that the matter is admitted or that an amended answer or response be served. The Administrative Law Judge may, in lieu of these orders, determine that final disposition may be made at a prehearing conference or at a designated time prior to trial.

(2) *Requests for production or access.* If a party fails to respond to or comply as requested with a request for production or access made under § 3.37(a), the discovering party may move for an order to compel production or access in accordance with the request.

* * * * *

19. Section 3.38A is amended by revising the first sentence of paragraph (a) to read as follows:

§ 3.38A Withholding requested material.

(a) Any person withholding material responsive to a subpoena issued pursuant to § 3.34, written interrogatories requested pursuant to § 3.35, a request for production or access pursuant to § 3.37, or any other request for the production of materials under this part, shall assert a claim of privilege or any similar claim not later than the date set for production of the material. * * *

* * * * *

20. Section 3.43 is amended by revising paragraph (b) to read as follows:

§ 3.43 Evidence.

* * * * *

(b) *Admissibility; exclusion of relevant evidence; mode and order of interrogation and presentation.* Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, and unreliable evidence shall be excluded. Evidence, even if relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or if the evidence would be misleading, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The Administrative Law Judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to

(1) make the interrogation and presentation effective for the ascertainment of the truth,

(2) avoid needless consumption of time, and

(3) protect witnesses from harassment or undue embarrassment.

* * * * *

21. Section 3.44 is amended by adding a new paragraph (c) to read as follows:

§ 3.44 Record.

* * * * *

(c) *Closing of the hearing record.* Immediately upon completion of the evidentiary hearing, the Administrative Law Judge shall issue an order closing the hearing record. The Administrative Law Judge shall retain the description to permit or order correction of the record as provided in § 3.44(b).

22. Section 3.45 is amended by adding a new paragraph (f) to read as follows:

§ 3.45 In camera orders.

* * * * *

(f) *When in camera information is included in rulings or recommendations of the Administrative Law Judge.* If the Administrative Law Judge includes in any ruling or recommendation information that has been granted *in camera* status pursuant to § 3.45(b), the Administrative Law Judge shall file two versions of the ruling or recommendation. A complete version shall be marked ''*In Camera*'' on the first page and shall be serve upon the parties. The complete version will be placed in the *in camera* record of the proceeding. An expurgated version, to be filed within five (5) days after the filing of the complete version, shall omit the *in camera* information that appears in the complete version, shall be marked ''Public Record'' on the first page, shall be served upon the parties, and shall be included in the public record of the proceeding.

23. Section 3.46 is amended by revising the first full sentence of paragraph (a) to read as follows:

§ 3.46 Proposed findings, conclusions, and order.

(a) *General.* Upon the closing of the hearing record, or within a reasonable time thereafter fixed by the Administrative Law Judge, any party may file with the Secretary of the Commission for consideration of the Administrative Law Judge proposed findings of fact, conclusions of law, and rule or order, together with reasons therefor and briefs in support thereof. * * *

* * * * *

24. Section 3.51 is amended by revising paragraph (a) and paragraph (c)(1) to read as follows:

§ 3.51 Initial decision.

(a) *When filed and when effective.* The Administrative Law Judge shall file an initial decision within ninety (90) days after closing the hearing record pursuant to § 3.44(c), or within thirty (30) days after a default or the granting of a motion for summary decision or waiver by the parties of the filing of proposed findings of fact, conclusions of law and order, or within such further time as the Commission may by order allow upon written request from the Administrative Law Judge. In no event shall the initial decision be filed any later than one (1) year after the issuance of the administrative compliant, except that the Administrative Law Judge may, upon a finding of extraordinary circumstances, extend the one-year deadline for a period of up to sixty (60) days. Such extension, upon its expiration, may be continued for additional consecutive periods of up to sixty (60) days, provided that each additional period is based upon a finding by the Administrative Law Judge that extraordinary circumstances are still present. The pendency of any collateral federal court proceeding that relates to the administrative adjudication shall toll the one-year deadline for filing the initial decision. The ALJ may stay the administrative proceeding until resolution of the collateral federal court proceeding. Once issued, the initial decision shall become the decision of the Commission thirty (30) days after service thereof upon the parties or thirty (30) days after the filing of a timely notice of appeal, whichever shall be later, unless a party filing such a notice shall have perfected an appeal by the timely filing of an appeal brief or the Commission shall have issued an order placing the case on its own docket for review or staying the effective date of the decision.

(b) * * *

(c) *Content.* (1) The initial decision shall include a statement of findings (with specific page references to principal supporting items of evidence in the record) and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record (or those designated under paragraph (c)(2) of this section) and an appropriate rule or order. Rulings containing information granted *in camera* status pursuant to § 3.45 shall be filed in accordance with § 3.45(f).

* * * * *

25. Section 3.55 is amended by revising the first sentence to read as follows:

§ 3.55 Reconsideration.

Within fourteen (14) days after completion of service of a Commission decision, any party may file with the Commission a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. * * *

PART 4—MISCELLANEOUS RULES

26. The authority for Part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

27. Section 4.2 is amended by adding a new sentence at the end of paragraph (c) and a new sentence at the end of paragraph (e)(1) to read as follows:

§ 4.2 Requirements as to form, and filing of documents other than correspondence.

* * * * *

(c) *Copies.* * * * With respect to motions under § 3.22, the moving party shall provide a copy of its motion to the Administrative Law Judge at the time the motion is filed with the Secretary.

* * * * *

(e) *Signature.* (1) * * * In addition, motions filed pursuant to § 3.22 shall include the name, address, and telephone number of counsel.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga

Amendment of the Commission's Procedural Rules Governing Adjudicative Proceedings

The Commission today amends its procedural rules governing administrative adjudications. I welcome the amended rules as a first step in reforming the Commission's adjudicative process. Some of the amendments seem clearly to be good ideas and the others may be worth a try to help expedite the Commission's adjudicative proceedings. Whether they will result in net benefits remains to be seen. Although rule changes to expedite adjudications are a starting point for improving the adjudicative process, reform ultimately should focus on improving the quality of the adjudicative record and of adjudicative decisions to help ensure that they meet the test of appeal.

I support further examination of the entire process, including how to focus discovery and hearings more precisely on the pertinent facts, and how best to prepare the record for efficient use in formulating reasoned and well supported decisions. I look forward to the next installment of this effort.

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Part VII

Department of Housing and Urban Development

24 CFR Part 570

Community Development Block Grant Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–3298–P–02]

RIN 2506–AB43

Office of the Assistant Secretary for Community Planning and Development; Community Development Block Grant Program; Dispute Resolution and Enforcement Actions, Loan Guarantee Application Requirements; Proposed Rule and Notice of Proposed Information Collection Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule and notice of proposed information collection requirements.

SUMMARY: In this rule, HUD is proposing changes to the Community Development Block Grant (CDBG) regulations, including procedures for voluntary and involuntary corrective actions for noncompliance with CDBG program requirements, dispute resolution, and hearings. HUD is also proposing changes in the application procedures under the Section 108 Loan Guarantee Program, in order to include references to the consolidated submission process.

DATES: Comment due date: November 25, 1996.

ADDRESSES: HUD invites interested persons to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. eastern time) at the above address. HUD will not accept comments sent by facsimile (FAX).

HUD also invites interested persons to submit comments on the proposed information collection requirements in this proposed rule. Comments should refer to the above docket number and title, and should be sent to Sheila E. Jones, Reports Liaison Officer, Room 7230, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Room 7286, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries (but not comments on the rule) may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements in § 570.704 of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

As required under 5 CFR 1320.8(d)(1), HUD and OMB are seeking comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Interested persons are invited to submit comments according to the instructions in the ''Dates'' and ''Addresses'' sections in the preamble of this proposed rule.

This proposed rule also lists the following information:

Title of Proposal: Consolidated Plan for Community Investment.

OMB Control Number: 2506–0117.

Description of the Need for the Information and Proposed Use: In this proposed rule, HUD proposes to require entities to use the procedures in the Consolidated Plan when applying for Section 108 Loan Guarantee assistance. The application information is required in order for HUD to determine the eligibility of the activities proposed to be financed with Section 108 loan guarantee assistance and to ensure that the loan guarantee does not pose a financial risk to the Federal Government.

Form Numbers: HUD–40090–A REV. and HUD–40091–A REV.

Members of Affected Public: States, units of general local government, consortia, and other ''consolidated'' jurisdictions.

Estimation of the Total Number of Hours Needed To Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: Requiring entities to use the Consolidated Plan when applying for Section 108 Loan Guarantee assistance should eliminate some duplicative information collection requirements, and it may result in an overall decrease in burden hours. The numbers below represent HUD's estimate of the additional hours it will take Section 108 applicants to prepare the required information under the Consolidated Plan; they do not reflect the hours saved by eliminating duplicative requirements.

Submission requirements	Number of respondents	Number of responses	Total annual response	Hours per response	Total
Consolidated Plan (Section 108 Loan Guarantee Application)	150	1	150	125	18,750

Status of the Proposed Information Collection: Revision of a currently approved collection is pending.

II. Background

The Community Development Block Grant (CDBG) program is a key component of HUD's legislative reinvention proposal, the American Community Partnerships Act. This proposed rule provides redesigned dispute resolution and sanctions procedures for enforcing the CDBG program requirements. It also conforms the regulations for the Section 108 Loan Guarantee program with the consolidated plan requirements, using the consolidated plan citizen participation and amendment process.

Proposed Revisions Regarding Dispute Resolution and Corrective Actions

On November 12, 1993 (58 FR 60088), HUD proposed certain changes to the procedures for resolving issues of grantee noncompliance with CDBG program requirements. The preamble to the November 12, 1993 rule provided background information about HUD's authority to address performance deficiencies. As a result of HUD's review of comments received on that proposed rule, HUD has determined that it will not adopt the changes proposed in the November 12, 1993 rule. Instead, this proposed rule reflects some additions to, and revisions and rearrangements of, the provisions of subpart O of part 570 regarding performance reviews. This section of the preamble includes a discussion of the provisions that were proposed in the November 12, 1993 rule, the comments received in response to that rule, and the revised proposals in today's rule.

A. Making of Grants

HUD proposes to amend § 570.304(a) to conform with the proposed changes to part 570, subpart O, as described below.

B. Authorities for Enforcing Compliance

The November 12, 1993 proposed rule would have included a new section § 570.907 to clarify the statutory authorities for HUD to enforce recipient compliance with applicable laws and regulations. HUD received no comments on this provision, and HUD has maintained the provision in today's proposed rule.

C. Voluntary Corrective and Remedial Actions

The November 12, 1993 proposed rule clarified in § 570.910 that there are actions that HUD may advise the grantee to take voluntarily to correct or remedy its alleged failure to comply with applicable program requirements. HUD's objectives in seeking voluntary actions are to prevent the continuation of the deficiency, to mitigate its adverse effects, and to avoid its recurrence. If HUD determines that the deficiency was beyond the reasonable control of the recipient, HUD may decide that no corrective action is needed.

A grantee that commented on the November 12, 1993 proposed rule suggested that HUD should consult with grantees concerning the appropriateness of any mitigation effort, and that grantees should have the option of reprogramming funds rather than reimbursing their line of credit. HUD agrees that the grantee should generally be given an opportunity to participate in the identification of corrective and remedial actions, and HUD has traditionally followed this practice. Today's proposed rule would clarify this.

The comment regarding reprogramming is unclear, but presumably the commenter is asking that HUD allow grantees to offset disallowed costs by receiving credit for activities undertaken with local funds. HUD does not believe that this is an appropriate remedy. Almost any grantee would be able to show some activities it has carried out with local funds that could have been funded with CDBG funds. The effect of allowing credit for such expenditures to offset noncomplying CDBG expenditures is that it reduces the incentive for a grantee to follow applicable rules in the use of CDBG funds. It should be noted that HUD's request for reimbursement of the line of credit with non-Federal funds is advisory and usually precedes HUD's initiation of an enforcement action.

Today's proposed rule would revise the section title and provisions of § 570.910 to remove actions that would not be voluntary. HUD would usually provide the grantee the opportunity to take one or more of these actions voluntarily prior to initiating enforcement actions or nondiscrimination compliance measures.

D. Resolving Disputes Over Noncompliance

Separate from today's rule, HUD has proposed a streamlined and consolidated set of hearing procedures for formal administrative hearings. HUD published these procedures in a proposed rule on April 23, 1996 (61 FR 18026). These procedures would appear as a separate subpart of 24 CFR part 26. Today's proposed rule would adopt these procedures for offering and conducting formal administrative hearings prior to HUD taking enforcement actions.

The November 12, 1993 proposed rule would have differentiated between substantial and nonsubstantial noncompliance with program requirements, establishing for such noncompliance either a formal administrative hearing process or an informal hearing process, respectively. The November 12, 1993 proposed rule would have established the informal hearing officer's decision as a nonreviewable agency decision.

