3–12–97
Vol. 62 No. 48
Pages 11307–11756

federal register

Wednesday
March 12, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the Federal Register on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal Register paper edition is $555, or $607 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530
	1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

NOW AVAILABLE ONLINE

The January 1997 Office of the Federal Register Document Drafting Handbook

Free, easy, online access to the newly revised January 1997 Office of the Federal Register Document Drafting Handbook (DDH) is now available at:

http://www.nara.gov/nara/fedreg/ddh/ddhout.html

This handbook helps Federal agencies to prepare documents for publication in the Federal Register.

For additional information on access, contact the Office of the Federal Register's Technical Support Staff.

Phone: 202–523–3447

E-mail: info@fedreg.nara.gov

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 48
Wednesday, March 12, 1997

Agricultural Marketing Service
RULES
Olives grown in California, 11314–11316

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Animal and Plant Health Inspection Service
NOTICES
Veterinary biological products; public meeting, 11413

Army Department
See Engineers Corps

Blackstone River Valley National Heritage Corridor Commission
NOTICES
Meetings, 11414

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11457–11458
Submission for OMB review; comment request, 11458

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 11458

Commerce Department
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 11414–11415

Commission of Fine Arts
NOTICES
Meetings, 11417

Consumer Product Safety Commission
NOTICES
Commission agenda and priorities; public hearing, 11417–11418

Defense Department
See Engineers Corps
See Navy Department

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Strengthening institutions program, 11586

Employment and Training Administration
NOTICES
Adjustment assistance:
Contact Technologies et al., 11474–11475
Cott Distributors USA et al., 11475–11476
Adjustment assistance and NAFTA transitional adjustment assistance:
Barclay Home Products et al., 11472–11474

Employment Standards Administration
See Wage and Hour Division
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 11476–11477

Energy Department
See Federal Energy Regulatory Commission
See Southeastern Power Administration
NOTICES
Radiological condition certification:
Energy Technology Engineering Center, CA, 11419–11420

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Arthur Kill/Howland Hook navigation channel, NY and NJ; deepening; limited reevaluation study, 11418–11419
Kill Van Kull and Newark Bay navigation channels, NY and NJ; deepening; limited reevaluation study, 11419

Environmental Protection Agency
RULES
Air programs:
Fuels and fuel additives—
Reformulated gasoline standards; nitrogen oxides; petition denied, 11346–11360
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Virginia, 11337–11346
Air quality implementation plans; approval and promulgation; various States:
Delaware, 11329–11332
Illinois, 11327–11329
Virginia, 11332–11337
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Clopyralid, 11360–11364
Water pollution control:
Great Lakes System; water quality guidance—
Polychlorinated biphenyls (PCBs) criteria for human health and wildlife, 11724–11731
PROPOSED RULES
Air programs:
Fuels and fuel additives—
Phoenix, AZ moderate ozone nonattainment area; reformulated gasoline program extension; public hearing, 11405–11407
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Virginia, 11405

Air quality implementation plans; approval and promulgation; various States:
Delaware, 11394–11395
Illinois, 11394
Virginia, 11395–11405
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 11432–11433
Meetings:
Scientific Counselors Board Executive Committee, 11433
Source water protection; national guidance, 11433
Pesticide, food, and feed additive petitions:
AgrEvo USA Co., 11433–11437
BASF Corp., 11450–11453
Cryolite Task Force, 11437–11441
Zeneca Ag Products, 11441–11447
Pesticide programs:
Federal Insecticide, Fungicide, and Rodenticide Act—
DuPont Agricultural Products of Delaware; genetically engineered microbial pesticide; small-scale field testing, 11453–11454
Pesticides; emergency exemptions, etc.:
Mancozeb, 11447–11449
Propamocarb hydrochloride, 11449–11450

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Bell, 11318–11321
PROPOSED RULES
Airworthiness directives:
Airbus Industrie, 11388–11390
Dornier, 11386–11392
Empresa Brasileira de Aeronautica S.A., 11384–11386
Saab, 11392–11394

Federal Communications Commission
RULES
Common carrier services:
Paging, common and private carrier; geographic licensing procedures; competitive bidding, 11616–11637
Television broadcasting:
Cable Television Consumer Protection and Competition Act of 1992—
Leased commercial access, 11364–11382
PROPOSED RULES
Common carrier services:
Paging systems development; competitive bidding, 11638–11643
Public mobile services—
Multiple address systems; 932/941 and 928/959 MHz band allocations, 11407–11410

Federal Election Commission
RULES
Civil monetary penalties; inflation adjustments, 11316–11317

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Interstate Power Co. et al., 11428–11431
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 11420–11421
Canyon Creek Compression Co., 11421
Cleveland Electric Illuminating Co., 11421
CNG Transmission Corp., 11421
Colorado Interstate Gas Co., 11421–11422
East Tennessee Natural Gas Co., 11422
El Paso Natural Gas Co., 11422
Florida Gas Transmission Co., 11422–11423
Midwestern Gas Transmission Co., 11423
Mississippi River Transmission Corp., 11423
Mojave Pipeline Co., 11423
National Fuel Gas Supply Corp., 11423–11424
NorAm Gas Transmission Co., 11424–11425
Northern Border Pipeline Co., 11425
Northern Natural Gas Co., 11425
Northwest Pipeline Corp., 11425–11426
Ohio Edison Co. et al., 11426
PECO Energy Co., 11426
Sonat Power Marketing, Inc., 11426
Southern Natural Gas Co. et al., 11426
Stingray Pipeline Co., 11426–11427
Tennessee Gas Pipeline Co., 11427
Texas-Ohio Pipeline, Inc., 11427
TransColorado Gas Transmission Co., 11427
Trunkline Gas Co., 11427
WestGas Interstate, Inc., 11428
West Texas Gas, Inc., 11428
Williams Natural Gas Co., 11428
Williston Basin Interstate Pipeline Co., 11428

Federal Prison Industries
NOTICES
New product, specific product, and significant expansion of existing product; definitions; public involvement procedures, 11465–11471

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 11454–11455
Permissible nonbanking activities, 11455
Meetings; Sunshine Act, 11455–11456

Federal Trade Commission
PROPOSED RULES
Trade regulation rules:
Telecommunications Act of 1996—
900-number rules; pay-per-call services advertising and operation and billing dispute procedures establishment, 11750–11756

Financial Management Service
See Fiscal Service

Fine Arts Commission
See Commission of Fine Arts

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Liberty Mutual Fire Insurance Co., 11522
Northland Insurance Co., 11522

Forest Service
NOTICES
Environmental statements; availability, etc.:
Tahoe National Forest, CA, 11413–11414

General Services Administration
NOTICES
Small business competitiveness demonstration program; solicitation procedures change, 11456

Government Ethics Office
RULES
Conflict of interests;
Executive agency ethics training programs, 11307–11314

Grain Inspection, Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Iron Range Livestock Exchange, Inc., MN; correction, 11414

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Health Care Financing Administration
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11458–11459

Housing and Urban Development Department
NOTICES
Public and Indian housing:
Housing assistance payments (Section 8)—
Rental voucher, rental certificate, and moderate rehabilitation programs; administrative fees; annual factors, 11526–11583

Indian Affairs Bureau
RULES
Education:
Special education; CFR part removed; Federal regulatory reform, 11324

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Employer social security taxes paid on employee tips; credit removal; correction, 11324–11325
PROPOSED RULES
Income taxes:
Limited partner for self-employment tax purposes; definition
Public hearing; location change, 11394

International Trade Commission
NOTICES
Import investigations:
Customs rules of origin; international harmonization, 11464–11465

Justice Department
See Federal Prison Industries
See Juvenile Justice and Delinquency Prevention Office

Juvenile Justice and Delinquency Prevention Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 11471–11472

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Labor Statistics Bureau
See Wage and Hour Division
NOTICES
Consumer price index; U.S. city average, 11472

Labor Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11477–11479

Land Management Bureau
NOTICES
Closure of public lands:
California, 11459–11460
Meetings:
Resource advisory councils—
Front Range, 11460
Opening of public lands:
California, 11460
Survey plat filings:
California, 11460–11461
Idaho, 11461

Management and Budget Office
NOTICES
Federal financial accounting standards:
Indian trust funds and Treasury judgment fund; interpretations, 11505–11508

National Highway Traffic Safety Administration
NOTICES
Child safety seats, purchase and distribution; agreement between General Motors and DOT; qualification certification criteria, 11513–11518

National Institute of Standards and Technology
NOTICES
Meetings:
Computer System Security and Privacy Advisory Board, 11415

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Atlantic tuna, 11410–11411
Northeastern United States fisheries—
Mid-Atlantic Fishery Management Council; public hearings, 11411–11412
International Code of Conduct for Responsible Fisheries implementation plan; availability, 11410
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11415–11416
National Weather Service; modernization and restructuring:
Weather Service Offices—
Automation certifications; transmittal to Congress, 11416
Permits:
Endangered and threatened species, 11416–11417

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Burke Museum, University of Washington, WA—
Inventory from Nebraska, 11462
Inventory from Washington State, 11461
Peabody Museum of Archaeology and Ethnology, MA; yellow wooden sunflowers, etc., 11462
San Diego Museum of Man, CA; Hopi Katsina masks, 11463
University of Nevada-Las Vegas, Physical Anthropology Laboratory, NV; inventory from Lyon County, NV, 11463

National Science Foundation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 11479
Meetings:
Networking and Communications Research and Infrastructure Special Emphasis Panel, 11479–11480

National Transportation Safety Board
NOTICES
Aircraft accidents; hearings, etc.:
Pensacola, FL; Delta Air Lines, Inc., flight 1288, MD-88, N927DA, 11480

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Bataan, 11326–11327
USS Mount Whitney, 11325–11326

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Entergy Operations, Inc., 11482–11483
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 11483–11505
Applications, hearings, determinations, etc.:
Boston Edison Co., 11480–11482

Office of Management and Budget
See Management and Budget Office

Personnel Management Office
NOTICES
Personnel management demonstration projects:
Army Department; Army Medical Research and Materiel Command, Fort Detrick, MD, 11676–11698
Army Department; Aviation Research, Development and Engineering Center, Federal Center, St. Louis, MO, 11700–11722
Army Department; U.S. Army Research Laboratory, Adelphi, MD, 11646–11673

Presidential Documents
ADMINISTRATIVE ORDERS
Narcotics; major producing and drug transit countries, certification (Presidential Determination No. 97-18 of February 28, 1997), 11589–11614

Public Health Service
See Centers for Disease Control and Prevention
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
RULES
Railroad Retirement Act:
Occupational disability and survivor annuities; eligibility, 11323–11324
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11508–11509

Securities and Exchange Commission
RULES
Securities:
Securities offerings trading practices rule (Regulation M); manipulation conduct preclusion, 11321–11323
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 11510–11511
Applications, hearings, determinations, etc.:
Painewebber/Kidder, Peabody Tax Exempt Money Fund, Inc., 11509

Small Business Administration
RULES
Small business size standards:
Affiliation with investment companies, 11317–11318

Southeastern Power Administration
NOTICES
Power marketing policy:
Jim Woodruff Project, 11413–11414

State Department
NOTICES
Meetings:
Historical Diplomatic Documentation Advisory Committee, 11511
U.S. foreign policy economic sanctions programs; briefing, 11512

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
SAMHSA Special Emphasis Panel II, 11459

Surface Transportation Board
NOTICES
Motor carriers:
Control exemptions—
Coach USA, Inc., 11518–11519
Railroad operation, acquisition, construction, etc.:
Burlington Northern Railroad Co., 11519
Minnesota Northern Railroad, Inc., 11519–11520
Orange County Transportation Authority et al., 11520–11521
RailAmerica, Inc., 11521
Union County Industrial Railroad Co. et al., 11521–11522

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
RULES
Organization, functions, and authority delegations:
Commandant, U.S. Coast Guard, et al., 11382–11383
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 11512

Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 11512–11513

Treasury Department
See Fiscal Service
See Internal Revenue Service

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 11522–11523

Wage and Hour Division
RULES
Migrant and seasonal agricultural worker protection: Employ, independent contractor, and joint employment, definitions; Federal regulatory reform, 11734–11748

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 11526–11583

Part III
Department of Education, 11586

Part IV
The President, 11589–11614

Part V
Federal Communications Commission, 11616–11643

Part VI
Personnel Management Office, 11646–11673

Part VII
Personnel Management Office, 11676–11698

Part VIII
Personnel Management Office, 11700–11722

Part IX
Environmental Protection Agency, 11724–11731

Part X
Department of Labor, Wage and Hour Division, 11734–11748

Part XI
Federal Trade Commission, 11750–11756

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 97–18 of February 28, 1997 11588

5 CFR

2638 11307

7 CFR

932 11314

11 CFR

111 11316

13 CFR

121 11317

14 CFR

39 (2 documents) 11318, 11320

Proposed Rules:

39 (5 documents) 11384, 11386, 11388, 11390, 11392

16 CFR

Proposed Rules:

308 11750

17 CFR

228 11321
229 11321
239 11321
240 11321
242 11321

20 CFR

216 11323

25 CFR

45 11324

26 CFR

1 11324

Proposed Rules:

1 11394

29 CFR

500 11734

32 CFR

706 (2 documents) 11325, 11326

40 CFR

52 (5 documents) 11327, 11332, 11334, 11337
80 11346
81 11337
132 11724
180 11360

Proposed Rules:

52 (5 documents) 11394, 11395, 11405
80 11405
81 11405

47 CFR

22 11616
76 11364
90 11616

Proposed Rules:

22 (2 documents) 11407, 11638
90 11638
101 11407

49 CFR

1 11382

50 CFR

Proposed Rules:

300 11410
630 11410
648 11411

Rules and Regulations

Federal Register
Vol. 62, No. 48
Wednesday, March 12, 1997

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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209–AA07

Executive Agency Ethics Training Program Regulation Amendments

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the OGE executive branchwide regulation on ''Executive Agency Ethics Training Programs'' to enable agencies to better focus their training resources on training employees in sensitive positions while ensuring that all executive branch employees receive sufficient training to enable them to understand the ethical responsibilities concomitant with their Government positions. While the current OGE regulation generally requires agencies to provide annual ''verbal'' ethics briefings to covered employees, the interim rule, once effective, will permit agencies to fulfill this requirement for most covered employees by means of a written briefing, provided generally that the employees receive verbal briefings at least once every three calendar years. Annual ethics briefings for employees who file public financial disclosure forms, however, will generally still have to be verbal and, starting next year (1998), will additionally be subject to a further requirement that a qualified individual be present during and after the briefings. This will focus agency ethics training resources upon employees in sensitive positions, while simultaneously freeing significant resources for use in other parts of the agency's ethics training program. Because this rule is being published as an interim rule, agencies will be able to take advantage of this flexibility in conducting their annual ethics briefings for part of the current 1997 training year as well as in future years. As noted, the provision requiring qualified individual personal presence for public filer briefings will not take effect until 1998.

DATES: This interim regulation is effective May 12, 1997, except for § 2638.704(d)(2)(ii) and Examples 1 through 3 following that paragraph, which will become effective on January 1, 1998. Comments by agencies and the public are invited and are due on or before April 11, 1997.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: John C. Condray. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov (for E-mail messages, the subject line should include the following reference—''Comments on interim training regulation amendments''). Copies of the two OGE memorandums discussed in the Supplementary Information section may be obtained, without charge, by contacting Mr. Condray at OGE. Those documents are also available on OGE's electronic bulletin board TEBBS (''The Ethics Bulletin Board Service''). Information about TEBBS may also be obtained from Mr. Condray. Information concerning this interim rule, the OGE memorandums and other OGE regulations and publications, is also available on OGE's World Wide Web site at http://www.access.gpo.gov/usoge.

FOR FURTHER INFORMATION CONTACT: John C. Condray, Office of the General Counsel and Legal Policy, Office of Government Ethics; telephone: 202–208–8000, extension 1152; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

A. Background and Analysis of Interim Rule Changes

Section 301 of Executive Order 12674 on Principles of Ethical Conduct, as modified by Executive Order 12731 (hereinafter referred to as Executive Order 12674), requires all executive branch agencies to ensure that all of their employees review the regulations that govern their conduct. Section 301 also requires agencies to provide mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or confidential financial disclosure reports, all employees who are contracting officers and procurement officials, and any other employees designated by the agency head. Agencies are also required to coordinate with the Office of Government Ethics (OGE) in developing annual ethics training plans. In accordance with these requirements, and consistent with its authority under the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, OGE promulgated a final rule implementing these requirements on April 7, 1992. See 57 FR 11886–11891, as corrected at 57 FR 15219 (April 27, 1992). The current version of this rule is codified at subpart G of 5 CFR part 2638, entitled ''Executive Agency Ethics Training Programs'' (the ''Training Regulation'').

In the nearly five years since the Training Regulation became effective, OGE has received a number of comments from ethics officials at the agency level. Partly in response to these comments, OGE has twice revised portions of the regulation. See 57 FR 58399–58400 (December 10, 1992), as corrected at 57 FR 61612 (December 28, 1992), and 59 FR 12145–12149 (March 16, 1994).

While the basic structure of the Training Regulation as currently in effect is regarded as sound, some agencies have voiced concerns over the requirement that all employees covered by the annual training requirement (a total of approximately 387,000 executive branch employees) receive annual verbal briefings. These commenters indicated that providing the resources to meet this requirement prevents their agencies from devoting resources to other desirable ethics training goals. These include: developing specific programs for employees who occupy sensitive positions and face more difficult conflicts issues; providing resources to increase the effectiveness of the initial ethics orientation received by all employees; and providing update training for those employees who are not required to receive annual briefings. The latter category is particularly troublesome, as agencies pointed out that under the Training Regulation an employee could receive an initial ethics orientation and then no other ethics information during the rest of his or her

Government career. Of course, the Training Regulation is a minimum standard, and agencies are encouraged to go beyond the minimum standard when feasible. But OGE is sensitive to the concern that the Training Regulation might be preventing agencies from developing programs to address these concerns by dictating too strictly the use of scarce agency resources.

Because of the need to provide agencies with the ability to more efficiently use their resources as soon as possible, and in particular because of the need to provide this relief for agencies during the 1997 calendar year training cycle, OGE is making these interim rule amendments effective 90 days after the publication of this rule, on May 12, 1997, except for the ''personal presence'' requirement for public filer briefings which, as noted above, will take effect on January 1, 1998. This course of action should allow agencies adequate time to prepare for the new, amended regulatory provisions and, once they become effective, to conduct a good portion of their 1997 ethics training in accordance with the various more flexible requirements. Thus, agencies will have greater flexibility in allocating their training resources while still ensuring that the requirements of Executive Order 12674 are met.

Annual Ethics Briefings

The most significant changes made in the interim rule will affect the requirement that agencies provide certain ''covered employees,'' as specified in section 301 of E.O. 12674 and restated at § 2638.704(b) of the Training Regulation, with annual ethics training. The interim rule will divide covered employees into two categories: (1) those who are ''covered employees'' because they file public financial disclosure reports (SF 278s); and (2) all other covered employees. While agencies will still be required to provide all covered employees with annual ethics training, now to be called ''briefings,'' the presentation requirements for the briefing will vary depending on which of the two categories of ''covered employee'' an employee falls under. Under the interim rule, public SF 278 filers will generally have to receive a verbal ethics briefing every year (as is the case under the current version of the Training Regulation). In addition, starting in calendar year 1998, the annual briefings for public filers will have to be offered with the presence of a qualified individual able to answer questions. All other covered employees will generally only have to receive a verbal ethics briefing at least once every three calendar years, with no requirement that a qualified individual be present. Written ethics briefings will be required for those calendar years where such employees do not receive a verbal ethics briefing.

The Office of Government Ethics has decided to distinguish between the level of annual ethics training provided for public financial disclosure filers and all other covered employees for the following reasons. Public filers occupy positions that involve policy-making. Congress has made the determination that individuals occupying these positions should disclose their financial interests on reports that are publicly available in order to promote public confidence in the integrity of the policy-making process. The Office of Government Ethics believes that the sensitivity and authority of these positions justify the heightened standard for annual ethics briefings as well. Not only does the authority concomitant with their positions create increased risks from a conflicts perspective, but the sensitivity and visibility of their positions increase the consequences of any real or apparent violation of ethics laws and regulations. From a practical standpoint, these individuals are easily identifiable. Agencies should be tracking the numbers and locations of employees in these positions as part of the management of their public financial disclosure systems. Although OGE believes that only public filers need receive the heightened briefings, comment is invited on this issue.

These interim rule amendments also retain the feature that allows an agency to count time spent in a *verbal* ethics briefing provided to the employee in accordance with new § 2638.704(d)(2) or (d)(3)(ii) against the requirement that an agency provide the employee with one hour of official duty time for the initial ethics orientation, if the briefing and orientation occur in the same calendar year. This provides an agency with an incentive to provide an incoming employee with a verbal ethics briefing early in the employee's Government service. The term ''verbal'' will also be added to § 2638.703(a)(3) on ethics orientation in the interim rule to avoid any confusion on this point. Providing such verbal training quickly is also helpful to new employees, because it will enable them to understand and apply the rules that govern their conduct to the activities they undertake as part of their everyday official duties.

In contrast, time spent in a *written* annual ethics briefing will not count against the time requirement for an initial ethics orientation taking place in the same year. A written annual ethics briefing need only include a brief reminder of the restrictions contained in the Standards of Ethical Conduct, and then can move on to focus on other specialized ethics topics (for example, post-employment restrictions). Thus, it may not provide a comprehensive summary of the Standards as is contemplated for the initial ethics orientation. Agencies should note, however, that if an initial ethics orientation were also to meet the content requirements for a *written* annual ethics briefing due in the same calendar year, it could serve as both the initial ethics training and as the written annual ethics briefing for covered employees receiving their annual ethics briefing in accordance with § 2638.704(d)(2)(iii)(A)(*2*), (d)(2)(iii)(B), (d)(3)(i) or (d)(3)(iii) of the interim rule (see the discussion below). This interrelationship between the initial ethics orientation and annual ethics briefing requirements will enable agencies to make the best use of agency resources and employee time by combining initial and annual ethics briefings where such a combination is feasible.