HUD received four comments (from a HUD field program manager, two grantees, and a commenter representing three public interest groups and a grantee) concerning the threshold in the November 12, 1993 proposed rule for distinguishing between substantial and nonsubstantial noncompliance. One commenter questioned HUD's authority to take enforcement actions unless noncompliance was substantial. A commenter questioned the dollar threshold for determining substantial noncompliance, believing it to be arbitrary, and suggested a sliding scale of thresholds depending upon grant size. Another commenter suggested that HUD should use nonmonetary factors as well. One commenter argued that certain violations should not entitle a grantee to a formal hearing. Finally, HUD received three comments (from two grantees and a commenter representing three public interest groups and a grantee) regarding the final nature of the informal hearing decision under the November 12, 1993 proposed rule.

In today's proposed rule, HUD does not distinguish between substantial and nonsubstantial noncompliance, and HUD has eliminated the informal hearing process provided for in the November 12, 1993, proposed rule. While today's proposed rule does contain an opportunity for an informal consultation, it would precede an opportunity for a final hearing, and it would constitute a reviewable agency decision.

Two commenters (a grantee and an administrative law judge) suggested lengthening the response periods for a grantee to request a hearing. Likewise, two commenters (an administrative law judge and a representative of three public interest groups and a grantee) offered numerous technical comments concerning the formal hearing procedures. However, HUD is now proposing to adopt a set of uniform hearing procedures, which HUD published in a proposed rule on April 23, 1996 (61 FR 18026), rather than

including duplicative hearing procedures in the CDBG regulations. Therefore, HUD invites the public to comment on HUD's use of those procedures in the CDBG program.

In summary, today's proposed rule would contain no differentiation in the level or gravity of noncompliance, but it would provide that HUD would offer the opportunity for an informal consultation concerning the noncompliance alleged by HUD and the enforcement action HUD plans to take, or that HUD would offer an alternative means of dispute resolution. If the grantee disputes that it has failed to comply, today's rule would provide a formal hearing process to resolve such dispute. Decisions from this formal hearing process, and any enforcement action HUD would take in the event of noncompliance, would be reviewable by the Secretary.

If, after requesting additional assurances with regard to certifications, a recipient fails to respond, declines to comply with HUD's request, or the Secretary finds the recipient's response to be unsatisfactory, today's proposed rule would provide, in § 570.911(c), that HUD may withhold the award of the recipient's grant until such time as assurances satisfactory to the Secretary are provided.

E. Enforcement Actions

The November 12, 1993 proposed rule would not have revised § 570.911. However, today's proposed rule would consolidate in § 570.911 the enforcement actions that HUD will initiate when it has made a finding of noncompliance and believes that the grantee has not taken or is unlikely to take appropriate corrective and remedial actions. HUD's objectives in initiating enforcement actions are to bring about compliance and mitigation of adverse effects to the extent practical.

One commenter, representing three public interest groups and a grantee, argued against HUD suspending future use of CDBG funds to mitigate adverse effects or consequences prior to an enforcement proceeding. This action is currently authorized in § 570.913(a). Today's proposed rule would provide, in § 570.913(a)(2), that after HUD has provided a grantee due notice of its opportunity for a hearing, but prior to the hearing, HUD may petition the Administrative Law Judge to order a suspension, if the Secretary determines such action to be in the best interests of the program.

Proposed Revisions for the Section 108 Loan Guarantee Program

When HUD published the regulations entitled ''Consolidated Submission for Community Planning and Development Programs'' in 24 CFR part 91 on January 5, 1995 (60 FR 1878), HUD updated most of the corresponding references to consolidated submissions in the CDBG regulations (24 CFR part 570). However, in that final rule HUD made only minimal references to consolidated plan submissions in subpart M of part 570 regarding loan guarantees. Since more substantive revisions would represent a change in the loan guarantee application process that might affect a substantial amount of financing, HUD is publishing the change today as a proposed rule. Specifically, this proposed rule addresses the need to include loan guarantee-financed activities in a grantee's consolidated action plan or amendment, and it proposes a change in the citizen participation requirements.

III. Other Matters

E.O. 12866 Statement

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled ''Addresses.''

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The economic impact of this proposed rule will be minimal, and the rule would affect small and large entities equally.

Environmental Impact

Under HUD regulations (24 CFR 50.20(k)), this proposed rule is exempt from the requirements of the National Environmental Policy Act of 1969, as set forth in 24 CFR part 50. The proposed rule relates to internal administrative procedures, the content of which does not involve development decisions or affect the physical condition of project areas or building sites, but only relates to the performance of accounting, auditing, and fiscal functions.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this document's promulgation that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *The Family,* has determined that this rule will not have potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies relate to the family, will result from promulgation of this proposed rule.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570 is proposed to be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. In § 570.304, paragraph (a) is amended by adding a sentence at the end, to read as follows:

§ 570.304 Making of grants.

(a) * * * Failing this voluntary compliance action, the Secretary may institute an enforcement action as provided under §§ 570.910(b)(3) and 570.911(c).

* * * * *

2. Section 570.704 is amended by revising paragraphs (a) and (b) to read as follows:

§ 570.704 Application requirements.

(a) *Presubmission and citizen participation requirements.* Before submission to HUD of an application for loan guarantee assistance, the public entity must:

(1) Develop a proposed application that includes the following items:

(i) The community development objectives identified under the provisions of §§ 91.215 (b) or (e)(1) or 91.315 (b) or (e) of this title that the public entity proposes to pursue with the guaranteed loan funds;

(ii) The activity or activities the public entity proposes to carry out with the guaranteed loan funds specified in accordance with the criteria at § 91.220(g)(1)(iv) of this title and § 570.301(a). For each proposed discrete project or activity, this information should include, but is not limited to:

(A) The specific provision of § 570.703 under which the activity or activities are eligible, and the national objective(s) under § 570.208 to be met;

(B) The amount of guaranteed loan funds to be used;

(C) Whether each activity is expected to generate program income, an estimate of the amount per year, and any other proposed source of repayment of the guaranteed loan;

(D) How citizens may obtain more information;

(E) The location of the activity or activities;

(iii) A description of the pledge of grants required under § 570.705(b)(2). In the case of applications by State-assisted public entities, the description shall note that pledges of grants will be made by the State and by the public entity.

(2) With respect to the proposed uses of guaranteed loan funds for each activity, fulfill the applicable requirements of the citizen participation plan developed in accordance with §§ 91.105 or 91.115 of this title, as applicable.

(3)(i) If an application for loan guarantee assistance is to be submitted simultaneously with a public entity's submission for an entitlement grant or a grant under subpart F of this part, the public entity shall include and identify the activity or activities to be assisted with loan guarantee funds in its action plan prepared pursuant to § 91.220 of this title.

(ii) If an application for loan guarantee assistance is not to be submitted simultaneously with a public entity's submission for an entitlement grant or a grant under subpart F of this part, and such action plan does not cover all of the activities proposed in the loan guarantee application, the application shall be considered a substantial amendment to the action plan, and the public entity shall follow the amendment procedures identified in its HUD-approved consolidated plan pursuant to § 91.105(c) of this title, as applicable.

(iii) If an application for loan guarantee assistance is to be submitted by a State-assisted public entity, it must either:

(A) Submit a certification from the State that the State's action plan prepared pursuant to § 91.315 of this title and approved by HUD includes all of the information about the public entity's proposed activities required by this section; or

(B) In coordination with the State, submit a proposed substantial amendment to the State's consolidated plan for HUD approval together with the Section 108 application.

(iv) Under either paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this section, the activity description in either the action plan or any substantial amendment thereto shall include at least the same elements as required under paragraph (a)(1) of this section.

(b) *Submission requirements.* An applicant may submit an application for loan guarantee assistance under § 570.702 at any time. The applicant must submit to the appropriate HUD office the application (and consolidated plan or substantial amendment thereto, as applicable), as well as the following:

(1) A description of how each of the activities to be carried out with the guaranteed loan funds is eligible under § 570.703, how it meets one of the criteria in § 570.208, and (if applicable) how it complies with the public benefit standards in § 570.209.

(2) A schedule for repayment of the loan that identifies the sources of repayment, together with a statement identifying the entity that will act as borrower and issue the debt obligations.

(3) A certification providing assurance that the public entity possesses the legal authority to make the pledge of grants required under § 570.705(b)(2).

(4) A certification providing assurance that the public entity has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, that the public entity will maintain documentation of such efforts for the term of the loan guarantee, and that the public entity cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(5) The drug-free workplace certification required under 24 CFR part 24.

(6) The certification regarding debarment and suspension required under 24 CFR part 24.

(7) The anti-lobbying statement required under 24 CFR part 87 (Appendix A).

(8) Certifications by the public entity that:

(i) It possesses the legal authority to submit the application for assistance under this subpart and to use the guaranteed loan funds in accordance with the requirements of this subpart.

(ii) Its governing body has duly adopted or passed as an official act a resolution, motion, or similar official action:

(A) Authorizing the person identified as the official representative of the public entity to submit the application and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public entity to act in connection with the application to provide such additional information as may be required; and

(B) Authorizing such official representative to execute such documents as may be required in order to implement the application and issue debt obligations pursuant thereto (provided that the authorization required by this paragraph (b)(8)(ii)(B) of this section may be given by the local governing body after submission of the application but prior to execution of the contract required by § 570.705(b));

(iii) Before submission of its application to HUD, the public entity has met the citizen information and participation requirements of § 570.704 (a)(1) and (a)(2) in preparing its application.

(iv) [Reserved].

(v) The public entity will affirmatively further fair housing, and the guaranteed loan funds will be administered in compliance with:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and

(B) The Fair Housing Act (42 U.S.C. 3601–3619).

(vi)(A) (Only for entitlement public entities): In the aggregate, at least 70 percent of all CDBG funds, as defined at § 570.3, to be expended during the one, two, or three consecutive years specified by the public entity for its CDBG program will be for activities that benefit low and moderate income persons, as described in § 570.208(a).

(B) (Only for nonentitlement public entities eligible under subpart F of this part): It will comply with primary and national objectives requirements, as applicable under subpart F of this part.

(vii) It will comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low and moderate income housing described in § 570.606.

(viii) It will comply with the requirements of § 570.200(c)(2) with regard to the use of special assessments to recover the capital costs of activities assisted with guaranteed loan funds.

(ix) Where applicable, the public entity may also include the following additional certification: It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of § 570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the guaranteed loan funded portion of the capital cost without paying such assessments in their behalf from guaranteed loan funds.

(x) It will comply with the other provisions of the Act and with other applicable laws.

(9) In the case of an application submitted by a State-assisted public entity, certifications by the State that:

(i) It agrees to make the pledge of grants required under § 570.705(b)(2).

(ii) It possesses the legal authority to make such pledge.

(iii) At least 70 percent of the aggregate use of CDBG grant funds received by the State, guaranteed loan funds, and program income during the one, two, or three consecutive years specified by the State for its CDBG program will be for activities that benefit low and moderate income persons.

(iv) It agrees to assume the responsibilities described in § 570.710.

* * * * *

3. In subpart O, a new § 570.907 is added, to read as follows:

§ 570.907 Authorities for enforcing compliance.

The Secretary may make appropriate adjustments in the amount of annual grants, or terminate, reduce, or limit the availability of payments to the recipient, if a recipient has failed to comply with applicable requirements of the program, as authorized and provided in sections 104(e) and 111 of the Act (42 U.S.C. 5304(e) and 5311).

4. Section 570.910 is revised to read as follows:

§ 570.910 Corrective and remedial actions.

(a) *General.* If HUD finds a deficiency in a recipient's performance due to failure to comply with applicable program requirements, as referenced under § 570.901, or failure to meet performance criteria under §§ 570.902 through 570.906, the Secretary may seek corrective and remedial action by the recipient prior to initiating actions authorized by §§ 570.911, 570.912, or 570.913.

(b) *Actions to secure voluntary compliance.* In order to secure voluntary compliance, HUD may take the following actions:

(1) *Letter to recipient.* HUD may issue a letter advising the recipient of HUD's finding of the deficiency, advising the recipient to notify HUD whether there are any ongoing or planned activities that are or will be affected by the deficiency, and putting the recipient on notice that additional action may be taken if the deficiency is not corrected in the time frame specified by HUD or is repeated. If HUD has determined that the deficiency is affecting one or more ongoing activities, it may advise the recipient to suspend disbursement of funds for the affected activities until corrective actions have been taken.

(2) *Corrective action.* HUD may advise the recipient to take corrective action prior to undertaking any activities that would be so affected in order to prevent a recurrence of the deficiency. HUD may specify the corrective action or offer the recipient the opportunity, within a time frame specified by HUD, to identify actions it believes will correct the deficiency. HUD may also advise the recipient that the deficiency calls into question a certification necessary to receive future funds, in which case HUD will identify any specific additional actions necessary to make the certification satisfactory.