Annual Ethics Briefings for Public Filers

As with the current Training Regulation, § 2638.704(d)(2)(i) of the interim rule states that agencies must supply employees who file Standard Form 278 Executive Branch Personnel Public Financial Disclosure Reports (SF 278s) with an annual verbal ethics briefing that is a minimum of one hour of official duty time in duration. Beginning next year, the interim rule amendments will require executive agencies to take the extra step of providing the personal presence of a ''qualified individual,'' as defined at redesignated paragraph (b) of § 2638.702 in the interim rule, during and immediately following the briefing in order to respond to questions or concerns on the part of public filers receiving the briefing. Note that the qualified individual will not have to be physically present to fulfill this forthcoming requirement. The key is that those covered employees receiving the training have immediate and direct access to the qualified individual so that they may raise and resolve questions that arise during the briefing. The examples used in the regulation text, e.g., an ethics briefing provided through means of video conferencing where the qualified individual can respond to employee questions directly as part of the training even though the qualified individual is not physically present at

the training site, illustrate this point. This increased level of training will be required, starting in 1998, for the approximately 21,000 executive branch employees who file public financial disclosure reports. These employees constitute approximately 5.4 percent of the nearly 387,000 employees currently receiving annual ethics briefings, based on agency responses to OGE's 1995 ethics program questionnaires.

The qualified individual provision is similar to the requirement initially imposed when the Training Regulation was first promulgated in 1992, though that requirement entailed physical presence and was much broader in scope since it applied to all employees covered by the annual training requirement. As we indicated in the preamble to the publication of the April 1992 final rule document, OGE believes that the presence of an individual qualified to answer questions at the annual ethics briefing is the best way to address employee questions and concerns raised by the training. See 57 FR 11886, 11889 (April 7, 1992). Concerns over the ability of agencies to meet this requirement for all annual ethics briefings provided to the large number of employees subject to the annual briefing requirement, however, led OGE to conclude that while having a qualified individual present is often the most effective means of providing training, providing the most effective training was not a realistic minimum standard for all agencies to provide to all covered employees. The Office of Government Ethics accordingly dropped this requirement in a set of 1994 interim amendments to the Training Regulation in favor of requiring ''verbal'' training, either in person or by telecommunications, computer-based methods or recorded means. See 59 FR 12145, 12146–12147 (March 16, 1994).

This interim rule strikes a new balance between feasibility concerns and the desirability of having a qualified individual able to respond immediately to questions raised during the ethics briefing. These interim rule amendments will thus only require that a qualified individual be present during and immediately following the annual ethics briefings provided to those covered employees who hold the most senior and responsible positions, i.e., public SF 278 filers. The delayed effective date of January 1, 1998 for this requirement will allow agencies sufficient time to prepare for its imposition. The limited nature of the class affected (public SF 278 filers only) significantly offsets the feasibility concerns that led to the 1994 amendments that deleted the original across-the-board in-person requirement. These concerns are further addressed in this interim rule by providing agencies with the option of conducting the required annual ethics briefing for the vast majority of covered employees who are not SF 278 filers through the use of a written ethics briefing for up to two out of every three years.

Moreover, the interim rule will retain the exception permitting agencies to provide the annual ethics training by a verbal briefing to public filers without the presence of a qualified individual (even when that new requirement becomes effective next year) or by written means (starting once the new rule becomes effective May 12, 1997. The basic exception is found at 5 CFR 2638.704(d)(2)(i) of the current rule and § 2638.704(d)(2)(iii)(A) of this interim rule. Pursuant to the interim rule exception, the Designated Agency Ethics Official or his or her designee can make a written determination that circumstances make it impractical to provide the required verbal briefing to a particular public SF 278 filer employee or a group of such employees in accordance with paragraphs (d)(2)(i) and (d)(2)(ii) of the new rule. In those cases, the annual ethics briefing could be provided, without the presence of a qualified individual, by telecommunications, computer-based methods or recorded means or by written means, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review the written materials.

5 CFR 2638.704(d)(2)(ii) of the current Training Regulation allows agencies to provide the annual ethics training to covered employees who are special Government employees by means of written briefings or other means at the agency's discretion. The interim rule includes an equivalent section, at § 2638.704(d)(2)(iii)(B), for special Government employees who are public SF 278 filers. Agencies should note that public filer special Government employees receiving their annual ethics training under this exception must receive a minimum of one hour of official duty time for their written briefings. As with the current Training Regulation, special Government employees who are expected to work fewer than 60 days in a calendar year would not generally be subject to this one-hour minimum requirement, as they are usually not required to file public financial disclosure reports.

Annual Ethics Briefings for Other Covered Employees

As noted, agencies currently must generally provide all covered employees with a one-hour verbal briefing every calendar year. The interim rule amendments will provide significant new flexibility to agencies in training covered employees who do not file public financial disclosure reports. Under new § 2638.704(d)(3), agencies will be able to meet the annual briefing requirement for such employees by providing them with written ethics briefings on an annual basis for up to two out of every three calendar years. Unlike the written briefings to be allowed in circumstances qualifying for an exception for public filers under the interim rule, there will be no minimum official duty time requirement for written ethics briefings provided under this section. The Office of Government Ethics believes that imposing a one-hour written briefing requirement for covered employees who are not SF 278 filers would be too burdensome for agencies administratively. Given the large number of employees eligible to receive written briefings, OGE believes that it would be very difficult for agencies to keep track of the time each affected individual employee spends reviewing the written ethics briefing materials. Nonetheless, agencies will still be required to provide such employees with sufficient official time to review the written materials provided. Moreover, at least once every three years, unless excepted, such covered employees would have to receive a verbal ethics briefing of one hour in duration. However, the verbal briefings provided to such employees will not require the personal presence of a qualified individual during and immediately following the briefing.

The interim rule amendments retain, as to the once-every-three-years verbal briefing requirement for certain nonpublic filer covered employees, the exceptions currently found at § 2638.704(d)(2) of the Training Regulation. These exceptions will permit agencies, at their discretion, to fulfill the annual briefing requirement through the use of written materials every year where: (1) there is a written determination by the DesignatedAgency Ethics Official, or his or her designee, that circumstances make it impractical to provide a verbal briefing once every three years for a particular employee or group of employees; or (2) for special Government employees expected to work fewer than 60 days in a calendar year as well as uniformed service officers who serve on active duty for 30

or fewer consecutive days. See § 2638.704(d)(3)(iii)(A), (d)(3)(iii)(B) and (d)(3)(iii)(C). As to the second exception listed, OGE is not currently aware of any situation where a special Government employee subject thereto would receive an appointment greater than two years in duration, thus requiring a verbal ethics briefing under the general rule of the interim amendments. This particular exception may therefore be unnecessary. Although retained in the interim amendments, OGE requests that any agencies that have covered special Government employees meeting the definition in this exception notify us during the comment period.

The interim rule amendments, at new § 2638.704(d)(3)(iii)(D), provide that agencies may also provide written briefings only for employees who are ''covered'' by the annual training requirement solely because of discretionary designation by their agencies pursuant to renumbered § 2638.704(b)(6), including any such discretionarily designated micro-purchasers. See the discussion below.

The interim rule, consistent with OGE practice to date in administering the Training Regulation, will not require agencies to use a particular system to track which method of training (written or verbal) has been provided to such covered employees. The Office of Government Ethics will instead continue the practice of allowing agencies to adopt their own means of tracking, both for the agencies' own records and for OGE oversight purposes.

Annual Ethics Briefings for ''Contracting Officers''; Separate Category for Prior ''Procurement Officials'' Dropped

Numerous statutory and regulatory changes have occurred recently in the area of Federal acquisition requirements, including procurement integrity provisions. Of particular significance to the Training Regulation was the enactment last year of a complete revision to the procurement integrity law at 41 U.S.C. 423 and the issuance in early January of this year of final implementing Federal Acquisition Regulation (FAR) provisions thereunder. See section 4304(a) of the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106, and 62 FR 226–233 (January 2, 1997). The amended procurement law sets forth revised restrictions applicable to certain agency officials involved in the contracting process and also revises the related definitions, including those directly relevant to the Training Regulation.

In accordance with section 301(c) of Executive Order 12674 (issued in 1989 and modified in 1990 by E.O. 12731), the Training Regulation has specified two categories of contracting personnel who are ''covered employees'' subject to the annual ethics training requirement—''contracting officers'' and ''procurement officials.'' See current 5 CFR 2638.704(b)(5) and (b)(6). This interim rulemaking will update the Training Regulation provisions regarding annual training of agency officials involved in contracting functions in light of the procurement changes.

First, the old term ''procurement official'' (prior 41 U.S.C. 423(p)(3)), as referenced in E.O. 12674, is no longer found or defined in the amended procurement integrity statute nor the above-cited implementing FAR rule. There is only a reference to ''procurement *officers*'' [emphasis added] in the heading of one of the procurement integrity statutory restrictions, at amended paragraph (c) of 41 U.S.C. 423 regarding actions required of certain agency officials when contacted by offerors regarding non-Federal employment. That amended provision indicates that a ''procurement officer'' is an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold. The simplified acquisition threshold is defined in 48 CFR 2.101, as revised, as $100,000, except for certain limited contracts outside the United States, where the threshold is $200,000. For purposes of the demanding annual ethics briefing requirement under theTraining Regulation, OGE has decided that the residual, informal reference to ''procurement *officers*'' [emphasis added] in section 423(c) of the amended procurement integrity statute is, thus far, too uncertain a concept, particularly when coupled with the removal of the ''Procurement Integrity Certification for Procurement Officials'' (Optional Form 333) requirement in the above-cited FAR final rulemaking under the amended procurement integrity law.

Therefore, OGE has decided to remove the separate covered employee category for ''procurement officials'' from § 2638.704(b). The Office of Government Ethics notes that many agency employees involved in contracts over the simplified acquisition threshold will be otherwise covered as contracting officers or confidential financial disclosure report filers. Agencies may also discretionarily designate certain of them to receive annual briefings if they deem it appropriate. See § 2638.704(b)(4), (b)(5) and (b)(6) of this interim rule.

In contrast, the new procurement integrity definition of ''contracting officer'' in amended 41 U.S.C. 423(f)(5) is similar to the old definition at prior section 423(p)(4) of the law. The specific category for annual training of ''contracting officers,'' at § 2638.704(b)(5) of the Training Regulation, will therefore be retained with a reference to the new procurement law provision. There is one related important development brought about by the passage of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. No. 103–355. Among the steps taken by FASA to simplify acquisition procedures was the creation of simplified procedures for ''micro-purchases,'' defined as those acquisitions of supplies or services (except construction), the aggregate amount of which does not exceed $2,500 ($2,000 for construction). An interim rule implementing this portion of FASA was published as Federal Acquisition Circular (FAC) 90–24, 59 FR 64784–64788 (December 15, 1994), with the Federal Acquisition Regulatory Council adopting a final rule, with changes to the interim rule, as published as part of FAC 90–40, 61 FR 39189–39199 (July 26, 1996). See 41 U.S.C. 428(f) and 48 CFR 2.101, as revised. To maximize the benefit of these simplified procedures, agency heads are encouraged to delegate micro-purchase authority to individuals who will be using the supplies or services being purchased. See 48 CFR 1.603(b), as revised. Under the July 1996 final rule in FAC 90–40, individuals delegated micro-purchase authority are now not required to be ''contracting officers'' for the purposes of the Federal Acquisition Regulation. See 48 CFR 1.603(b), as revised. (Under the prior, interim FAR rule, micro-purchase authority holders were deemed contracting officers (see 48 CFR 13.601(d) (1996 edition), now removed).)

In order to harmonize the Training Regulation with the goals of FASA which encourages agencies to delegate micro-purchase authority widely, OGE will not require agencies to provide annual briefings to micro-purchasers who are not contracting officers. (Of course, contracting officers who are also ''micro-purchasers'' will still need to receive annual training based on their contracting officer status.) Individual agencies may, if they deem it appropriate based on conflict of interest concerns, discretionarily designate some or all of their micro-purchasers who are not contracting officers (or otherwise in a specifically covered category of

employees, see § 2638.704(b)) as covered employees subject to annual briefings under the discretionary designation provision at renumbered and revised § 2638.704(b)(6) (old 5 CFR 2638.704(b)(7)). In such cases, the interim rule at new § 2638.704(d)(3)(iii)(D) will permit agencies to provide annual briefings for any such discretionarily designated non-''contracting officer'' micro-purchasers solely through distribution of written materials (without the requirement for verbal briefings at least once every three years). This exception for written briefings will likewise apply to any other employees who are ''covered employees'' for annual ethics training purposes solely because of discretionary designation by their agencies pursuant to new § 2638.704(b)(6).

Other Issues

The Office of Government Ethics is also amending 5 CFR 2638.701. This change will add language explicitly including the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635 (''Standards''), and any agency supplemental regulation thereto, as items that employees must be made aware of through agency ethics training programs. The interim rule will also explicitly reference the conflict of interest statutes, 18 U.S.C. chapter 11. These interim rule changes will not substantively change the requirements of subpart G; an agency meeting the requirements of 5 CFR 2638.703 and 2638.704 will continue to fulfill the general requirement of § 2638.701. Reference to the Standards and supplemental regulations thereto were left out of § 2638.701, when it was originally published in the Federal Register in April 1992, because they had not been published at that time. The change in the interim rule will update the § 2638.701 reference.

The interim rule amendments will also make certain other, minor changes to the Training Regulation. Executive Order 12674 requires agencies to coordinate with OGE in developing annual agency ethics training plans. The current Training Regulation, at 5 CFR 2638.702(a)(3), provides that agencies are to file this written plan for annual ethics training with OGE by August 31 of each calendar year. The interim rule, at revised and redesignated § 2638.702(c), will formally eliminate the requirement that agencies file their plans with OGE on an annual basis. While the filing requirement was useful during the initial stage of the implementation of the Training Regulation, the utility of the measure has declined as agencies have become proficient in planning and providing the required ethics training. For this reason, OGE sent a memorandum to Designated Agency Ethics Officials (DAEO) on July 6, 1995 (DO–95–028), indicating that agencies should continue to develop written plans for annual ethics training, coordinating with OGE where necessary, but should maintain the plans at the agency rather than filing them each year with OGE. As noted in that memorandum, such coordination can include: consulting with OGE concerning upcoming OGE training materials, including videotapes, that may be useful in administering an agency's training program; contacting OGE's Ethics Information Center to obtain training materials from other executive branch agencies that may be adapted to the agency's needs; or consulting with OGE concerning other issues or problems an agency is facing in providing ethics training. The interim rule will codify that change in policy.

Even though agencies will no longer be required to file their annual ethics training plans with OGE, agencies remain subject to the requirement of Executive Order 12674 and the Training Regulation that they develop annual agency ethics training plans. See the OGE memorandum to DAEOs of January 6, 1997 (DO–97–002). The Office of Government Ethics will include the plans as a program element subject to the periodic agency ethics program reviews that OGE conducts. The plans should be completed by January 1 of the calendar year that they cover. The interim rule will slightly adjust the information required in the plan to conform to the changes in the structure of the annual ethics briefing and will require agencies to include a brief narrative description of the agency's annual ethics briefings. The Office of Government Ethics anticipates that a typical narrative will be only one or two paragraphs in length, and will include information concerning the projected content of the briefings, the method of presentation to be used, and the anticipated number of employees who will receive different types of presentations if the agency plans to use a number of different methods.

Since these interim rule amendments to the Training Regulation take effect on May 12, 1997, except for § 2638.704(d)(2)(ii) and Examples 1 through 3 following that section, which will take effect on January 1, 1998, OGE will allow agencies to count any 1997 calendar year training already completed under the current version of the Training Regulation before the effective date of these interim rule amendments. Thus, agencies will not have to redo any 1997 ethics training properly conducted under the 5 CFR part 2638, subpart G training requirements effective at the time of training. The new, generally liberalized training requirements should be followed for the remainder of 1997.

While the interim rule amendments will substantially alter § 2638.704, on annual agency ethics training (designated as ''annual ethics briefings'' under the interim revision), they will not significantly alter § 2638.703, initial agency ethics orientation. Some commenters have indicated a desire that OGE amend the Training Regulation to require that the initial ethics orientation be verbal instead of allowing the use of written materials. The Office of Government Ethics encourages agencies to strengthen the initial ethics orientation, and believes that verbal training is generally more effective than using written materials. However, OGE believes that the current fiscal situation makes it unreasonable to require agencies to provide employees receiving their initial ethics orientation with verbal training. Such a requirement will be particularly difficult for those agencies with widely scattered facilities. The other changes to subpart G contained in the interim rule should provide agencies with the ability to shift some of their ethics training resources to provide a more comprehensive initial ethics orientation for their new employees. The Office of Government Ethics notes that many agencies have already made some effort to expand the scope of their initial ethics orientations.

The most recent results available from OGE's Annual Agency Ethics Program Questionnaire (for CY 1995) showed that only 24 of 125 responding agencies provided their employees with nothing more than a copy of the Standards and an hour of official duty time for their ethics orientation. In addition to the potential for providing a more comprehensive initial ethics orientation, the changes made by the interim rule amendments will also place agencies in a better position to provide those employees who do not receive annual ethics briefings with periodic ethics-related updates or training to ensure that all employees better understand the statutes and regulations that govern their conduct.

For these reasons, the interim rule only makes minor changes to § 2638.703. The interim rule will amend § 2638.703(a)(3) to reflect changes to the annual ethics training requirement. The interim rule will also amend § 2638.703(b)(2), substituting ''each employee'' for ''employees'' to bring the

section into conformity with the language used in other parts of the section. The interim rule will add agency supplemental regulations to those materials that must be included with a copy of the Standards furnished for purposes of review only in accordance with § 2638.703(b)(1), as well as requiring that any agency supplemental ethics regulations be included in a summary provided to employees under § 2638.703(b)(2). Each of these subsections is also being amended to include the relevant agency supplemental regulations among the materials whose complete text must be retained and readily accessible in an employee's immediate office area for an agency to use these exceptions to § 2638.703(a)(1).

In addition to the above changes, the interim rule amendments also substitute the term ''ethics briefing'' for the term ''ethics training'' in § 2638.704 and in cross-references throughout subpart G. The new language parallels the language used in E.O. 12674, but does not represent a substantive change in the regulation.

As stated earlier, the goal of these interim rule amendments is to enable agencies to more efficiently use the resources that are currently available to the ethics training programs. Should these changes result in a diminishing level of resources for ethics training, OGE of course might have to seek to further amend the Training Regulation to reimpose the current across-the-board verbal briefing requirement.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to sections 553 (b) and (d) of title 5 of the United States Code, I find good cause for waiving the general notice of proposed rulemaking. Because the changes made by these interim rule amendments to the Training Regulation will enable agencies to more efficiently use their resources to provide required Government ethics orientation and annual briefings to their employees, it is essential to the administration of the executive branch ethics program that the changes made by this interim rule become effective in time for agencies to implement them during the course of their calendar year 1997 training cycle. However, this is an interim rule which will generally become effective on May 12, 1997, with a delayed effective date of January 1, 1998 for new § 2638.704(d)(2)(ii) and Examples 1 through 3 following that section. Moreover, this rule provides for a 30-day comment period. All interested persons are invited to submit written comments to OGE on these interim rule amendments, to be received on or before April 11, 1997. The Office of Government Ethics will review all comments received and consider any modifications which appear warranted to these amendments in adopting a final rule in this matter.

Executive Order 12866

In promulgating these interim amendments to the executive branchwide Government ethics training regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule has also been reviewed by the Office of Management and Budget under that Executive Order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal executive branch agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this interim rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: February 4, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending subpart G of part 2638 of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2638—[AMENDED]

1. The authority citation for part 2638 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart G—Executive Agency Ethics Training Programs

2. Section 2638.701 is revised to read as follows:

§ 2638.701 Executive agency ethics training programs; generally.

Each executive branch agency shall maintain a program of ethics training designed to ensure that all of its employees are aware of: the Federal conflict of interest statutes, located at chapter 11 of title 18 of the United States Code; the Principles of Ethical Conduct, found in part I of Executive Order 12674, as modified; the Standards of Ethical Conduct for Employees of the Executive Branch, codified at 5 CFR part 2635, and any agency supplemental regulation thereto; and how to contact agency ethics officials when the employee needs advice concerning ethics issues. As a minimum, each agency program shall consist of the initial ethics orientation required by § 2638.703 of this subpart and the annual ethics briefing required by § 2638.704 of this subpart. For purposes of this subpart, the term ''employee'' shall include special Government employees (as defined in 18 U.S.C. 202(a)) and officers of the uniformed services.

3. Section 2638.702 is amended by removing paragraph (b), removing the paragraph designation (a), and redesignating paragraphs (a)(1), (a)(2) and (a)(3) as new paragraphs (a), (b), and (c), respectively; further redesignating in newly designated paragraph (b), paragraphs (i) through (v) as paragraphs (b) (1) through (5), respectively; removing the word ''training'' and adding the word ''briefing'' in newly designated paragraphs (b) introductory text and (b)(5); and revising newly redesignated paragraph (c) to read as follows:

§ 2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics.