(3) *Request for additional assurances.* If the Secretary finds a certification to be unsatisfactory under the authority of § 570.304(a), HUD may request that the recipient provide such additional assurances as the Secretary deems warranted or necessary to find the certification satisfactory.

(4) *Reimburse line of credit.* HUD may advise the recipient, within a time frame specified by HUD, to reimburse its line of credit with non-Federal funds for any portion of the amounts improperly expended and to reprogram the use of those funds in accordance with applicable requirements. HUD may advise that some or all of the reimbursed funds be reprogrammed to be used to redress particular adverse effects.

(5) *Review of activities and systems.* HUD may advise the recipient to review its planned and ongoing activities together with its administrative and management systems within such time limit as HUD may specify for this purpose in order to:

(i) Identify the causes for delays,

(ii) Change the systems and activities,

(iii) Reprogram funds to other activities, as applicable and necessary to bring its expenditures into compliance, and

(iv) Develop a detailed schedule with interim milestones for use in tracking the recipient's management of its expenditures.

(c) *Changing the method of payment.* In addition to the actions described in paragraph (b) of this section, if HUD has determined that the recipient is not taking appropriate action to prevent a financial management deficiency from affecting ongoing or future performance, HUD may change the method of payment to the recipient for some or all of the activities from a line of credit basis to a pre-Federal payment approval basis, until the deficiency is cured.

5. Section 570.911 is revised to read as follows:

§ 570.911 Resolving disputes/administrative hearings.

If HUD has made a finding of noncompliance pursuant to subpart O of this part, and if HUD believes that additional action is necessary to bring about appropriate corrective and remedial actions in a timely manner (including any actions sought by HUD under § 570.910 that are not forthcoming), HUD will initiate one or more of the following enforcement actions:

(a) *Opportunity for informal consultation.* HUD will initiate the enforcement actions under § 570.913 (except as specified under § 570.913(d)) only after HUD has provided the recipient the opportunity for an informal consultation, in order to discuss the alleged noncompliance and the enforcement actions HUD proposes to take. If the recipient elects to participate in an informal consultation, HUD will defer an enforcement action under § 570.913 (except as specified under § 570.913(d)) pending completion of the consultation. HUD may also offer another ''alternative means of dispute resolution,'' as defined at 5 U.S.C. 581(3), and if the recipient elects to participate in such procedure, HUD will defer an enforcement action under § 570.913 (except as specified under § 570.913(d)) pending completion of the procedure.

(b) *Opportunity for administrative hearing.* After considering any information the recipient may provide through the process of consultation or other alternative means of dispute resolution, if HUD maintains that the alleged deficiency constitutes a failure to comply with one or more program

requirements, but the recipient does not agree, HUD will offer the recipient the opportunity for an administrative hearing to resolve the dispute. HUD will not take an enforcement action under § 570.913 until either the time has elapsed for the recipient to avail itself of the opportunity for a hearing or the hearing results in a finding that the recipient failed to comply with program requirements. For these purposes, the hearing will be conducted in accordance with the procedures outlined under 24 CFR part 26, subpart B.

(c) *Certifications.* After requesting additional assurances of certifications under § 570.910(b)(3), HUD shall conduct the dispute resolution in accordance with the procedures under paragraph (b) of this section, and may withhold the award of the recipient's CDBG grant until such time as the recipient provides assurances satisfactory to the Secretary, if either of the following occurs:

(1) The recipient fails to respond or declines to comply with HUD's request, or

(2) The Secretary finds the recipient's response to be unsatisfactory.

6. Section 570.913 is revised to read as follows:

§ 570.913 Enforcement actions.

If HUD has made a finding of noncompliance under subpart O of this part, and if HUD believes that additional action is necessary to bring about appropriate corrective and remedial actions by the recipient in a timely manner (including any actions sought by HUD under § 570.910 that are not forthcoming), HUD will initiate one or more of the following enforcement actions after complete dispute resolution/administrative hearing procedures under § 570.911 (a) and (b), as appropriate:

(a) *Limit availability of funds.* HUD may limit the availability of CDBG funds to the recipient to programs, projects, or activities not affected by the performance deficiency. This could include, for example, requiring the recipient to limit the availability of CDBG funds it has provided to one or more of its subrecipients.

(b) *Reduce payments.* As appropriate, HUD may reduce payments to the recipient under the CDBG program by the amount of funds that were not expended in accordance with the requirements of the regulations or applicable laws. This could include a reduction in the amount of a future grant to which the recipient would otherwise be entitled or eligible to receive.

(c) *Terminate grant(s).* As appropriate, HUD may terminate the recipient's entire CDBG grant to prevent continuation or recurrence of the deficiency.

(d) *Suspend payments.* The Secretary may petition the Administrative Law Judge for authority to suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to § 570.911(b), pending such hearing and a final decision, to the extent the Secretary determines such action is necessary to preclude the further disbursement of funds for activities affected by such failure to comply.

(e) *Limitation on enforcement actions.* In no case shall funds already expended on eligible activities be recaptured from an existing grant or deducted from future grants under the actions described above.

7. Section 570.14 is added to read as follows:

§ 570.914 Referrals to the Attorney General and claims collection.

(a) *Referral action.* In lieu of, or in addition to, any action authorized in § 570.913, the Secretary may:

(1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

(2) Upon such referral, the Attorney General may bring a civil action in any United States district court with proper venue for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under title I of the Act that was not expended in accordance with the Act, or for mandatory or injunctive relief.

(b) *Claims collection.* In any case in which claims are payable to HUD or the U.S. Treasury, HUD will institute collection procedures pursuant to subpart C of 24 CFR part 17.

Dated: June 26, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

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federal register

Thursday
September 26, 1996

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AD69

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 1996–97 migratory bird hunting season. These late seasons include most waterfowl seasons, the earliest of which generally commence on or about October 1, 1996. The effects of this final rule are to facilitate the selection of hunting seasons by the States to further the annual establishment of the late-season migratory bird hunting regulations. State selections will be published in the Federal Register as amendments to §§ 20.104 through 20.107 and § 20.109 of title 50 CFR part 20.

EFFECTIVE DATE: September 26, 1996.

ADDRESSES: Season selections from States are to be mailed to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1996

On March 22, 1996, the Service published in the Federal Register (61 FR 11992) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 13, 1996, the Service published in the Federal Register (61 FR 30114) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. The June 13 supplement also provided detailed information on the 1996–97 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings. On June 14, 1996, the Service published in the Federal Register (61 FR 30490) a third document describing the Service's proposed 1996–97 regulatory alternatives for duck hunting and its intent to consider establishing a special youth waterfowl hunting day.

On June 27, 1996, the Service held a public hearing in Washington, DC, as announced in the March 22 and June 14 Federal Registers, to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 22, 1996, the Service published in the Federal Register (61 FR 37994) a fourth document specifically dealing with proposed early-season frameworks for the 1996–97 season. This document also extended the public comment period to August 1, 1996, for early-season proposals. This rulemaking establishes final frameworks for early-season migratory bird hunting regulations for the 1996–97 season.

On August 2, 1996, a public hearing was held in Washington, DC, as announced in the March 22, June 14, and July 22 Federal Registers, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 15, 1996, (61 FR 42506), the Service published a fifth and sixth document on migratory bird hunting. The fifth document dealt specifically with proposed frameworks for the 1996–97 late-season migratory bird hunting regulations. The sixth document proposed establishing a youth waterfowl hunting day for the 1996–97 duck-hunting season. On August 29, 1996, the Service published a seventh document containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

On August 30, 1996, the Service published in the Federal Register (61 FR 45836) an eighth document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. This document, which establishes final frameworks for late-season migratory bird hunting regulations for the 1996–97 season, is the ninth in the series.

Review of Comments and the Service's Response

Public-hearing and written comments received through September 6, 1996, relating to proposed late-season frameworks, are discussed and addressed here. Two individuals presented statements at the August 2, 1996, public hearing. They were: Joe Kramer, representing the Central Flyway Council and Bruce Barbour, representing National Audubon Society. The Service received 28 written comments that specifically addressed late-season issues. These late-season comments are summarized and discussed in the subject order used in the March 22, 1996, Federal Register. Only the numbered items pertaining to late seasons for which comments were received are included. Flyway Council recommendations shown below include only those involving changes from the 1995–96 late-season frameworks. For those topics where a Council recommendation is not shown, the Council supported continuing the same frameworks as in 1995–96.

General

Written Comments: The Humane Society of the United States (Humane Society) expressed concern that the public was not well represented in the regulations-development process and requested establishment of a system directly involving the non-hunting public. In addition, they recommended that the Service undertake efforts to obtain population estimates for all hunted species. Finally, they recommended pre-sunrise shooting be disallowed.

Service Response: When the preliminary proposed rulemaking document was published in the Federal Register on March 22, 1996, the Service announced the comment periods for the early-season and late-season proposals and gave notice that the process of promulgating hunting regulations ''must, by its nature, operate under time constraints.'' Ample time must be given to gather and interpret survey data, consider recommendations and develop proposals, and to receive public comment. Scheduled dates are set to give the greatest possible opportunity for public input. The Service is obligated to, and does, give serious consideration to all information received as public comment. The Service has long recognized the problems associated with the length of time necessary to establish the final frameworks, and in conjunction with States, Flyway Councils, and the public, continues to seek new ways to streamline and improve the regulatory process.

Regarding the Service's efforts to obtain population estimates, the long-term objectives of the Service include providing opportunities to harvest

portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Annually, the Service evaluates the status of populations and considers the potential impacts of hunting. The Service believes that the hunting seasons provided herein are consistent with the current status of waterfowl populations and long-term population goals.

In regard to shooting hours, the Service has compiled information which demonstrates that shooting hours beginning one-half hour before sunrise do not contribute significantly to the harvest of nontarget species. Consistent with the Service's long-term strategy for shooting hours, published in the September 21, 1990, Federal Register (55 FR 388898), the frameworks herein provide for shooting hours of one-half hour before sunrise to sunset, unless otherwise specified.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

A. General Harvest Strategy

Council Recommendations: The Atlantic Flyway Council, the Upper-Region Regulations Committee of the Mississippi Flyway Council, the Central Flyway Council, and the Pacific Flyway Council recommended adopting the ''liberal'' alternative for the 1996–97 duck hunting season.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended some specific modifications to the ''liberal'' alternative. These modifications are detailed in *B. Framework Dates, C. Season Length, and E. Bag Limits.*

Written Comments: Senator John Breaux of Louisiana asked for consideration of the Lower-Region Regulations Committee of the Mississippi Flyway Council's recommendation.

Senators Thad Cochran and Trent Lott of Mississippi, John Breaux and Bennett Johnston of Louisiana, and Richard Shelby of Alabama, supported the recommendations of the Lower-Region Regulations Committee of the Mississippi Flyway Council.

The Wildlife Management Institute (WMI) supported the Service's proposed frameworks for late-season hunting regulations. WMI supported adaptive harvest management (AHM) and believed that recent attempts by some States to circumvent the established regulatory process threatens the future of AHM as a useful process.

The National Wildlife Federation concurred with the Service's proposal to generally maintain harvest levels similar to last year, with some areas slightly increased.

Service Response: Beginning in 1995, the Service, Flyway Councils, and States introduced a new approach to the regulation of duck harvests, called Adaptive Harvest Management (AHM). An integral part of this harvest-management approach is the cooperative establishment of a set of regulatory alternatives that includes specified season lengths and bag limits for restrictive, moderate, and liberal seasons. The alternatives established for this year's hunting season are similar to those of the 1995 season and are the result of extensive discussions with the Flyway Councils and States since last January, as well as involvement by the public during an open comment period.

The estimate of total ducks this year is 16 percent higher than the long-term average and several species are at record levels. The outlook for production is excellent and the 1996 fall flight will be comparable to those observed during the 1970s. Based on favorable input, the Service seeks to continue use of the AHM approach initiated last year. The AHM strategy for 1996 prescribes the liberal regulatory alternative based on high mallard and pond numbers.

The frameworks recommended by the Lower-Region Regulations Committee of the Mississippi Flyway Council differed from those in the ''liberal'' alternative established earlier this year. The Service's proposal is consistent with the ''liberal'' alternative outlined in the July 22 Federal Register and was supported by the other three Flyway Councils as well as the Mississippi Flyway Council's Upper-Region Regulations Committee.

The Service recognizes the need to address the issue of harvest opportunity for species other than mallards that may be at or above objective population levels. Consequently, as part of the continuing development of AHM, the Service and Flyway Councils will soon begin a comprehensive review of regulatory alternatives, including all aspects of duck hunting regulations, in preparation for the 1997–98 hunting season.

Additionally, in the July 22, 1996, Federal Register, the Service reported that all four Flyways continued to express support for the AHM approach, but that the Mississippi and Central Flyway Councils had recommended some specific modifications to the harvest-management objective (objective function). The Service and Flyway Councils have examined the role of the North American Waterfowl Management Plan (NAWMP) in harvest management and have explored a range of possible objectives designed to balance harvest and population goals. The Service emphasizes that population goals are not necessary for ensuring resource persistence if the basic objective is one of maximizing long-term cumulative harvest. In this sense, the NAWMP is neither a system for regulating harvest nor a substitute for Flyway management. However, NAWMP goals do provide a means to reflect non-harvest conservation values, an ecosystem context for management, and a potential vehicle for future integration of harvest and habitat management.

Based on recommendations from the Flyway Councils, the Service has decided to adopt a harvest-management objective that implements a proportional decrease in harvest value when the mallard population is expected to recede from the NAWMP goal. This change in harvest-management objective results in a somewhat more liberal harvest strategy than that used in 1995, all other things being equal. However, the Service notes that: (1) a proportional decrease in harvest value provides a reasonable balance of harvest and population goals, while still calling for very restrictive seasons with low pond and mallard numbers; and (2) the frequency of regulatory changes and potential for closed seasons are expected to be lower when compared with the objective function from 1995.

B. Framework Dates

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended fixed September 28 and January 23 framework dates.

Written Comments: Senators Thad Cochran and Trent Lott of Mississippi recommended an experimental January 31 framework closing date for Mississippi.

The Delta Outfitters Association of Mississippi and the Delta Wildlife Foundation of Mississippi requested a January 31 framework closing date for Mississippi, citing scientific benefits, habitat incentives, equal hunting opportunities, and additional economic income for Mississippi.

An individual from Texas recommended extending the season through the second week of February.

The Humane Society recommended that all seasons open at noon on Wednesdays in order to reduce the high level of harvest associated with traditional Saturday season openings. Furthermore, the Humane Society recommended that season openings be delayed by two weeks in all breeding areas in order to allow ducks time to leave natal marshes before being subjected to hunting pressure.

Service Response: Regarding the Mississippi Flyway Council's Lower-Region Regulations Committee recommendation of fixed framework dates, the Service responded last year in the September 27, 1995, Federal Register (60 FR 50042) that to maintain consistency among Flyways in the procedures for selecting framework dates, and because floating dates have been recommended annually for the Mississippi Flyway in recent years, it returned to the traditional procedure using fixed calendar dates for the Atlantic Flyway and floating dates for the Mississippi, Central, and Pacific Flyways. All floating dates would be oriented to the October 1 - January 20 period. Further, the Service reiterated its previously-stated policy to retain the option of using framework dates as a harvest-management tool. Traditionally, framework opening and closing dates have been oriented to the period October 1 - January 20, either as fixed calendar dates or ''floating'' dates, using as a guideline the Saturday nearest October 1 and the Sunday nearest January 20 to select opening and closing dates annually. In recent years, the Service has established fixed calendar dates of October 1 - January 20 for all Flyways. The fixed calendar dates of September 28 - January 23 recommended for the Mississippi Flyway this year would provide consistently wider frameworks over the years than the fixed October 1 - January 20 dates for the Atlantic Flyway and the floating dates for the Central and Pacific Flyways.

Regarding the requests for a January 31 framework closing date in Mississippi, we reiterate our long-standing concerns that hunting disturbance in late winter may interfere with pair bonding and inhibit nutrient acquisition and storage with subsequent impacts to reproductive potential. However, we continue to support investigations by the AHM technical working group to assess the suitability of all aspects of the current regulatory alternatives, including framework dates. Before the Service can consider changes to the timing of the framework closing date, additional information to alleviate these concerns is necessary.

Regarding the Humane Society's recommendation for Wednesday season openings, the Service has previously stated in the Federal Register (58 FR 50190) that a State may choose to delay its opening date to correspond with a particular day of the week or to close earlier to maximize the number of weekends that hunting is allowed.

C. Season Length

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a 53-day season.

Written Comments: Congressman Jimmy Hayes of Louisiana requested the Service grant the Louisiana Department of Wildlife and Fisheries' request to extend the season by 3 days.

Service Response: The Service responded in the July 22, 1996, Federal Register that it believes that any modifications to season length under the three regulatory alternatives must be approached carefully, with due consideration to differences among Flyways. Current differences in season length among the Flyways are predicated on historic (ca. 1950) patterns of duck abundance and hunter activity, with longer seasons available to Flyways with relatively more ducks and fewer hunters. Further, the Service believes that a thorough review of Flyway differences in season lengths is needed and is seeking technical guidance from the Flyway Councils, the AHM technical working group, and others. Current differences in hunter activity and duck abundance, as well as the origin and status of duck stocks contributing to each Flyway, should be investigated using recent data and current analytical techniques. Until such analyses are conducted, the Service is concerned that changes in season lengths contained in the regulatory alternatives could alter the allocation of harvest in unpredictable, undesirable or inappropriate ways. Therefore, the Service prefers to approach all proposed changes to season length, regardless of the number of days involved, in a systematic and comprehensive manner.

E. Bag Limits

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a 6-duck daily bag limit, including no more than 4 mallards (no more than 1 of which could be a hen), 4 mottled ducks, 4 scaup, 4 ringnecks, 4 goldeneyes, 4 buffleheads, 2 wood ducks, 2 redheads, 2 canvasbacks, 1 pintail, and 1 black duck.

Written Comments: Senators Thad Cochran and Trent Lott of Mississippi recommended an experimental 6-bird daily bag limit for Mississippi.

The Delta Outfitters Association of Mississippi and the Delta Wildlife Foundation of Mississippi requested a 6-bird daily bag limit for Mississippi.

An individual from Texas recommended a 5-bird daily bag limit, including at least 2 pintails and 2 redheads. Another individual from Texas recommended a 5-bird daily bag limit, including 2 to 3 pintails.

Service Response: The Service responded in the July 22, 1996, Federal Register that it cannot support the proposal of the Lower-Region Regulations Committee of the Mississippi Flyway Council to increase the overall bag limit in the ''liberal'' alternative from 5 to 6 in order to provide additional hunting opportunity on several abundant species. The Service believes that major changes to the regulatory alternatives should be addressed in a deliberate and comprehensive manner. Historic efforts at species-specific management have been predicated largely on the assumptions that: (a) mallard harvest rates can be used as a standard by which to judge the appropriateness of harvest rates for other species; (b) target stocks of ducks can be isolated in time or space, or that hunters can shoot selectively; and (c) that management costs are largely fixed, whether managing one stock or many. Recent information has led the Service to question the validity of these assumptions. The Service believes that a number of issues must be addressed prior to major reforms in species-specific harvest strategies: (1) how much must species or populations differ in terms of their population dynamics to warrant differential harvest regulations? (2) what are the relative costs and benefits of managing individual duck stocks? (3) what is the ability of hunters to harvest selectively? and (4) do hunters prefer the maximum hunting opportunity afforded by complex regulations or simpler hunting regulations that offer less hunting opportunity? The Service awaits further guidance from the Councils and the AHM technical working group before considering significant changes to species-specific bag limits.

F. Zones and Split Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the Service implement the proposed changes to guidelines for the use of zones and split seasons, and determine if States could be allowed to

have 3 zones, with split seasons in each, where the numbers of hunters and ducks harvested in one or more zones would be very small.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended an additional option of 3 zones and 2-way splits be provided as a regular option to all States in 1997.

Written Comments: The Illinois Department of Natural Resources, the Ohio Division of Wildlife, and the Wisconsin Department of Natural Resources requested the Service add the option of 3 zones and 2-way splits in one or more zones to the 1996–2000 zones and splits guidelines. Collectively, they believe that delay in the consideration of this recommendation until the next open period in 2001 is unreasonable and further request that States would have up to 1 year to select this option (prior to the 1997 season).

The Wyoming Game and Fish Department (Wyoming) appreciated the proposed approval of their zone/split configuration for the 1996–2000 period. However, they recommended the Service establish more detailed requirements on the minimum acceptable zone width for use during the next open season. Wyoming believed that guidelines should be sufficiently clear to prevent unintended interpretations and explicit regarding their intent. Finally, Wyoming believed that States with diverse, non-contiguous physiography should be allowed exceptions to the existing guidelines.

An individual from Wyoming requested the Service's guidelines allow non-contiguous zones. One individual from Indiana desired for a fourth zone in Indiana while another requested consideration for allowing changes to Indiana's zone boundaries. An individual from Maine recommended the Service consider Maine's proposal to change zone boundaries and create an additional zone citing the loss of late season hunting opportunities due to cold weather.

The Humane Society urges the Service to discontinue all split and special seasons and recommends that any State establishing such seasons reduce the total number of hunting days by a minimum of 10 days.

Service Response: For the 1996 open season, the Service provided final guidelines on the use of zones and split seasons for the 1996–2000 period in the July 22, 1996, Federal Register. As we previously stated, the Service established these guidelines in 1990 (Federal Register, 55 FR 38901) following extensive review and endorsement of the Flyway Councils and Technical Sections. The primary purpose of the guidelines was to provide a framework for controlling the proliferation of changes in zone and split options, which compromise our ability to measure impacts of various regulatory changes on harvest. The guidelines were not developed preferentially according to the geographic size of any State, but rather, were administered equally to all States. We continue to believe that the guidelines must be applied fairly and consistently to all States in order to prevent further proliferations in zone/split configurations and that current guidelines offer States sufficient flexibility to address unique differences in physiograpy, climate, and biology. However, we will work with the Flyway Councils to cooperatively review these guidelines, as well as those concerns identified above, prior to the next scheduled open season in 2001.

With respect to Wyoming's recommendation for increased levels of detail in existing guidelines, we believe the guidelines should only be as detailed as necessary to achieve the desired intent, while allowing as much flexibility as possible in selecting a zone/split configuration.

In regard to the recommendation that split and special seasons be discontinued, the Service notes that States always have the option of selecting a continuous season with no splits. Furthermore, the Service is not aware of any information that split seasons are causing detrimental impacts to populations.

G. Special Seasons/Species Management

Written Comments: WMI believes the Service must aggressively develop processes for management of harvest programs for species that do not easily fall under the existing scientific base for AHM.

Service Response: The Service is committed to working with the Flyway Councils and States to address those species that may not be managed optimally with the existing AHM framework. However, the Service believes that species-specific harvest strategies should be developed in a deliberate and comprehensive manner, and that a number of issues must be addressed prior to major changes. These issues were described in the July 22, 1996, Federal Register (61 FR 37999). The Service will soon undertake a comprehensive review of species-specific harvest management and will actively seek advice on appropriate approaches from the Flyway Councils, States, and the public.

i. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended that the individual Atlantic Flyway States achieve a 40 percent reduction in their black duck harvest during the 1996–97 season compared with the 1977–81 base-line harvest.

Written Comments: An individual from Maine questioned the need for black duck harvest reductions.

Service Response: The Service agrees with the Atlantic Flyway Council's recommendation and acknowledges the Council's concern for the population status of black ducks. Black duck populations remain below the NAWMP goal and while the decline seems to have halted, little increase is evident. The Service believes the harvest restrictions identified in the 1983 Environmental Assessment should be maintained until a revised harvest strategy is developed.

ii. Canvasbacks

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a daily bag limit of 2 canvasbacks.

Written Comments: An individual from Washington recommended a daily bag limit of 2 canvasbacks.

Service Response: The Service continues to support the canvasback harvest strategy adopted in 1994. Current population and habitat status suggests that a daily bag limit of 1 canvasback during the 1996–97 season will result in a harvest within levels allowed by the strategy. The Service believes that it has insufficient experience with this harvest strategy to consider modifications at this time, and is concerned that an overly aggressive strategy could precipitate a return to closed seasons. The Service will continue to monitor the performance of the current strategy for canvasbacks.

4. Canada Geese

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended several changes in Canada goose quotas, season lengths, etc., based on population status and management plans.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended the Service allow 3-way splits for goose seasons. The Council further recommended that 3-way split seasons for Canada geese require both Council and Service

approval and a 3-year evaluation by each participating State.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a dark goose daily bag limit of 3 Canada geese, 2 white-fronted geese, and 2 brant.

The Central Flyway Council recommended a 4-bird dark goose aggregate bag limit in the west-tier States, except for the Western Goose Zone of Texas.

The Pacific Flyway Council recommended a closing framework date in the NW Oregon Special Permit Zone of the Sunday closest to February 28. During the extended period, hunting would occur one day per week. The Council also recommended the morphological definition of a dusky Canada goose be defined as dark-breasted (Munsell 10YR color value of 5 or less) with a culmen measurement of 40 to 50 millimeters.

Written Comments: The NWF supported the general suspension of the regular season on Canada geese in the Atlantic Flyway.

Service Response: The Service concurs with the above recommendations regarding bag limits in the Mississippi and Central Flyways and the Pacific Flyway Council's recommendation for a framework closing date of February 28 in the NW Oregon Special Permit Zone. Further, the Service also concurs with the Upper-Region Regulations Committee of the Mississippi Flyway Council's recommendation on 3-way split seasons for Canada geese.