* * * * *

(c) Develop each year a written plan for annual ethics training to be conducted by the agency. The written plan for annual ethics training shall be completed by the beginning of the calendar year covered by the plan. In developing their written plans for annual ethics training, agencies shall coordinate with OGE where necessary. The plan shall contain a brief narrative description of the agency's annual ethics training, and shall also include:

(1) An estimate of the total number of agency employees who will be provided annual ethics briefings, including:

(i) An estimate of the number of public filers described in § 2638.704(b)(3) of this subpart who must be provided annual ethics briefings, including:

(A) An estimate of the number of public filers to whom annual ethics briefings will be presented verbally with a qualified individual present in accordance with § 2638.704(d)(2)(ii) of this subpart;

(B) An estimate of the number of public filers to whom annual ethics briefings will be presented under the exception provided at 2638.704(d)(2)(iii)(A) of this subpart; and

(C) An estimate of the number of special Government employees who are public filers to whom the annual ethics briefing will be presented in accordance with the exception provided at 2638.704(d)(2)(iii)(B) of this subpart; and

(ii) An estimate of the number of covered employees other than public filers described in § 2638.704(b)(3) of this subpart who must be provided annual ethics briefings, including:

(A) An estimate of the number of covered employees who will receive a verbal annual ethics briefing in accordance with 2638.704(d)(3)(ii) of this subpart;

(B) An estimate of the number of covered employees who will receive a written ethics briefing in accordance with 2638.704(d)(3)(i) of this subpart;

(C) An estimate of the number of covered employees who will receive a written ethics briefing in accordance with the exception provided at § 2638.704(d)(3)(iii)(A) of this subpart;

(D) An estimate of the number of special Government employees and the number of officers in the uniformed services who will receive a written ethics briefing in accordance with the exceptions provided at § 2638.704 (d)(3)(iii)(B) and (d)(3)(iii)(C) of this subpart; and

(E) An estimate of the number of covered employees who will receive a written ethics briefing in accordance with the exception provided at § 2638.704(d)(3)(iii)(D) of this subpart; and

(2) Any other information that the designated agency ethics official believes will facilitate OGE's review of the agency's ethics training program.

4. Section 2638.703 is amended by revising the second sentence of paragraph (a)(3) and revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 2638.703 Initial agency ethics orientation.

(a) * * *

(3) * * * If the agency provides verbal ethics training during official duty time, including a verbal ethics briefing provided in accordance with § 2638.704(d) of this subpart, or a nominee or other new entrant receives verbal ethics training provided by the Office of Government Ethics or the White House Office, the period of official duty time set aside for individual review may be reduced by the time spent in such training.

(b) * * *

(1) Furnishing each employee a copy of the Standards of Ethical Conduct for Employees of the Executive Branch at part 2635 of this chapter, and any supplemental regulation of the concerned agency, for the purposes of review only, provided that copies of the complete text of part 2635 and any supplemental regulation of the concerned agency are retained and readily accessible in the employee's immediate office for use by several employees; or

(2) Providing each employee with materials that summarize part I of Executive Order 12674, as modified by Executive Order 12731, 3 CFR, 1990 Comp., p. 306, the Standards of Ethical Conduct for Employees of the Executive Branch at part 2635 of this chapter, and any supplemental regulation of the concerned agency. To ensure that all employees have access to all of the information contained in these documents, an agency using this alternative must ensure that copies of the complete text of part 2635 and the agency's supplemental regulation thereto (if any) are retained and readily accessible in the employees' immediate office area.

5. Section 2638.704 is amended by removing the word ''training'' and adding the word ''briefings'' in its place in paragraph (b)(4), revising the section heading and paragraphs (a), (b)(5) and (d), removing paragraph (b)(6), redesignating paragraph (b)(7) as new paragraph (b)(6) and revising the text thereof, and revising the introductory text of paragraph (c), to read as follows:

§ 2638.704 Annual ethics briefings.

(a) *Annual ethics briefings.* Executive branch agencies must provide each employee identified in paragraph (b) of this section with an ethics briefing every calendar year. This briefing must meet the content requirements contained in paragraph (c) of this section and the presentation requirements contained in paragraph (d) of this section.

(b) * * *

(5) Contracting officers within the meaning of 41 U.S.C. 423(f)(5); and

(6) Other agency employees designated by the head of the agency or his or her designee based on a determination that such briefings are desirable in view of their particular official duties.

(c) *Content.* Agencies are encouraged to vary the emphasis and content of annual agency ethics briefings from year to year as necessary within the context of their ethics programs. The emphasis and content are generally a matter of each agency's sole discretion. However, each briefing must include, as a minimum:

* * * * *

(d) *Presentation.* The annual ethics briefing shall be presented in accordance with the following requirements:

(1) A qualified individual, as defined in § 2638.702(b) of this subpart, shall:

(i) Present the briefing, if the briefing is presented in person;

(ii) Prepare the recorded materials or presentation, if the briefing is presented by telecommunications, computer-based methods or recorded means; or

(iii) Prepare the written ethics briefing, if the annual ethics briefing requirement is satisfied through the use of a written ethics briefing in accordance with paragraphs (d)(2)(iii)(A)(*2*), (d)(2)(iii)(B), (d)(3)(i) or (d)(3)(iii) of this section.

(2) *Annual briefings for filers of public financial disclosure reports.* (i) The annual ethics briefings for covered employees described at paragraph (b)(3) of this section shall be verbal, either in person or by telecommunications, computer-based methods or recorded means. Employees must be provided a minimum of one hour of official duty time for this briefing.

(ii) A qualified individual, as defined in § 2638.702(b) of this subpart, shall be present during and immediately following the presentation. The qualified individual need not be physically present at the training site to meet this requirement. To meet the ''presence'' requirement, the covered employees receiving the briefing must have direct and immediate access to the qualified individual.

Example 1 to paragraph (d)(2)(ii): An agency provides annual ethics briefings for public filers in a regional office by establishing a video conference link between a qualified individual in the headquarters office and the regional office. Because the link provides for direct and immediate communication between the qualified individual and the employees receiving the briefing, this arrangement meets the presence requirement even though the qualified

individual is not physically located in the room where the briefing is received.

Example 2 to paragraph (d)(2)(ii): The agency described in the preceding example provides a briefing through a videotaped briefing instead of through a video conference link. The employees viewing the videotape are provided with a telephone at the training site and the telephone number of a qualified individual who is standing by during and immediately following the training to answer any questions. The briefing fulfills the physical presence requirement because the employees receiving the briefing have direct and immediate access to a qualified individual.

Example 3 to paragraph (d)(2)(ii): The physical presence requirement would not be met if the facts of Example 2 were varied so that the employees receiving the briefing did not have immediate access to the qualified individual, either because there was no phone provided at the training site or because the qualified individual was not standing by to respond to any questions raised. Merely providing the phone number of the qualified individual, without providing access to that individual who is standing by to answer questions raised during the briefing, does not provide the employees receiving the training with the direct and immediate access to the qualified individual necessary to satisfy the presence requirement.

(iii) *Exceptions.* An agency may provide the annual ethics briefing for employees described in paragraph (b)(3) of this section by means other than as specified in paragraphs (d)(2)(i) and (d)(2)(ii) of this section only under the following circumstances:

(A) Where the Designated Agency Ethics Official, or his or her designee, has made a written determination that circumstances make it impractical to provide the annual verbal ethics briefing with a qualified individual present, to a particular employee or group of employees in accordance with paragraphs (d)(2)(i) and (d)(2)(ii) of this section. In such cases, the annual ethics briefing may be provided without the presence of a qualified individual, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review the written materials, either by:

(*1*) Telecommunications, computer-based methods or recorded means; or

(*2*) Written means.

Example 1 to paragraph (d)(2)(iii)(A): The State Department has one public filer (the Ambassador) in the American Embassy in Ulan Bator, Mongolia. Because of the difference in time zones and the uncertainty of an ambassador's schedule, the designated agency ethics official for the State Department is justified in making a written determination that circumstances make it impractical to provide the annual ethics training as a verbal briefing, either with or without the presence of a qualified individual. The required annual ethics briefing can therefore be provided by written means in accordance with § 2638.704(d)(2)(iii)(A)(*2*). Note that an initial ethics orientation provided in the same calendar year in accordance with § 2638.703 of this subpart will meet this annual written ethics briefing requirement, provided the materials meet the content requirements stated at paragraph (c) of this section.

(B) In the case of special Government employees who are covered employees under paragraph (b)(3) of this section, an agency may (without the presence of a qualified individual) provide the annual ethics briefing by written or other means at the agency's discretion, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review the written materials.

(3) *Annual ethics briefings for all other covered employees.* (i) An agency may satisfy the annual ethics briefing requirement for covered employees other than those described at paragraph (b)(3) of this section for up to two out of every three calendar years through the distribution of a written ethics briefing to those employees. In such case, while not required to provide a minimum of one hour of official duty time, an agency must provide employees receiving their annual ethics briefings under this paragraph with sufficient official duty time to review the written materials provided. Note that an initial ethics orientation provided in the same calendar year in accordance with § 2638.703 of this subpart will meet this annual ethics briefing requirement (as well as that of § 2638.704(d)(3)(iii) of this section), provided the materials meet the content requirements stated at paragraph (c) of this section.

(ii) Except as permitted under paragraph (d)(3)(iii) of this section, the ethics briefing for covered employees other than those described at paragraph (b)(3) of this section shall be presented verbally at least once every three years, either in person or by telecommunications, computer-based methods or recorded means. Employees must be provided a minimum of one hour of official duty time for this verbal briefing. Unlike the annual ethics briefing described at paragraph (d)(2) of this section, for covered employees described at paragraph (b)(3) of this section, a qualified individual need not be present during and immediately following the verbal presentation provided under this paragraph.

(iii) *Exceptions.* An agency can provide covered employees receiving their annual ethics briefings under this paragraph (d)(3) with written briefings only, in accordance with paragraph (d)(3)(i) of this section, every year without the verbal ethics briefing as described at paragraph (d)(3)(ii) of this section at least once in any three calendar year period, under the following circumstances:

(A) Where the Designated Agency Ethics Official, or his or her designee, has made a written determination that circumstances make it impractical to provide an ethics briefing verbally once every three calendar years to a particular employee or group of employees in accordance with paragraph (d)(3)(ii) of this section;

(B) In the case of special Government employees who are expected to work fewer than 60 days in a calendar year;

(C) In the case of officers in the uniformed services who serve on active duty for 30 or fewer consecutive days; or

(D) Where a particular employee or group of employees are covered employees solely because of agency discretionary designation pursuant to paragraph (b)(6) of this section.

[FR Doc. 97–6160 Filed 3–11–97; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV96–932–4 FIR]

Olives Grown In California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1997 fiscal year and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers

enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, FAX (209) 487–5906, or Tershirra Yeager, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–5127, 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, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning January 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 1,200 producers of olives in the production area and approximately 4 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

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

The Committee met on December 11, 1996, and recommended 1997 expenditures of $2,159,265 and an assessment rate of $14.99 per ton covering olives from the appropriate crop year. The vote on the assessment rate was 13 in favor and 1 opposed, with the opposing grower maintaining that the assessment is not sufficient for the industry's needs. In comparison, last year's budgeted expenditures were $2,600,785. The assessment rate of $14.99 is $13.27 lower than last year's established rate. Major expenditures recommended by the Committee for the 1997 fiscal year include $390,890 for administration, $173,375 for research, and $1,595,000 for market development. Budgeted expenses for these items in 1996 were $388,350, $213,000, and $1,999,435 respectively.