The Service concurs with the need for a uniform classification procedure to determine the harvest of dusky Canada geese in the quota zones in Washington and Oregon. The Service also agrees with the criteria proposed by the Pacific Flyway Council for this purpose. The Service would encourage the Pacific Flyway to continue to evaluate these criteria to ensure that the harvest management objectives are met.

C. Special Late Seasons

Council Recommendations: The Atlantic Flyway Council recommended new experimental late seasons for resident geese in Maryland, Rhode Island, and Virginia, and additional days and area modifications for existing seasons in Georgia, Massachusetts, New Jersey, New York, Pennsylvania, and South Carolina.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended the special late season in the Fergus Falls/Alexandria Goose Zone of Minnesota be made operational.

The Pacific Flyway Council recommended a daily bag and possession limit of 2 and 4 cackling Canada geese, respectively, in the SW Washington Special Goose Zone during the February 5 to March 10 late season.

Written Comments: The NWF stressed the importance of setting regulations that would increase the harvest of resident geese in the Atlantic Flyway while decreasing or eliminating harvest on migrant populations.

The Humane Society opposed the proposed late season Canada goose hunts, citing that such hunts fail to target the goose populations ostensibly responsible for conflicts with humans.

Service Response: The Service concurs with the Atlantic Flyway Council's recommendations to expand seasons in those areas that meet existing criteria. Several new seasons were initiated this year and many others were expanded to increase harvest of resident birds in lieu of the closed season on the migrant Atlantic Population. However, these seasons are experimental and the Service encourages all States to initiate or continue existing evaluations to assess the potential impacts on the migratory population.

The Service also concurs with the Mississippi Flyway Council's Upper-Region Regulations Committee recommendation on the special late season in the Fergus Falls/Alexandria Goose Zone of Minnesota and the Pacific Flyway Council's recommendation on cackling Canada geese in the SW Washington Special Goose Zone.

Regarding the Humane Society's comment that such hunts fail to target specific populations, we recognize the problems caused by increasing populations of resident geese and the continuing concern for the status of certain migratory flocks. However, as we stated previously, we remain committed to targeting these special seasons at locally-breeding and/or injurious Canada goose populations. The Service and the Flyway Councils have cooperatively reviewed and structured these special seasons to protect migratory flocks and target specific locally-breeding populations. The Service does not wish to increase the composition of migrants in the harvest beyond that which is currently identified in the criteria for these seasons.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 30-day Atlantic brant season with a 2-bird daily bag limit.

Service Response: The Service concurs with the Atlantic Flyway Council's recommendation to reduce the season length as prescribed in the interim hunt plan.

7. Snow and Ross's Geese

Council Recommendations: The Atlantic Flyway Council recommended a March 10 framework closing date with a daily bag and possession limit of 8 and 24, respectively. The Council also recommended allowing the season to be split into three segments.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a March 10 framework closing date with a daily bag and possession limit of 10 and 30, respectively.

The Central Flyway Council recommended a March 10 framework closing date, except for Federal and State lands in the Rainwater Basin counties in Nebraska, with a daily bag and possession limit of 10 and 40, respectively.

Written Comments: The Nebraska Game and Parks Commission (Nebraska) recommended the closing framework for the 17 Rainwater Basin counties in south-central Nebraska be extended from the Sunday nearest February 15 (February 16, 1997) to March 10, 1997, except for lands owned by the Service and the Nebraska Game and Parks Commission. Nebraska believed this mixture of open and closed areas would provide adequate protection for other species of migratory birds and not impact the public from viewing concentrations of migratory birds.

In a second alternative proposal, Nebraska recommended the proposed county boundary be changed to existing roads, highways, and the Platte River. This change would provide a more identifiable boundary for hunters and allow some areas to be included for study in that portion of the Basin that will be hunted until March 10. The results of these studies would allow more objective establishment of late-season snow goose regulations in the future.

An individual from Wyoming requested a March 10 framework closing date. An individual from Nebraska recommended a March 10 framework closing date and inclusion of the Rainwater Basin counties in the snow goose hunt area.

Service Response: The Service concurs with the requests to extend the framework closing date for light geese to March 10 in the Atlantic, Mississippi, and Central Flyways, but believes that this extension should be limited to areas

that do not pose a threat to the management and welfare of other migratory bird species during the spring migration and nesting period. In this regard, the Service appreciates the comments from Nebraska; however, we do not support the original proposal that would allow for a mixture of open and closed areas in the Rainwater Basin counties for snow goose hunting until March 10. The Service believes hunting could result in disturbance to other migratory birds and alter natural distributions of waterfowl. This important spring staging area provides critical habitat for many species of migratory birds, and the impacts of hunting have not been adequately studied. In addition, potential impacts to eco-tourism, endangered species, and disease management have not been adequately addressed.

The alternative proposal which more clearly delineates the boundaries according to existing roads and highways, is generally acceptable to the Service. However, the Service continues to have concerns over late-season snow goose hunting along the Big Bend reach of the Platte River. The proposed east and south boundaries would allow hunting on some of the southern-most basins and on Harlan County Reservoir. These additional hunting opportunities will allow for studies to assess the impact of hunting on distributions of migratory birds.

Therefore, the Service will allow light goose hunting in Nebraska until March 10 except in the area bounded by: the intersection of the Platte River and U.S. Highway (Hwy) 92 in Polk County, east on Hwy 92 to NE Hwy 15, south on Hwy 15 to NE Hwy 4, west on NE Hwy 4 to U.S. Hwy 34, west on U.S. Hwy 34 to U.S. Hwy 283, north on U.S. Hwy 283 to U.S. Hwy 30, east on U.S. Hwy 30 to U.S. Hwy 281, south on U.S. Hwy 281 to NE Hwy 34 & 2, east on NE Hwy 34 to the Platte River, and then north and east along the Platte River to the beginning. In this area, the closing date will be the Sunday nearest February 15 (February 16, 1997).

8. Swans

Council Recommendations: The Atlantic Flyway Council recommended that 5600 tundra swan permits be issued for the 1996–97 season. The Council recommended that North Carolina receive 5,000 permits and Virginia 600. The Council also recommended eliminating the requirement that tundra swan seasons must be held during snow goose seasons.

Written Comments: The Humane Society requested that the Service close all swan hunting seasons, citing that tundra swan seasons were impeding, if not preventing, winter range expansion and recovery of trumpeter swans.

Service Response: The Service concurs with the Atlantic Flyway Council's recommendation to reduce the number of permits issued in the Flyway to 5,600 and to eliminate the requirement that these seasons are concurrent with the light goose season. The Service supports the Flyway's effort to carefully monitor the harvest and status of the Eastern Population of tundra swans and encourages the completion of the revisions to the management plan.

In regards to the Humane Society's comment, we would refer to our detailed response in the September 27, 1995, Federal Register (60 FR 50042) concerning the establishment of a general swan season. Enhancing Rocky Mounting Population trumpeter swan range expansion while retaining most aspects of tundra swan hunting were covered in detail in our 1995 Environmental Assessment ''Proposal to Establish General Swan Seasons in Parts of the Pacific Flyway for the 1995–99 Seasons'' (August 1995) which compares various alternative strategies for reconciling conflicting swan management strategies. Copies are available from the Service at the address indicated under the caption **ADDRESSES**.

23. Other

Written Comments: The Concerned Coastal Sportsmen's Association, a local organization in Massachusetts, requested compensatory days for those States that prohibit Sunday hunting.

Service Response: The Service has previously stated its position on this issue in the September 24, 1993, Federal Register (58 FR 50188), but has recently agreed to work with the Atlantic Flyway Council to review and clarify various technical and policy concerns. While this assessment is still pending, the Service will continue its long-held policy for the 1996–97 season that all States should be treated equally under existing Federal regulations and allowed similar frameworks within each Flyway to hunt migratory birds.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, Federal Register (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations have been conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may cause modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Regulatory Flexibility Act

These regulations have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). In the March 22, 1996, Federal Register, the Service reported measures it took to comply with requirements of the Act. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) documenting the significant beneficial economic effects on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996. Copies of the Analysis are

available upon request from the Office of Migratory Bird Management.

Paperwork Reduction Act

The Department examined these regulations under the Paperwork Reduction Act of 1995. The various information collection requirements are utilized in the formulation of migratory game bird hunting regulations. OMB has approved these information collection requirements and assigned clearance number 1018–0015.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the Federal Register a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1995–96 season.

The Service therefore finds that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform - Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1996–97 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a—j.

Dated: September 17, 1996.

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1996–97 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1996, and March 10, 1997.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Definitions: For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese - Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese - snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: 50 days and daily bag limit of 5 ducks, including no more than 1 hen mallard, 1 black duck, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 1 canvasback.

Closures: The season on harlequin ducks is closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: The Canada goose season is suspended throughout the Flyway except as noted below. Unless specified otherwise, seasons may be split into two segments.

Connecticut: A special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Georgia: In specific areas, a 70-day experimental season may be held between November 15 and February 15, with a limit of 5 Canada geese per day.

Maryland: An experimental season may be held in designated areas of

western Maryland from January 15 to February 15, with 5 geese per day.

Massachusetts: In the Central Zone and a portion of the Coastal Zone, a season may be held from January 15 to February 15, with 5 geese per day.

New Jersey: An expanded experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with 5 geese per day.

New York: An experimental season may be held between January 15 and February 15, with 5 geese daily in Westchester County and portions of Nassau, Orange, Putnam, and Rockland Counties.

Pennsylvania: Erie, Mercer, and Butler Counties - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Crawford County - 35 days between October 1 and January 20; with 1 goose per day.

An expanded experimental season may be held in the designated areas of western Pennsylvania from January 15 to February 15 with 5 geese per day.

Rhode Island: An experimental season may be held in a designated area from January 15 to February 15, with 5 geese per day,

South Carolina: A 70-day special season may be held in the designated areas during November 15 to February 15, with a daily bag limit of 5 Canada geese per day.

Virginia: An experimental season may be held from January 15 to February 15, with 5 geese per day, in all areas west of Interstate 95.

West Virginia: 70 days between October 1 and January 20, with 3 geese per day.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with 8 geese per day and 24 in possession. States may split their seasons into three segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 30-day season between October 1 and January 20, with 2 brant per day. States may split their seasons into two segments.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest October 1 (September 28) and the Sunday nearest January 20 (January 19).

Hunting Seasons and Duck Limits: 50 days with a daily bag limit of 5 ducks, including no more than 4 mallards (no more than 1 of which may be a female), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Minnesota and Arkansas, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania (Northwest Zone).

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation, by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (September 28) and January 31, and 107 days for light geese between the Saturday nearest October 1 (September 28) and March 10. The daily bag limit is 10 light geese, 3 Canada geese, 2 white-fronted geese, and 2 brant. The possession limit for light geese is 30. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: In the Southern James Bay Population (SJBP) Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone and 14 days in the West Zone. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 94,900 birds. Limits are 2 Canada geese daily and 10 in possession.

(a) North Zone - The season for Canada geese will close after 93 days or when 11,000 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Zone - The season for Canada geese will close after 93 days or when 17,600 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone - The harvest of Canada geese in the Southern Illinois and Rend Lake Quota Zones will be limited to 36,600 and 10,400 birds, respectively. The season for Canada geese in each zone will close after 84 days or when the harvest limit has been reached, whichever occurs first. In the Southern Illinois Quota Zone, if any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.
2. 10 consecutive days of daily high temperatures less than 20 degrees F.
3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.
4. Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

In the remainder of the South Zone, the season may extend for 84 days or until both the Southern Illinois and Rend Lake Quota Zones have been closed, whichever occurs first.

Indiana: The total harvest of Canada geese in the State will be limited to 24,200 birds.

(a) Posey County - The season for Canada geese will close after 65 days or when 4,350 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State - The season for Canada geese may extend for 65 days in the respective duck-hunting zones, except in the SJBP Zone, where the season may not exceed 35 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky

(a) Western Zone - The season for Canada geese may extend for 65 days

(80 days in Fulton County), and the harvest will be limited to 21,000 birds. Of the 21,000-bird quota, 13,650 birds will be allocated to the Ballard Reporting Area and 3,990 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 65-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 65 days (80 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone - The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit for Canada and white-fronted geese is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 53,300 birds.

(a) North Zone - The framework opening date for all geese is September 28 and the season for Canada geese may extend for 20 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone - The season for Canada geese may extend for 20 days. The daily bag limit is 2 Canada geese.

(c) South Zone

(1) Allegan County GMU - The season for Canada geese will close after 51 days or when 2,200 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU - The season for Canada geese will close after 53 days or when 700 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU - The season for Canada geese will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(4) Tuscola/Huron GMU - The season for Canada geese will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(5) Remainder of South Zone - The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose.

(d) Southern Michigan GMU - An experimental special Canada goose season may be held between January 4 and February 2. The daily bag limit is 2 Canada geese.

Minnesota:

(a) West Zone

(1) West Central Zone - The season for Canada geese may extend for 30 days. In the Lac Qui Parle Zone, the season will close after 30 days or when 16,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State - The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(d) Fergus Falls/Alexandria Zone - A special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri

(a) Swan Lake Zone - The season for Canada geese will close after 40 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The season may be split into 3 segments, provided that one segment of at least 9 days occurs prior to October 15. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. In the Pymatuning Reservoir Area, the seasons, limits, and shooting hours for all geese shall be the same as those selected in the adjacent portion of Pennsylvania.

Tennessee

(a) Northwest Zone - The season for Canada geese will close after 78 days or when 8,000 birds have been harvested, whichever occurs first. The season may extend to February 15. All geese harvested must be tagged. The daily bag limit is 2 Canada geese.

(b) Southwest Zone - The season for Canada geese may extend for 63 days, and the harvest will be limited to 700 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone - The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 69,600 birds.

(a) Horicon Zone - The framework opening date for all geese is September 21. The harvest of Canada geese is limited to 36,600 birds. The season may not exceed 86 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone - The framework opening date for all geese is September 21. The harvest of Canada geese is limited to 1,100 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone - The framework opening date for all geese is September 28. The harvest of Canada geese is limited to 27,400 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 79 days and the daily bag limit is 1 Canada goose. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 26,900 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle

Zone in Minnesota, the Swan Lake Zone in Missouri, the Northwest and Kentucky/Barkley Lakes Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Outside Dates: Between September 28 and January 19.

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 83 days and a daily bag limit of 5 ducks, including no more than 1 female mallard, 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 7).

(2) Remainder of the Central Flyway: 60 days and a daily bag limit of 5 ducks, including no more than 1 female mallard, 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, and 2 wood ducks.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Season Lengths, Outside Dates, and Limits: States may select seasons not to exceed 107 days; except for dark geese, which may not exceed 86 days in Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas. For dark geese, outside dates for seasons may be selected between the Saturday nearest October 1 (September 28) and January 31, except in the Western Goose Zone of Texas, where the closing date is the Sunday nearest February 15 (February 16). For light geese, outside dates for seasons may be selected between the Saturday nearest October 1 (September 28) and March 10, except in the Rainwater Basin Light Goose Area of Nebraska where the closing date is the Sunday nearest February 15 (February 16). Seasons may be split into two segments. The daily bag and possession limits for light geese are 10 and 40, respectively.

Dark goose daily bag limits in States and goose management zones within States, may be as follows:

Kansas, Nebraska, Oklahoma, and South Dakota: 2 dark geese, including no more than 1 white-fronted goose.

Colorado, Montana, New Mexico and Wyoming: 4 dark geese.

North Dakota: 2 dark geese.

Texas: For the Western Goose Zone, the daily bag limit is 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

For the Eastern Goose Zone, the daily bag limit is 2 dark geese, including no more than 1 white-fronted goose.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Concurrent 93 days and daily bag limit of 7 ducks, including no more than 1 female mallard, 2 pintails, 2 redheads and 1 canvasback.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days. In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest October 1 (September 28) and the Sunday nearest January 20 (January 19).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 28), and the Sunday nearest January 20 (January 19), and the basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Brant Season - A 16-consecutive-day season may be selected in Oregon and Washington, and a 30-consecutive day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2 geese.

California

Northeastern Zone - White-fronted geese and cackling Canada geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone - The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone - The daily bag and possession limits for dark geese is 2 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone - A 79-day season may be selected, except that white-fronted geese and cackling Canada geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2,

provided that they are Canada geese other than cackling Canada geese for which the daily limit is 1.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before December 14, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho

Northern Unit - The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit - The daily bag limit on dark geese is 4.

Montana

West of Divide Zone and East of Divide Zone - The daily bag limit on dark geese is 4.

Nevada

Lincoln and Clark County Zone - The daily bag limit of dark geese is 2 geese.

New Mexico: The daily bag limit for dark geese is 2 geese.

Oregon: Except as subsequently noted, the dark goose limit is 4, including not more than 1 cackling Canada goose.

Harney, Lake, Klamath, and Malheur Counties Zone - The season length may be 100 days. The dark goose limit is 4, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Western Zone - In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 132 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 3, including not more than 2 cackling Canada geese.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

West Zone - In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 72 dusky Canada geese. See section on quota zones.

Wyoming: The daily bag limit is 4 dark geese.

Quota Zones: Seasons on Canada geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late Canada goose season, and any extended falconry season, combined, must not exceed 107 days and the established quota of dusky Canada geese must not be exceeded. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. The daily bag limit of Canada geese may not include more than 2 cackling Canada goose.

In the designated areas of the Washington Quota Zone, a special late Canada goose may be held between February 5 and March 10. The daily bag limit may not include Aleutian Canada geese. In the Special Canada Goose Management Area of Oregon, the framework closing date is extended to February 28th.

Swans

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Montana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (September 28). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must provide to the Service by June 30, 1996, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,750 permits may be issued. The season must end no later than the first Sunday in December (December 1) or upon attainment of 15 trumpeter swans in the harvest, whichever occurs earliest.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 5) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

Tundra Swans

In Central Flyway portion of Montana, and in North Carolina, North Dakota, South Dakota, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, from October 1 to January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,000 permits may be issued.

—In South Dakota, no more than 1,500 permits may be issued.

Area, Unit and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I-95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine border to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I-95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I-95 (New Hampshire Turnpike) in Hampton, and south along I-95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I-80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I-80 to U.S. 220, Route 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

West Virginia

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I-64; I-64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I-79, I-79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I-280 to I-80, then east along I-80 to the Indiana border.

Central Zone: That portion of the State between the North and South Zone boundaries.

South Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I-70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I-70, then east along I-70 to the Indiana border.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway

175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Webster Road, easterly and southerly along Webster Road to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I-75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Mississippi

Zone 1: Hancock, Harrison, and Jackson Counties.

Zone 2: The remainder of Mississippi.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I-55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota border along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan border.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S, 183, south along U.S. 183 to KS 4, east along KS 4 to I-135, south along I-135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of Highways U.S. 183 and U.S. 20 from the South Dakota border to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 93 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas border.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and east of a line extending from the South Dakota border along NE 26E Spur to U.S. 20, west on U.S. 20 to NE 12, west on NE 12 to the Knox/Keya Paha County line, south along the county line to the Niobrara River and

along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: That portion of the State east of the High Plains Zone and bounded by designated highways and political boundaries starting on U.S. 73 at the Kansas border, north to NE 67, north to U.S. 75, north to NE 2, west to NE 43, north to U.S. 34, east to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to U.S. 34; west to NE 2; south to I-80; west to Hamilton/Hall County line (Gunbarrel Road), south to Giltner Road; west to U.S. 34; west to U.S. 136; east on U.S. 135 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northeasterly to NE 91; west to U.S. 281, north to NE 91 in Wheeler County, west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler County; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east along U.S. 30 to U.S. 75, north along U.S. 75 to the Washington/Burt County line; then east along the county line to the Iowa border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I-40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State west of a line from the South Dakota border along U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 8, north to U.S. 2, west to U.S. 85, north to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas border along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I-40, east along I-40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I-35, north along I-35 to U.S. 60, west along U.S. 60 to U.S. 64, west along U.S. 64 to OK 132, then north along OK 132 to the Kansas border.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota border and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, south across a line over the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, south along the Reservation Boundary to Lyman County Road, south along Lyman County Road to I-90 at Presho, east on I-90 to U.S. 183, then south along U.S. 183 to Nebraska border.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along US 212 to SD 15, then north along SD 15 to Big Stone Lake at the Minnesota border.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I-29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma border along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Wyoming (Central Flyway portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, Washakie, and that portion of Park County south of T58N and not within the boundary of the Shoshone National Forest.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B-45.

North Zone: GMUs 1-5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir

drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties and that part of Toole County north of I-80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

Same zones as for ducks.

Georgia

Special Area for Canada Geese: Statewide.

Maryland

Special Area for Canada Geese: Allegheny, Carroll, Frederick, Garrett, Washington counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

Massachusetts

Special Area for Canada Geese: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

New Hampshire

Same zones as for ducks.

New Jersey

Special Area for Canada Geese

North - that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South - that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to the Garden State Parkway; then south along the Garden State Parkway to Route 9; then south along Route 9 to Route 542; then west along Route 542 to the Mullica River (at Pleasant Mills); then north (upstream) along the Mullica River to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then south along Route 49 to Route 50; then east along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Special Area for Canada Geese: Westchester County and portions of Nassau, Orange, Putnam, Rockland, and Suffolk Counties—See State regulations for detailed description.

Pennsylvania

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

Special Area for Canada Geese: Statewide except for the Counties of Erie, Mercer, Butler, Crawford, and the area east of Interstate 83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of state Route 441, east of SR 441 to intersection of Interstate 283, east of I-283 to I-83, east of I-83 to intersection of I-81, east of I-81 to intersection of I-80, and south of I-80 to the New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Virginia

Back Bay Area—Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford,

Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

Illinois

Same zones as for ducks, but in addition:

North Zone:

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone:

Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, Lake, LaPorte, Newton, Porter, Pulaski, Starke, and Steuben Counties.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

Same zones as for ducks, but in addition:

South Zone

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 1/2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I-196 in Casco Township, then northerly along I-196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I-69, westerly along I-69 to Michigan Highway 21, westerly along Michigan 21 to I-96, northerly along I-96 to I-196, westerly along I-196 to Lake Michigan Drive (M-45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I-94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons:

Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Missouri

Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone

Schell-Osage Zone: That portion of the State encompassed by a line extending east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Ohio

Same zones as for ducks but in addition:

North Zone

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Lake Erie SJBP Zone: That portion of the State encompassed by a line extending south from the Michigan border along Interstate Highway 75 to I-280, south along I-280 to I-80, and east along I-80 to the Pennsylvania border.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I-90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I-90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I-25 from the Wyoming border south to I-70; west on I-70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Kansas

Light Geese

Unit 1: That portion of Kansas east of KS 99.

Unit 2: The remainder of Kansas.

Dark Geese

Marais des Cygne Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S 169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S. 75 to I-35, I-35 to U.S. 50, U.S. 50 to U.S. 77, U.S. 77 to I-70, I-70 to U.S. 75.

Southeast Unit: That area of southeast Kansas bounded by the Missouri border to U.S. 160, U.S. 160 to U.S. 69, U.S. 69 to KS 39, KS 39 to U.S. 169, U.S. 169 to the Oklahoma border, and the Oklahoma border to the Missouri border.

Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central Flyway portion of Montana.

Nebraska

Dark Geese

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

East Unit: The area east of a line beginning at U.S. 183 at the northern State line; south to NE 2; east to U.S. 281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

Light Geese

Rainwater Basin Light Goose Area: The area bounded by the intersection of the Platte River and U.S. Highway (Hwy) 92 in Polk County, east on Hwy 92 to NE Hwy 15, south on Hwy 15 to NE Hwy 4, west on NE Hwy 4 to U.S. Hwy 34, west on U.S. Hwy 34 to U.S. Hwy 283, north on U.S. Hwy 283 to U.S. Hwy 30, east on U.S. Hwy 30 to U.S. Hwy 281, south on U.S. Hwy 281 to NE Hwy 34 & 2, east on NE Hwy 34 to the Platte River, and then north and east along the Platte River to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra County and that portion of Socorro County lying south of the Sevilleta National Wildlife Refuge Boundary.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND 200, east to ND 31, south to ND 25, south to I-94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

South Dakota

Canada Geese

Unit 1: Statewide except for Units 2 and 3.

Unit 2: Brule, Buffalo, Campbell, Dewey, Hughes, Hyde, Lyman, Potter, Stanley, Sully, and Walworth Counties and that portion of Corson County east of State Highway 65.

Unit 3: Charles Mix and Gregory Counties.

Texas

West Unit: That portion of the State lying west of a line from the international toll bridge at Laredo; north along I-35 and I-35W to Fort Worth; northwest along US 81 and US 287 to Bowie; and north along US 81 to the Oklahoma border.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and that portion of Park County south of T58N.

Area 2: Platte County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties and those portions of Carbon County east of the Continental Divide and Park County north of T58N.

Area 4: Goshen County.

Pacific Flyway

Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on I-5 to Hahn Road north of Arbuckle in Colusa County; easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; southerly on the Sacramento River to the Tisdale Bypass to O'Banion Road; easterly on O'Banion Road to CA 99; northerly on CA 99 to the Gridley-Colusa Highway in Gridley in Butte County; westerly on the Gridley-Colusa Highway to the River Road; northerly on the River Road to the Princeton Ferry; westerly across the Sacramento River to CA 45; northerly on CA 45 to CA 162; northerly on CA 45-162 to Glenn; westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described

Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on CA 132 to I-5; southerly on I-5 to CA 152 in Merced County; easterly on CA 152 to CA 165; northerly on CA 165 to CA 99 at Merced; northerly and westerly on CA 99 to the point of beginning.