The order requires that the assessment rate for a particular fiscal year apply to all assessable olives handled during the appropriate crop year, which for this season is August 1, 1996, through July 31, 1997. The assessment rate recommended by the Committee was derived by dividing anticipated expenses by actual receipts of olives by handlers during the crop year. Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

An interim final rule regarding this action was published in the January 17, 1997, issue of the Federal Register (62 FR 2549). That rule provided for a 30-day comment period. No comments were received.

The recommended budget and rate of assessment is usually acted upon by the Committee after the crop year begins and before the fiscal year starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses. The olive receipts for the year are 144,075 tons which should provide $2,159,684 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

This action reduces the assessment obligation imposed on handlers. The assessments will be uniform for all handlers. The assessment costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997 fiscal year began on January 1, 1997, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during the appropriate crop year; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided a 30-day comment period, no comments were received.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932 which was published at 62 FR 2549 on January 17, 1997, is adopted as a final rule without change.

Dated: March 4, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–6203 Filed 3–11–97; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 1997–3]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: This rule implements the Debt Collection Improvement Act of 1996 (''DCIA''), which requires the Commission to adopt a regulation adjusting for inflation the maximum amount of civil monetary penalties (''CMP'') under the Federal Election Campaign Act of 1971 (''FECA'' or ''Act''), as amended. Any increase in CMP shall apply only to violations that occur after the effective date of this regulation.

EFFECTIVE DATE: March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing final rules implementing the Debt Collection Improvement Act of 1996, Pub. L. 104–134, section 31001(s), 110 Stat. 1321–358, 1321–373 (April 26, 1996). The DCIA amended the Federal Civil Penalties Inflation Adjustment Act ''Inflation Adjustment Act''), 28 U.S.C. 2461 nt., to require that the Commission adopt regulations no later than 180 days after enactment of the statute and at least once every four years thereafter, adjusting for inflation that maximum amount of the CMP's contained in the status administered by the Commission.

Explanation and Justification

A CMP is defined at section 3(2) of the Interest Adjustment Act as any penalty, fine, or other sanction that (1) is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceedings or by federal law. This definition covers the monetary penalty provisions administered by the Commission.

The DCIA requires that these penalties be adjusted by the cost of living adjustment set forth in section 5 of the Interest Adjustment Act. The cost of living adjustment is defined as the percentage by which the U.S. Department of Labor's Consumer Price Index (''CPI'') for the month of June of the year preceding the adjustment exceeds the CPI for the month of June for the year in which the amount of the penalty was last set or adjusted pursuant to law. The adjusted amounts are then rounded in accordance with a specified rounding formula. However, the DCIA imposes a 10% maximum increase for each penalty for the first adjustment following its enactment.

Part 111—Compliance Procedure (2 U.S.C. 437g, 437d(a))

Section 11.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.

The Commission's general CMP provisions for violations of the FECA are found at 2 U.S.C. 437g(a) (5) and (6). They provide for a civil penalty not to exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in the violation.

These amounts are doubled in the case of a knowing and willful violation, to $10,000 or an amount equal to 200 percent of any contribution or expenditure involved in the violation.

In addition, the Act imposes CMP's on those who violate certain of its confidentiality provisions. 2 U.S.C. 437g(a)(12). The penalty for violating this section is a fine of not more than $2,000 or $5,000 in the case of a knowing and willful violation.

Sections 437g(a) (5) and (6) were enacted in 1976. Pub. L. 94–283, sec. 109, 90 Stat. 475, 483 (May 11, 1976). Section 437g(a)(12) was added in 1980. Pub. L. 96–187, sec. 108.93 Stat. 1339, 1361 (Jan. 8, 1980).

The civil penalties established in those sections have not subsequently been revised. The Commission is therefore increasing the amount of each maximum CMP by 10%. As explained above, neither the CPI formula nor the rounding off formula applies to this situation, since the Interest Adjustment Act limits the first post-enactment adjustment to 10%.

Accordingly, as of March 12, 1997, the maximum civil penalties set forth in 2 U.S.C. 437g(a) (5) and (6) are increased to the greater of the amount of any contribution or expenditure involved in the violation or $5,500. The maximum penalty for a knowing and willful violation is increased to the greater of twice the amount of any contribution or expenditure involved in the violation or $11,000. The maximum penalty for a violation of 2 U.S.C. 437g(a)(12) is

increased to $2,200, or $5,500 for a knowing and willful violation. These increased CMP's shall apply only to violations that occur after March 12, 1997.

These CMP provisions do not currently appear in the Commission's rules. However, section 4(1) of the Interest Adjustment Act directs the Commission to ''*by regulation* adjust each civil monetary penalty'' by the specified percentage (emphasis added). The Commission is accordingly adopting new 11 CFR 111.24, ''Civil Penalties,'' for this purpose. This section lists each penalty established at 2 U.S.C. 437g(a)(5), (6) and (12), adjusted upwards by 10% as required by the Interest Adjustment Act.

The Commission has no discretion in taking this action, but is doing so pursuant to a statutory mandate. These are thus technical amendments that are exempt from the notice and comment requirements of the Administrative Procedure Act at 5 U.S.C. 553(b)(B) and the legislative review requirements of 2 U.S.C. 438(d). These exemptions allow the rule to become effective immediately upon publication in the Federal Register. Accordingly, these amendments are effective on March 12, 1997.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act are not applicable to this final rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other laws. Therefore, no regulatory flexibility analysis is required.

List of Subjects in 11 CFR Part 111

Administrative practice and procedure, Elections, Law enforcement.

For the reasons set out in the preamble, Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended to read as follows:

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

1. The authority citation for Part 111 is revised to read as follows:

Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

2. Part 111 is amended by adding new section 111.24, to read as follows:

§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

(a) Except as provided in paragraph (b) of this section, a civil penalty negotiated by the Commission or imposed by a court for a violation of the Act or chapter 95 or 96 of title 26 shall not exceed the greater of $5,500 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of $11,000 or an amount equal to 200% of any contribution or expenditure involved in the violation.

(b) Any Commission member or employee, or any other person, who in violation of 2 U.S.C. 437g(a)912)(A) makes public any notification or investigation under 2 U.S.C. 437g without receiving the written consent of the person receiving such notification, or the person with respect to whom such investigation is made, shall be fined not more than $2,200. Any such member employee, or other person who knowingly and willfully violates this provision shall be fined not more than $5,500.

Dated: March 6, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97–6098 Filed 3–11–97; 8:45 am]

BILLING CODE 6715–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Affiliation With Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is amending part 121 section103(b)(5) of its size regulations to make clear that, for purposes of the Small Business Investment Act of 1958 (SBIAct), certain venture capital firms and pension plans that make investments in small firms are not considered affiliated with those firms in which they invest. As a result, for any assistance under the SBIAct, an applicant concern is not affiliated with these investors. This final rule is in accordance with section 208 of the Small Business Programs Improvement Act of 1996.

EFFECTIVE DATE: March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW, Washington, DC 20416, (202) 205–6618.

SUPPLEMENTARY INFORMATION: Division D of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 (Public Law 104–208) is the Small Business Programs Improvement Act of 1996 (SBPIAct), which amended the Small Business Investment Act of 1958 (SBIAct). Title II, Section 208 of the SBPIAct amends the definition of ''small business concern'' to clarify that, for purposes of the SBIAct, a business which receives an investment from certain types of venture capital firms and pension plans shall not be considered affiliates of one another. Specifically, section 208 of the amendment provides that such investments shall not cause a business concern to be deemed not independently owned and operated; and further, the investments shall be disregarded in determining whether or not a business is a small concern under the SBA's size standards. The types of venture capital and pension plans covered by this amendment are listed in § 121.103(b)(5), and include venture capital firms, investment companies, small business investment companies, employee welfare benefit plans or pension plans, and trusts, foundations, or endowments exempt from Federal income taxation.

The SBA had recently revised its Small Business Size Regulation (Federal Register, Wednesday, January 31, 1996, Vol. 61. No. 21 FR 3280) to extend its exclusion from affiliation for SBICs that invests in small businesses to include venture capital firms, pension funds, and certain charitable entities exempt from Federal taxation, as long as the investors do not control the concern. For purposes of that provision, control was defined in § 107.865 of this part. This rule eliminates the condition that affiliation between certain investors and small business would be found present if control by an investor existed over the small business. However, SBICs continue to be restricted in the exercise of control over a small business they invest in as stated in § 107.865 of this part.

Also, under that regulation and prior to this legislation, the exclusion from affiliation had been limited to applicants for assistance under the Small Business Investment Company (SBIC) Program, and only, as stated above, where the investor(s) did not control the concern. In addition to the SBIC Program, the SBIAct has established a number of other SBA financial and management assistance programs, namely: the Surety Bond Guarantee Program, the Certified State and Local Development Company Program the Lease Guarantees and the Pollution Control Guarantee Program. While the SBIAct may authorize all of these programs, assistance under the Lease Guarantee and the Pollution Control Guarantee Programs has not been available for several years. Nor

does SBA intend for this regulation to be understood as re-establishing the availability of assistance under those programs. Hence, since this legislation now extends the exclusion form affiliation to small concerns that apply for any type of assistance under the SBIAct, the exclusion from affiliation applies solely to applicants for available financial, management, or technical assistance under the SBIC, the Surety Bond Guarantee, and the Certified State and Local Development Company Programs.

SBA is issuing this as a final rule and not as a proposed rule, because Sba is merely incorporating this Congressionally mandated interpretation and clarification of the definition of small business into its existing regulations. SBA is not modifying or othewise changing its regulations in any way other than to the extent that the statute directs the Agency to do so.

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

Under the Regulatory Flexibility Act (RFA), SBA is not required to analyze the impact of this revision of its size regulations on small businesses because: the RFA applies to Federal rules that require public comment; and this is a final rule, incorporating into SBA's Small Business Size Regulations a Congressionally mandated interpretation and clarification of the definition of small business, and therefore requires no comment. In Fiscal Year 1995 SBICs invested in 2,221 enterprises. SBA believes that clarifying this definition actually increases the number of small businesses that may apply for assistance under the SBIAct. It also provides more programs under which these small businesses may seek assistance. Under this amendment, venture capital companies can invest in small businesses confident that they are not jeopardizing a small business' eligibility for additional funding and assistance as well.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule contains no new reporting or recordkeeping requirements. For purposes of Executive Order 12612, SBA certifies that this rule does not have federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

PART 121—[AMENDED]

1. The authority citation for 13 CFR Part 121 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5);

2. Section 121.103(b)(5) introductory text is revised to read as follows:

* * * * *

(5) For financial, management or technical assistance under the Small Business Investment Company Act of 1958, as amended, (and applicant is not affiliated with the investors listed in paragraphs (b)(5)(I) through (vi) of this section.