Colorado (Pacific Flyway Portion)

Gunnison/Saguache Area: Gunnison County and that portion of Saguache County west of the Continental Divide.

West Central Area: Archuleta, Delta, Dolores, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale and Mineral Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I-84, and south and west of I-84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I-84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I-40.

South Zone: The Pacific Flyway portion of New Mexico located south of I-40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I-5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I-5; then south on I-5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to the Pacific Coast.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone.

Closed Zone: Those portions of Coos, Curry, Douglas and Lane Counties west of US 101.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake and Malheur Counties Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Eastern Washington: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Area 1: Lincoln, Spokane, and Walla Walla Counties; that part of Grant County east of a line beginning at the Douglas-Lincoln County line on WA 174, southwest on WA 174 to WA 155, south on WA 155 to US 2, southwest on US 2 to Pinto Ridge Road, south on Pinto Ridge Road to WA 28, east on WA 28 to the Stratford Road, south on the Stratford Road to WA 17, south on WA 17 to the Grant-Adams County line; those parts of Adams County east of State Highway 17; those parts of Franklin County east and south of a line beginning at the Adams-Franklin County line on WA 17, south on WA 17 to US 395, south on US 395 to I-182, west o I-182 to the Franklin-Benton County line; those parts of Benton County south of I-182 and I-82; and those parts of Klickitat County east of U.S. Highway 97.

Area 2: All of Okanongan, Douglas, and Kittitas Counties and those parts of Grant, Adams, Franklin, and Benton Counties not included in Eastern Washington Goose Management Area 1.

Area 3: All other parts of eastern Washington not included in Eastern Washington Goose Management Areas 1 and 2.

Western Washington: All areas west of the East Zone.

Area 1: Skagit, Island, and Snohomish Counties.

Area 2: Clark, Cowlitz, Pacific, and Wahkiakum Counties.

Area 3: All parts of western Washington not included in Western Washington Goose Management Areas 1 and 2.

Lower Columbia River Early-Season Canada Goose Zone: Beginning at the Washington-Oregon border on the I-5 Bridge near Vancouver, Washington; north on I-5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the

North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming (Pacific Flyway Portion): See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Beadle, Brookings, Brown, Campbell, Clark, Codington, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hughes, Hyde, Kingsbury, Marshall, McPherson, Potter, Roberts, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287-89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box, Elder, Weber, Davis, Salt Lake, and Toole Counties lying south of State Hwy 30, I-80/84, west of I-15, and north of I-80.

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federal register

Thursday
September 26, 1996

Part IX

Environmental Protection Agency

40 CFR Part 180, et al.

Withdrawal of Pesticide Tolerance Revocations; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 185

[OPP–300438; FRL–5397–4]

RIN 2070–AC55

Withdrawal of Pesticide Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule.

SUMMARY: EPA is withdrawing final rules revoking 17 processed food tolerances. The Agency is withdrawing these revocations because they were based on two provisions of the Federal Food, Drug and Cosmetic Act that no longer are applicable to pesticide residues in food, specifically the Delaney clause and the ''ready-to-eat'' provision. Since the enactment of the Food Quality Protection Act, the basis for these revocations no longer exists as a matter of law. Accordingly, EPA is withdrawing these final rules.

EFFECTIVE DATE: This rule is effective September 26, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi-Glosson, Special Review Branch, (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8028. e-mail: nazmi-glosson.niloufar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.) authorizes the establishment of maximum permissible levels of pesticides in foods, which are referred to as ''tolerances'' (21 U.S.C. 346a). Without such a tolerance or an exemption from 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. 342). Monitoring and enforcement of pesticide residues are carried out by the U.S. Food and Drug Administration and the U.S. Department of Agriculture.

The FFDCA's provisions governing pesticides were significantly amended on August 3, 1996 by the enactment of the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170, 110 Stat. 1489). The FQPA amendments were effective immediately.

Among other things, the FQPA amends the FFDCA to bring all EPA pesticide tolerance-setting activities under a single section of the statute — section 408 — and added a new safety standard and new procedures in that section. Previously, regulatory authority over pesticides in the FFDCA had been divided between sections 408 and 409. The division of pesticides between sections 408 and 409 had been the subject of some controversy because of the differing safety standards in the two sections. Of particular significance was the inclusion in section 409, but not section 408, of the Delaney anti-cancer clause. The FQPA converted all existing section 409 tolerances for pesticide residues in processed food into section 408 tolerances. 21 U.S.C. 346a(j).

The FQPA also amended the so-called ''flow-through'' provision in section 402(a)(2) that governed whether tolerances for pesticide residues in raw agricultural commodities apply to pesticide residues in processed foods. Before being amended, the FFDCA had specified that a pesticide residue in a processed food would not render that food adulterated if, among other things, the level of the residue in the processed food ''when ready to eat'' is below the tolerance level for the pesticide in the precursor raw agricultural commodity. The FQPA maintained this flow-through concept that raw agricultural commodity tolerances would apply to pesticides in processed food but modified existing law by dropping the requirement that the level of residue in the processed food be evaluated at the ready-to-eat stage. 21 U.S.C. 346a(a)(2)(A).

II. Regulatory Background

In response to the decision in *Les v. Reilly*, 968 F.2d 985 (9th Cir.), cert. denied, 113 S.Ct. 1361 (1993), in which the U.S. Court of Appeals, Ninth Circuit held there was no *de minimis* exception to the Delaney clause, EPA began to initiate revocation actions against those existing section 409 tolerances which were inconsistent with the Delaney clause.

Further, on February 9, 1995, EPA entered into a court-approved consent decree in which EPA agreed to a timetable for deciding whether to revoke an extensive list of section 408 and 409 tolerances. Under the consent decree, EPA has taken a number of revocation actions. In the case of final revocations, many tolerances remain in effect because either EPA has delayed the effective date to allow for the filing of objections and hearing requests and to consider stay requests or EPA or a court has granted requests for stays of the effective date of revocation.

III. Today's Action

EPA is today withdrawing a total of 17 revocations issued in 5 separate actions. The tables in Unit IV of this notice list the specific tolerance revocations in those five actions that are being withdrawn. Revocations in those actions not listed in the table are not affected.

1. *Benomyl on tomato products and raisins.* This final revocation of section 409 tolerances (June 30, 1994, 59 FR 33685; July 14, 1993, 58 FR 37862) was stayed by the D.C. Court of Appeals and the Agency reinstated the tolerances on September 12, 1994 (59 FR 46769). EPA is withdrawing the revocations of the tolerances on tomato products and raisins. Because EPA's reinstatement rule restablished the tomato products and raisin tolerances in full force, no amendment to the Code of Federal Regulations is ncessary inconjunction with the withdrawal of these revocations.

2. *Dichlorvos in bagged and packaged processed foods.* This final revocation of the section 409 tolerance (November 10, 1993, 58 FR 59663) was stayed by EPA on March 11, 1994 (59 FR 11556). EPA styled this revocation as a revision to the tolerance because the revocation had a delayed effective date. EPA is withdrawing that revision.

3. *Dicofol on dried tea.* This final revocation of the section 409 tolerance for dicofol (March 9, 1994, 59 FR 10993) was stayed by EPA on May 9, 1994 (59 FR 23799). EPA is withdrawing this revocation.

4. *March 1996 revocations.* This group consists of final revocations of 26 section 409 tolerances for 7 pesticides (March 22, 1996, 61 FR 11993)(FRL–5357–7). The revocations of 8 tolerances were stayed by EPA (May 20, 1996, 61 FR 22153). The remaining revocations became effective on May 21, 1996. EPA is today withdrawing the revocations of the 8 tolerances for which stays were granted.

5. *July 1996 revocations.* This group consists of final revocations of six section 409 tolerances and three section 408 tolerances for four pesticides (July 29, 1996, 61 FR 39527)(FRL–5388–2). These revocations are not yet effective. EPA is today withdrawing the revocations of five section 409 tolerances. The revocations of the remaining section 409 tolerance and the section 408 tolerances will become effective on October 28, 1996.

EPA is withdrawing 16 of the 17 revocations because they were based on the Delaney clause in section 409. Under the modified FFDCA, pesticide residues are no longer governed by

section 409 or its Delaney clause and all of the section 409 tolerances which were still in effect on August 3, 1996 were converted to section 408 tolerances. A section 408 processed food tolerance cannot be revoked on the basis of the Delaney clause in section 409 and thus all pending revocations premised solely on the Delaney clause are being withdrawn as lacking any legal basis.

EPA is withdrawing one revocation (imazalil/citrus oil) because it was based on EPA's conclusion that the tolerance in question is set on a not ready-to-eat food. EPA had reasoned that once the dilution associated with final processing of the ready-to-eat food is taken into account the ready-to-eat food is unlikely to contain residues above the tolerance for the precursor raw commodity and hence no section 409 tolerance is necessary to prevent the processed food from being deemed adulterated. Because the FQPA removed the ready-to-eat factor from the flow-through provision governing the applicability of raw agricultural commodity tolerances to processed foods, revocations relying on the dilution which occurs in processing a ready-to-eat food have no basis in law and are therefore being withdrawn.

In withdrawing these actions, EPA would like to make clear two points. First, because these revocations concerned legal requirements no longer applying to pesticides, EPA will not assert a preclusive effect as to any factual findings regarding such requirements. Second, today's action should not be interpreted to mean that EPA has made a ''safety finding'' as to the pesticide tolerances in question under the FFDCA, as amended by the FQPA. EPA will systematically review the safety of all the tolerances within the next 10 years, as required under the FQPA.

IV. Specific Revocations Being Withdrawn

The specific actions EPA is withdrawing are presented in the two tables below.

Table 1 lists section 409 tolerances for which final rules were issued on Delaney grounds.

TABLE 1.—REVOCATIONS WHICH WERE BASED ON THE DELANEY CLAUSE

Pesticide	Commodity	40 CFR Citation
Acephate	food handling establishments	185.100
Benomyl	tomato products, raisins	185.350
Dichlorvos (DDVP).	bagged and packaged processed foods	185.1900
Dicofol	dried tea	185.410
Ethylene Oxide.	ground spices	185.2850
Iprodione	dried ginseng, raisins	185.3750
Mancozeb	bran of oats	185.6300
Propargite	dried figs, dried tea	185.5000
Propylene oxide.	cocoa, gums, processed nutmeats (except peanuts), processed spices	185.5150
Triadimefon.	milled fractions of wheat	185.800

Table 2 lists section 409 tolerances for which a final rule was issued on not ready-to-eat grounds.

TABLE 2.—REVOCATION WHICH WAS BASED ON NOT READY-TO-EAT GROUNDS

Pesticide	Commodity	40 CFR Citation
Imazalil ...	citrus oil	185.3650

List of Subjects in Part 185

Environmental protection, Food additives, Pesticides and pests

Dated: September 19, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Accordingly, 40 CFR chapter I, part 185 is amended as follows:

PART 185—[AMENDED]

The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 185.410 [Amendment and Stay Withdrawn]

2. The amendment removing § 185.410, at 59 FR 10997, March 9, 1994 and the subsequent stay of the effective date of that amendment, at 59 FR 23800, May 9, 1994 are withdrawn.

§ 185.1900 [Amendment and Stay Withdrawn]

3. The revision of § 185.1900 at 58 FR 59667, November 10, 1993 and the subsquent stay of that revision at 59 FR 11556, March 11, 1994 are withdrawn.

§ 185.2850 [Amendment and Stay Withdrawn]

4. The amendment removing § 185.2850 published at 61 FR 11993, March 22, 1996, and the subsequent stay at 61 FR 25153, May 20, 1996 are withdrawn.

§§ 185.5000, 185.5150 and 185.6300 [Amendment Withdrawn]

5. The amendment to the text of § 185.5000, and the amended text for §§ 185.5150 and 185.6300, published at 61 FR 25153, May 20, 1996 as a result of a partial stay of the removals published at 61 FR 11993, March 22, 1996 are confirmed as final.

§§ 185.100, 185.800, 185.3650, 185.3750 [Amendment Withdrawn]

6. The amendments removing §§ 185.100, 185.800, 185.3650, and 185.3750, at 61 FR 39542, July 29, 1996 are withdrawn.

[FR Doc. 96–24602 Filed 9–25–96; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[OPP–300439; FRL–5397–5]

RIN 2070–AC55

Withdrawal of Proposed Revocations of Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed revocations.

SUMMARY: EPA is withdrawing the proposed revocations of a number of pesticide tolerances established under the Federal Food, Drug and Cosmetic Act (FFDCA). The enactment of the Food Quality Protection Act removed the legal basis for these revocations. Accordingly, EPA is withdrawing these proposed rules. EPA is also withdrawing the various proposed decisions to retain certain tolerances because the obligation to make decisions on these tolerances has been removed.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi-Glosson, Special Review Branch, (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308-8028; e-mail: nazmi-glosson.niloufar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.) authorizes the establishment of maximum permissible levels of pesticides in foods, which are referred to as ''tolerances'' (21 U.S.C. 346a). Without such a tolerance or an exemption from 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. 342). Monitoring and enforcement of pesticide residues are carried out by the U.S. Food and Drug Administration and the U.S. Department of Agriculture.

The FFDCA's provisions governing pesticides were significantly amended on August 3, 1996 by the enactment of the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170). The FQPA amendments were effective immediately.

Among other things, the FQPA amends the FFDCA to bring all EPA pesticide tolerance-setting activities under a single section of the statute — section 408 — and added a new safety standard and new procedures in that section. Previously, regulatory authority over pesticides in the FFDCA had been divided between sections 408 and 409. The division of pesticides between sections 408 and 409 had been the subject of some controversy because of the differing safety standards in the two sections. Of particular significance was the inclusion in section 409, but not section 408, of the Delaney anti-cancer clause. The FQPA converted all existing section 409 tolerances for pesticide residues in processed food into section 408 tolerances. 21 U.S.C. 346a(j).

The FQPA also amended the so-called ''flow-through'' provision in section 402(a)(2) that governed whether tolerances for pesticide residues in raw agricultural commodities apply to pesticide residues in processed foods. Before being amended, the FFDCA had specified that a pesticide residue in a processed food would not render that food adulterated if, among other things, the level of the residue in the processed food ''when ready to eat'' is below the tolerance level for the pesticide in the precursor raw agricultural commodity. The FQPA maintained this flow-through concept that raw agricultural commodity tolerances would apply to pesticides in processed food but modified existing law by dropping the requirement that the level of residue in the processed food be evaluated at the ready-to-eat stage. 21 U.S.C. 346a(a)(2)(C).

II. Regulatory Background

In response to the decision in *Les v. Reilly*, 968 F.2d 985 (9th Cir.), cert. denied, 113 S.Ct. 1361 (1993), in which the U.S. Court of Appeals, Ninth Circuit held there was no *de minimis* exception to the Delaney clause, EPA began to initiate revocation actions against those existing section 409 tolerances which were inconsistent with the Delaney clause. EPA also began identifying those section 408 tolerances which would have to be revoked under EPA's coordination policy. Under the coordination policy, EPA will not permit use of a pesticide on a raw agricultural commodity if tolerances needed to prevent the adulteration of processed food can not be approved. Application of this policy was triggered by the revocation of various section 409 tolerances on Delaney clause grounds.

Further, on February 9, 1995, EPA entered into a court-approved consent decree in which EPA agreed to a timetable for deciding whether to revoke an extensive list of section 408 and 409 tolerances. Under the consent decree, EPA has taken a number of proposed and final revocation actions.

III. Today's Action

EPA is today withdrawing certain proposed revocations included in two separate proposals:

1. *September 21, 1995 Proposed Revocations (60 FR 49141)(FRL–4977–3).* Proposed revocation of 36 section 409 tolerances (feed additives) for 16 pesticides (Appendix I, Group C). EPA is withdrawing the proposed revocations of 11 of these tolerances. EPA is not withdrawing the remaining 25 proposed revocations in the September 21, 1995 notice and, in the future, EPA will complete action on these proposals.

EPA is withdrawing 2 of the 11 proposed revocations because they were based on the Delaney clause in section 409. Under the modified FFDCA, pesticide residues are no longer governed by section 409 or its Delaney clause and all of the section 409 tolerances which were still in effect on August 3, 1996 were converted to section 408 tolerances. A section 408 processed food tolerance cannot be revoked on the basis of the Delaney clause in section 409 and thus all pending revocations premised solely on the Delaney clause are being withdrawn as lacking any legal basis.

EPA is withdrawing 9 proposed revocations because they were based on EPA's conclusion that the tolerances in question are set on not ready-to-eat foods. EPA had reasoned that once the dilution associated with final processing of ready-to-eat foods is taken into account the ready-to-eat food is unlikely to contain residues above the tolerance for the precursor raw commodity and hence no section 409 tolerance is necessary to prevent the processed food from being deemed adulterated. Because the FQPA removed the ready-to-eat factor from the flow-through provision governing the applicability of raw agricultural commodity tolerances to processed foods, revocations relying on the dilution which occurs in processing to a ready-to-eat food have no basis in law and are therefore being withdrawn.

In the future, EPA will complete action on the remaining 25 proposed revocations, which were based on determinations that the pesticide does not concentrate in the processed feed or that the processed feed is no longer a significant animal feed for which a tolerance is necessary. These determinations are not affected by the enactment of the FQPA.

2. *March 1, 1996 Proposed Revocations (61 FR 8173)(FRL–5351–6).* Proposed revocation of 9 section 408 tolerances under the coordination

policy, and the proposed decision to retain 32 section 408 tolerances.

EPA proposed to revoke 9 section 408 tolerances on the ground that the associated pesticide use needed a section 409 tolerance as well as a section 408 tolerance to prevent the adulteration of processed food and such section 409 tolerance is barred by the Delaney clause. Because the FQPA has moved authority for regulation of all pesticide residues into section 408, the Delaney clause in section 409 no longer bars the establishment of needed processed food tolerances. Thus there is no longer any basis for EPA to apply its coordination policy to this situation and the proposed revocations are withdrawn.

In the same notice, EPA proposed to retain 32 section 408 tolerances. EPA had issued a proposal to retain these tolerances because the consent decree mentioned in Unit II of this document required EPA to announce its decision regarding such tolerances and EPA believed revocation was not warranted. As provided by its own terms, the consent decree has now been superseded by the FQPA and EPA and all parties to the litigation have filed a joint motion seeking dismissal of the case and termination of the consent decree. Accordingly, EPA is withdrawing its proposed decisions to retain section 408 tolerances because there is no obligation on the Agency to make a decision regarding those specific tolerances.

In withdrawing these proposed revocations, EPA would like to make clear two points. First, because these revocations concerned legal requirements no longer applying to pesticides, EPA will not assert a preclusive effect as to any factual findings regarding such requirements. Second, today's action should not be interpreted to mean that EPA has made a ''safety finding'' as to the pesticide tolerances in question under the FFDCA, as amended by the FQPA. EPA will systematically review the safety of all the tolerances within the next ten years, as required under the FQPA.

IV. Specific Proposals Being Withdrawn

The specific actions EPA is withdrawing are presented in three tables.

Table 1 lists section 409 tolerances for which a proposed revocation was issued on Delaney grounds.

TABLE 1.—PROPOSED REVOCATIONS THAT WERE BASED ON DELANEY GROUNDS

Pesticide	Commodity	40 CFR citation
Simazine ...	Sugarcane molasses	186.5350

TABLE 1.—PROPOSED REVOCATIONS THAT WERE BASED ON DELANEY GROUNDS—Continued

Pesticide	Commodity	40 CFR citation
Tetrachlorvinphos.	Feed of beef, dairy cattle, and horses	186.950

Table 2 lists section 409 tolerances for which a proposed revocation was issued on not ready- to-eat grounds.

TABLE 2.—PROPOSED REVOCATIONS THAT WERE BASED ON NOT READY-TO-EAT GROUNDS

Pesticide	Commodity	40 CFR citation
Acephate	Cottonseed hulls	186.100
Benomyl	Dried citrus pulp, rice hulls	186.350
Diflubenzuron.	Soybean hulls	186.2000
Imazalil	Dried citrus pulp	186.3650
Iprodione ...	Rice bran, rice hulls	186.3750
Mancozeb	Milled wheat fractions	186.6300
Thiodicarb	Soybean hulls	186.5650

Table 3 lists section 408 tolerances for which EPA made a proposed determination to either retain or revoke based upon its coordination policy.

TABLE 3.—PROPOSED REVOCATIONS AND DECISIONS ON SECTION 408 TOLERANCES

Pesticide	Commodity	40 CFR Citation	Proposed Action
Acephate	Cottonseed	180.108	Retain
Alachlor	Sunflower seed	180.249	Retain
Benomyl	Citrus	180.294	Retain
	Rice	180.294	Retain
Captan	Grapes,Tomatoes	180.103	Retain
Carbaryl	Pineapples	180.169	Retain
Dicofol	Apples	180.163	Revoke
	Grapes	180.163	Revoke
	Plums	180.163	Revoke
	Tomatoes	180.163	Retain
Diflubenzuron	Soybeans	180.377	Retain
Dimethipin	Cottonseed	180.406	Retain
Ethylene Oxide	Whole spices (direct treatment)	180.151	Retain
Iprodione	Peanuts	180.399	Retain
	Rice	180.399	Retain
Lindane	Tomatoes	180.133	Retain
Mancozeb	Barley	180.176	Retain
	Grapes	180.176	Retain
	Oats	180.176	Revoke
	Rye	180.176	Retain
	Wheat	180.176	Revoke
Maneb	Grapes	180.110	Retain
Methomyl	Wheat	180.253	Retain
Norflurazon	Grapes	180.356	Retain
Oxyfluorfen	Cottonseed	180.381	Retain
	Peppermint	180.381	Retain
	Spearmint	180.381	Retain
	Soybeans	180.381	Retain
PCNB	Tomatoes	180.319	Retain

TABLE 3.—PROPOSED REVOCATIONS AND DECISIONS ON SECTION 408 TOLERANCES—Continued

Pesticide	Commodity	40 CFR Citation	Proposed Action
Permethrin	Tomatoes	180.378	Retain
Propargite	Apples	180.259	Revoke
	Figs	180.259	Revoke
	Grapes	180.259	Retain
	Plums	180.259	Retain
Simazine	Sugarcane	180.213	Revoke
Thiodicarb	Cottonseed	180.407	Retain
	Soybeans	180.307	Retain
Triadimefon	Grapes	180.410	Retain
	Wheat	180.410	Revoke
	Pineapple	180.410	Retain

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, reporting and recordkeeping requirements.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticide and pests.

Accordingly, for the reasons set out in the preamble above, EPA is withdrawing the following:

1. The proposed rule published at 61 FR 8174, March 1, 1996 proposing changes to part 180 is withdrawn.

2. The amendments proposing to remove §§ 186.100, 186.350, 186.950, 186.2000, 186.3650, 186.3750 and 186.5350, 186.5650, and 186.6300, published at 60 FR 49141, September 21, 1995 are withdrawn.

Dated: September 19, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–24603 Filed 9–25–96; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Agricultural Marketing Service

Cauliflower (frozen); grade standards; published 8-27-96

DEFENSE DEPARTMENT

Acquisition regulations:

Miscellaneous amendments; published 9-26-96

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Wisconsin; published 8-27-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Benomyl et al.; published 9-26-96

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; published 9-26-96

FEDERAL TRADE COMMISSION

Adjudicatory proceedings; rules of practice; published 9-26-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Late-season regulations; final frameworks (1996-1997); published 9-26-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Allison; published 9-11-96

Fokker; published 9-11-96

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Public lands highways funds program; elemination; federal regulatory reform; CFR part removed; published 8-27-96

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Limes grown in Florida and imported; comments due by 10-4-96; published 8-5-96

Oranges, grapefruit, tangerines, and tangelos grown in Florida

Grade standards; comments due by 10-1-96; published 8-2-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Horses from Mexico; quarantine requirements; comments due by 9-30-96; published 7-31-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Cotton crop; comments due by 10-3-96; published 9-3-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

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Bering Sea and Aleutian Islands groundfish; comments due by 10-3-96; published 8-22-96

Caribbean, Gulf of Mexico, and South Atlantic reef fish; comments due by 10-3-96; published 8-21-96

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Comprehensive small business subcontracting plans; test program for negotiation; comments due by 9-30-96; published 7-31-96

Federal Acquisition Regulation (FAR):

Competitive range determinations; comments due by 9-30-96; published 7-31-96

Service contracting; comments due by 9-30-96; published 8-1-96

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Architectural coatings; correction; comments due by 9-30-96; published 9-3-96

Air quality implementation plans; approval and promulgation; various States:

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State operating permits programs--

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Special hazard areas identification and mapping, map correction procedures, and procedures and fees for processing map changes; comments due by 10-1-96; published 8-30-96

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

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HEALTH AND HUMAN SERVICES DEPARTMENT

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Current good manufacturing practice--

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HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

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INTERIOR DEPARTMENT

Land Management Bureau

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INTERIOR DEPARTMENT

Fish and Wildlife Service

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Minerals Management Service

Royalty management:

Gas produced from Federal and indian leases; gas royalties and deductions for gas transportation calculations; comments due by 9-30-96; published 7-31-96

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INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

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Investment and deposit activities; comments due by 9-30-96; published 6-12-96

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Grand Canyon Nationl Park; flight free zones and reporting requirements for commercial sightseeing companies (SFAR No. 50-2); comments due by 9-30-96; published 7-31-96

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TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

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