* * * * *

Dated: February 24, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–5739 Filed 3–11–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–24–AD; Amendment 39–9959; AD 97–06–02]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B, 214B–1 and 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214B, 214B–1, and 214ST helicopters, that currently establishes a retirement life of 40,000 high-power events for the lower planetary spider (spider). This amendment changes the method of calculating the retirement life for the spider from high-power events to a maximum accumulated Retirement Index Number (RIN) of 80,000, and makes this RIN applicable to an additional part-numbered spider. This amendment is prompted by fatigue analyses and tests that show certain spiders fail sooner than originally anticipated because of the unanticipated higher number of external load lifts and takeoffs (torque events) performed with those spiders, in addition to the time-in-service (TIS) accrued under other operating conditions. The actions specified by this AD are intended to prevent fatigue failure of the spider, which could result in failure of the main transmission and subsequent loss of control of the helicopter.

EFFECTIVE DATE: April 16, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Ft. Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–05–02, Amendment 39–8608 (58 FR 45833, August 31, 1993), which is applicable to BHTI Model 214B, 214B–1, and 214ST helicopters, was published in the Federal Register on November 14, 1996 (61 FR 58353). That action proposed changing the method of calculating the retirement life for the spider from high-power events to a maximum accumulated RIN of 80,000, and proposed making this RIN applicable to an additional part-numbered spider.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with some editorial changes. The FAA has determined that these changes will neither increase the economic burden on any operator nor expand the scope of the AD.

The FAA estimates that 11 helicopters of U.S. registry will be affected by this AD, that it will take approximately (1) 48 work hours to replace a spider affected by the new method of determining the retirement life required by this AD; (2) 2 work hours per helicopter to create the component history card or equivalent record (record), and (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10,920 per helicopter. Based on these figures, the

total cost impact of the AD on U.S. operators is estimated to be $28,220 for the first year and $27,120 for each subsequent year. These costs assume replacement of the spider in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the fleet's records and maintenance of the records for all the fleet each subsequent year.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8608 (58 FR 45833, August 31, 1993), and by adding a new airworthiness directive (AD), Amendment 39–9959, to read as follows:

AD 97–06–02 Bell Helicopter Textron, Inc.: Amendment 39–9959. Docket No. 94–SW–24–AD. Supersedes AD 93–05–02, Amendment 39–8608.

Applicability: Model 214B and 214B–1 helicopters, with lower planetary spider (spider), part number (P/N) 214–040–080–001 or –101, and Model 214ST helicopters, with spider, P/N 214–040–080–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the spider, which could result in failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card for the spider, P/N 214–040–080–001 or –101.

(b) For Model 214B and 214B–1 helicopters with spider, P/N 214–040–080–001, determine and record the accumulated Retirement Index Number (RIN) as follows:

(1) If the number of takeoffs and the number of external load lifts conducted with this spider are known, record one (1) RIN for each takeoff and one (1) RIN for each external load lift.

(2) If either the number of takeoffs or the number of external load lifts conducted with this spider are unknown, record twenty-four (24) RIN for each hour TIS.

(3) If either the number of takeoffs or the number of external load lifts conducted with this spider are unknown, or the hours TIS are unknown, record twenty-one thousand, six hundred (21,600) RIN for each calendar year TIS. Prorate the number of RIN, based on the number of calendar days, for a portion of a year.

(c) For Model 214B, 214B–1, and 214ST helicopters with spider, P/N 214–040–080–101, determine and record the accumulated RIN by multiplying the high-power events by two (2).

Note 2: BHTI Alert Service Bulletin (ASB) No. 214–94–53, which is applicable to Model 214B and 214B–1 helicopters, and ASB No. 214ST–94–68, which is applicable to Model 214ST helicopters, both dated November 7, 1994, pertain to this subject.

(d) After complying with paragraphs (a) and (b) or (c) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the number of takeoffs performed, and at the end of each day's operations, increase the accumulated RIN on the component history card as follows:

(1) For the Model 214B and 214B–1 helicopters:

(i) Increase the RIN by 1 for each takeoff.

(ii) Increase the RIN by 1 for each external load lift, or increase the RIN by 2 for each external load lift in which the load is picked up at a higher elevation and released at a lower elevation, and the difference in elevation between the pickup point and the release point is 200 feet or greater.

(2) For the Model 214ST helicopter:

(i) Increase the RIN by 2 for each takeoff.

(ii) Increase the RIN by 2 for each external load lift, or increase the RIN by 4 for each external load lift in which the load is picked up at a higher elevation and released at a lower elevation, and the difference in elevation between the pickup point and the release point is 200 feet or greater.

(e) Remove the spider, P/N 214–040–080–001 or –101, from service on or before attaining an accumulated RIN of 80,000. The spider is no longer retired based upon flight hours. This AD revises the Airworthiness Limitations Section of the maintenance manual by establishing a new retirement life for the spider of 80,000 RIN.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

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

(h) This amendment becomes effective on April 16, 1997.

Issued in Fort Worth, Texas, on February 26, 1997.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–6090 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–SW–25–AD; Amendment 39–9960; AD 97–06–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI) Model 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214ST helicopters, that currently establishes a mandatory retirement life of 50,000 high-power events for the main rotor mast (mast). This amendment requires changing the retirement life for the mast from high-power events to a maximum accumulated Retirement Index Number (RIN) of 140,000 and applying this RIN to an additional part-numbered mast. This amendment is prompted by fatigue analyses and tests that show certain masts fail sooner than originally anticipated because of an unanticipated high number of takeoffs and external load lifts in addition to the deterioration in strength that occurs under other operating conditions. The actions specified by this AD are intended to prevent fatigue failure of the mast, which could result in failure of the main rotor system and subsequent loss of control of the helicopter.

EFFECTIVE DATE: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–15–04, Amendment 39–8975 (59 FR 37155, July 21, 1994), which is applicable to BHTI Model 214ST helicopters, was published in the Federal Register on November 14, 1996 (61 FR 58356). That action proposed to require creation of a component history card or equivalent record on which to record RIN counts, and to establish a retirement life of a maximum accumulated RIN for the mast of 140,000.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that nine helicopters of U.S. registry will be affected by this AD, that it will take approximately (1) 48 work hours per helicopter to replace the mast; (2) 2 work hours per helicopter to create the component history card or equivalent record (record); and (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts will cost approximately $17,267 per mast. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $36,700 for the first year and $35,800 for each subsequent year. These costs assume replacement of the mast in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the fleet's records and maintenance of the records for all the fleet each subsequent year.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8975 (59 FR 37155), and by adding a new airworthiness directive (AD), Amendment 39–9960, to read as follows:

AD 97–06–03 Bell Helicopter Textron, Inc. (BHTI): Amendment 39–9960. Docket No. 94–SW–25–AD. Supersedes AD 94–15–04, Amendment 39–8975.

Applicability: Model 214ST helicopter with main rotor mast (mast), part number (P/N) 214–040–090–109 or P/N 214–040–090–121, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the mast, which could result in failure of the main rotor system and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card or an equivalent record for the affected mast.

(b) Determine and record the accumulated Retirement Index Number (RIN) to date on the mast as follows:

(1) For operators with mast, P/N 214–040–090–109, multiply the takeoffs and external load lifts (high-power events) total to date by 2.8 (round up the result to the next whole number).

(2) For operators with mast, P/N 214–040–090–121, multiply the factored flight hour total to date by 14 (round up the result to the next whole number).

(3) Record on the component history card the accumulated RIN.

Note 2: BHTI Alert Service Bulletin (ASB) No. 214ST–94–67, dated November 7, 1994, pertains to this subject.

(c) After complying with paragraphs (a) and (b) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the

number of takeoffs performed, and at the end of each day's operations, increase the accumulated RIN on the component history card as follows:

(1) Increase the RIN by 2 for each takeoff.

(2) Increase the RIN by 2 for each external load lift operation; or, increase the RIN by 4 for each external load lift operation in which the load is picked up at a higher elevation and released at a lower elevation, and the difference in elevation between the pickup point and the release point is 200 feet or greater.

(d) Remove the mast, P/N 214–040–090–109 or -121, from service on or before attaining an accumulated RIN of 140,000. The mast is no longer retired based upon flight hours. This AD revises the Airworthiness Limitations Section of the maintenance manual by establishing a new retirement life for the mast of 140,000 RIN.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

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

(g) This amendment becomes effective on April 16, 1997.

Issued in Fort Worth, Texas, on February 26, 1997.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–6089 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 239, 240, and 242

[Release Nos. 33–7400; 34–38363; IC–22540; International Series Release No. 1061; File No. S7–11–96]

RIN 3235–AF54

Anti-Manipulation Rules Concerning Securities Offerings; Corrections

AGENCY: Securities and Exchange Commission.

ACTION: Corrections to final regulations.

SUMMARY: This document contains technical amendments to correct the final rules for Regulation M and related amendments published in the Federal Register on January 3, 1997 (62 FR 520). In addition, the market notification requirement of § 242.104(h) (1) and (2) is postponed until April 1, 1997.

DATES: The second sentence of the Effective Date for the rule published at 62 FR 520 is corrected to read as follows: ''The requirements of § 242.104(h) (1) and (2) and § 242.104(i) and the amendments to § 240.17a–2 are effective on April 1, 1997.''

The corrections published in this document are effective March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy J. Sanow, M. Blair Corkran, or Alan J. Reed in the Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549, at 202–942–0772.

SUPPLEMENTARY INFORMATION: The Commission is announcing technical amendments to Rule 100 [1] under Regulation M, Rule 104 [2] under Regulation M, Rule 10b–18 [3] under the Securities Exchange Act of 1934 (''Exchange Act''),[4] Rule 13e–4 [5] under the Exchange Act, Item 508 under Regulation S–B,[6] Item 508 under Regulation S–K,[7] and Forms F–7,[8] F–8,[9] F–9,[10] and F–10 [11] under the Securities Act of 1933 (''Securities Act'').[12] These amendments correct drafting errors in the rule text published in the release adopting Regulation M (''Adopting Release'').[13] The Commission also is announcing that the market notice requirements of Rule 104(h) [14] will be effective on April 1, 1997.

I. Technical Amendments to Definitions in Rule 100

A. Business Day

In both the Adopting Release and the release proposing Regulation M (''Proposing Release''),[15] the Commission stated that it intended Regulation M to require restricted periods commencing either one or five business days prior to the day of pricing.[16] The Proposing Release defined ''business day'' as ''a twenty-four hour period determined with reference to the principal market for the securities to be distributed, and that includes a complete trading session for that market.'' [17]

The Commission adopted the definition of business day with a minor change: the business day was to commence at midnight and run 24 hours. This revision was intended to make the definition applicable to Rule 104, as well as Rules 101 and 102. Since publication of the Adopting Release, it has become apparent that the definition of business day as adopted had the potential effect of extending the restricted periods beyond the one or five days intended, where offerings are priced after the close of the principal market. This result, which would occur if the calculation of business day commenced at midnight, was not intended by the Commission.

Therefore, the definition of business day is amended by revising it to parallel the definition set forth in the Proposing Release. This correction eliminates the requirement that the 24 hour period begin at midnight.

B. Agent Independent of the Issuer

The text of the Adopting Release and the Proposing Release both indicated that a plan agent would not be deemed independent from the issuer where the issuer changed the source of shares to be distributed through the plan more frequently than once every three months. [18] However, the definition of ''agent independent of the issuer'' in Rule 100 under Regulation M, as adopted, did not expressly include this limitation. This result was not intended by the Commission.

Accordingly, the definition is amended by adding the phrase ''the source of the shares for the plan'' to the proviso in paragraph (2). This amendment clarifies that an agent will not be deemed independent if the issuer changes the source of shares to fund the plan more often than once every three months.

II. Other Technical Amendments

A. Rule 102

Paragraph (b)(7)(ii) of Rule 102 incorrectly refers to paragraph (b)(6)(i) rather than to paragraph (b)(7)(i). The amendment corrects this error.

[1] 17 CFR 242.100.

[2] 17 CFR 242.104.

[3] 17 CFR 240.10b–18.

[4] 15 U.S.C. 78a *et seq.*

[5] 17 CFR 240.13e–4.

[6] 17 CFR 228.508.

[7] 17 CFR 229.508.

[8] 17 CFR 239.37.

[9] 17 CFR 239.38.

[10] 17 CFR 239.39.

[11] 17 CFR 239.40.

[12] 15 U.S.C. 77a *et seq.*

[13] Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520.

[14] 17 CFR 242.104(h).

[15] Securities Exchange Act Release No. 37094 (April 11, 1996), 61 FR 17108.

[16] *See* Adopting Release, 62 FR at 525; Proposing Release, 61 FR at 17113.

[17] Adopting Release, 62 FR at 545.

[18] Adopting Release, 62 FR at 533; Proposing Release, 61 FR at 17121.

B. Rule 104

Paragraph (f)(2)(i) of Rule 104 is amended by replacing the phrase ''preceding business day'' with ''most recent prior day of trading in the principal market''.

Paragraph (j)(2)(ii) incorrectly refers to paragraph (j)(1) rather than to paragraph (j)(2)(i). The amendment corrects this error.

C. Rule 10b–18

The Commission is amending the punctuation in paragraph (a)(3)(i) of Rule 10b–18 to correct the grammatical structure of the paragraph.

D. Rule 13e–4

Paragraph (h)(5)(i) of Rule 13e–4 is corrected to use the term ''plan'' rather than ''issuer's plan'' and to cite § 242.100 of this chapter, rather than Regulation M.

E. Item 508 of Regulations S–B and S–K

Item 508 of Regulations S–B and S–K was amended in the Adopting Release to include disclosure regarding syndicate short covering transactions and penalty bids. These activities invariably occur after the offer and sale phase of an offering. [19] As adopted, Item 508 requires disclosure of these activities ''during the offering.'' [20] This language may be misconstrued to limit the disclosure to only activities conducted during the offer and sale period of an offering. Therefore, this phrase is replaced with ''in connection with the offering''.

F. Forms F–7, F–8, F–9, and F–10

Securities Act Forms F–7, F–8, F–9, and F–10 are corrected to reference Regulation M.

III. Change of Effective Date of Rule 104(h)

The effective date of Rule 104(h) (1) and (2) under Regulation M is changed from March 4, 1997 to April 1, 1997. This change applies only to the provisions requiring prior notice to the market on which stabilizing, syndicate covering transactions, or penalty bids will be effected. Thus, this change does not affect a person's obligation to disclose that a bid is for the purpose of stabilizing to the person with whom the bid is placed, as required pursuant to Rule 104(h)(1). This change will provide self-regulatory organizations with the opportunity to implement procedures for receiving notification.

[19] *See* Adopting Release, 62 FR at 535; Proposing Release, 61 FR at 17124–17125.

[20] Adopting Release, 62 FR at 543.

IV. Certain Findings

Under Section 553(b), notice of proposed rulemaking is not required when the agency for good cause finds that notice and public procedure thereon are ''impracticable, unnecessary, or contrary to the public interest.'' Because the amendments adopted today are technical corrections to clarify the application of Regulation M, the Commission finds that publishing the amendments for comment would be unnecessary. The rules being amended were adopted after notice and the opportunity for public comment. The changes are responsive to concerns raised with the staff relating to ambiguity in the current language of the rules. Furthermore, if the changes were delayed so as to allow notice and the opportunity for comment, there is the danger of confusion regarding the obligations of underwriters and other market participants, with the possibility of some disruption of the process of capital raising.

Under Section 553(d), publication of a substantive rule not less than 30 days before its effective date is required except as otherwise provided by the agency for good cause. For the same reasons as described above with respect to notice and opportunity for comment, the Commission finds that there is good cause for having the rules become effective on March 4, 1997.

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendments adopted in this release would not have a significant economic impact on a substantial number of small entities. This certification, including a statement of the factual basis therefor, is attached to this release as Appendix A.

The Paperwork Reduction Act of 1995 [21] does not apply to this rulemaking since these correcting amendments do not require any ''collection of information.''

Section 23(a)(2) of the Exchange Act [22] requires the Commission to consider the anti-competitive effects of any rules it adopts thereunder, and to balance them against the benefits that further the purposes of the Act. Furthermore, Section 2 of the Securities Act [23] and Section 3 of the Exchange Act, [24] as amended by the recently enacted National Securities Markets Improvements Act of 1996, [25] provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the act will promote efficiency, competition, and capital formation. Because the amendments here do not effect any substantive change in the rules they do not have any anti-competitive effects. Because they correct mistakes or clarify ambiguity present in the Commission's rules, they serve to promote efficiency, competition, and capital formation, and are therefore in the public interest.

[21] 44 U.S.C. 3501 *et seq.*

[22] 15 U.S.C. 78w(a)(2).

[23] 15 U.S.C. 77b.

[24] 15 U.S.C. 78c.

[25] Pub. L. No. 104–290, § 106, 110 Stat. 3416 (1996).

V. Statutory Authority

The necessary nomenclature amendments to Securities Act Forms F–7, F–8, F–9, and F–10 and Exchange Act Rule 13e–4, reflecting the removal of Rules 10b–6, 10b–6A, 10b–7, and 10b–8 under the Exchange Act and the adoption of Regulation M, and the amendment to Exchange Act Rule 10b–18, are adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, particularly Sections 2, 3, 9(a)(6), 10(a), 10(b), 13(e), 15(c), 17(a), and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78m(e), 78o(c), 78q(a), and 78w(a), and with respect to Forms F–7, F–8, F–9, and F–10, also under the Securities Act, particularly Sections 7, 10, and 19(a), 15 U.S.C. 77g, 77j, and 77s(a). The amendments to Item 508 of Regulations S–B and S–K are adopted under the Securities Act, 15 U.S.C. 77a *et seq.*, particularly Sections 6, 7, 8, 10, and 19(a), 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a); the Exchange Act, 15 U.S.C. 78a *et seq.*, particularly Sections 3, 4, 10, 12, 13, 14, 15, 16, and 23, 15 U.S.C. 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78p, and 78w; and the Investment Company Act, 15 U.S.C. 80a–1 *et seq.*, particularly Sections 8 and 38(a), 15 U.S.C. 80a–8 and 80a–37(a). Regulation M is adopted under the Securities Act, 15 U.S.C. 77a *et seq.*, particularly Sections 7, 17(a), 19(a), 15 U.S.C. 77g, 77q(a), and 77s(a); the Exchange Act, 15 U.S.C. 78a *et seq.*, particularly Sections 2, 3, 9(a), 10, 11A(c), 12, 13, 14, 15(c), 15(g), 17(a), 23(a), and 30, 15 U.S.C. 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(c), 78o(g), 78q(a), 78w(a), and 78dd–1; and the Investment Company Act, 15 U.S.C. 80a–1 *et seq.*, particularly Sections 23, 30, and 38, 15 U.S.C. 80a–23, 80a–29, and 80a–37.

VI. Correction of Publication

Accordingly, the publication on January 3, 1997 of the final regulations, which were the subject of FR Doc. No. 97–1, is corrected as follows:

§ 228.508 [Corrected]

1. On page 543, in the first column, in § 228.508, paragraph (j), on the sixth line, the phrase ''during the offering'' is corrected to read ''in connection with the offering''.

§ 229.508 [Corrected]

2. On page 543, in the second column, in § 229.508, paragraph (l), on the sixth line, the phrase ''during the offering'' is corrected to read ''in connection with the offering''.

§ 239.37 [Amended]

3. Form F–7 (referenced in § 239.37) is amended by removing the phrase ''Rules 10b–6, 10b–7 and 10b–8 under the Exchange Act'' from General Instruction III.A. and adding, in its place, the phrase ''Regulation M (17 CFR 242.100 through 242.105)''.

Note: Form F–7 does not appear in the Code of Federal Regulations.

§ 239.38 [Amended]

4. Form F–8 (referenced in § 239.38) is amended by removing the phrase ''Rules 10b–6, 10b–7 and 10b–13 under the Exchange Act. [*See* Exchange Act Release No. 29355 (June 21, 1991) containing exemptions from Rules 10b–6 and 10b–13.]'' from General Instruction V.A. and adding, in its place, the phrase ''Regulation M (17 CFR 242.100 through 242.105) and Rule 10b–13 under the Exchange Act [*See* Exchange Act Release No. 29355 (June 21, 1991) containing an exemption from Rule 10b–13.]''.

Note: Form F–8 does not appear in the Code of Federal Regulations.

§ 239.39 [Amended]

5. Form F–9 (referenced in § 239.39) is amended by removing the phrase ''Rules 10b–6 and 10b–7 under the Exchange Act'' from General Instruction III.A. and adding, in its place, the phrase ''Regulation M (17 CFR 242.100 through 242.105)''.

Note: Form F–9 does not appear in the Code of Federal Regulations.

§ 239.40 [Amended]

6. Form F–10 (referenced in § 239.40) is amended by removing the phrase ''Rules 10b–6 and 10b–7 under the Exchange Act'' from General Instruction III.A. and adding, in its place, the phrase ''Regulation M (17 CFR 242.100 through 242.105)''.

Note: Form F–10 does not appear in the Code of Federal Regulations.

§ 240.10b–18 [Corrected]

7. On page 543, in the third column, in § 240.10b–18, paragraph (a)(3)(i), the third line is corrected by inserting a comma between the words ''chapter'' and ''during'' and, in the fifth line, the phrase ''common stock, or during a distribution'' is corrected to read ''common stock or a distribution''.

§ 240.13e–4 [Corrected]

8. On page 544, in the first column, in § 240.13e–4, instruction 19 is revised to read:

Section 240.13e–4 is amended by removing the phrase ''an issuer's plan, as that term is defined in § 242.100 of Regulation M'' from paragraph (h)(5)(i) and adding, in its place, the phrase ''a plan as that term is defined in § 242.100 of this chapter''.

§ 242.100 [Corrected]

9. On page 545, in the second column, in the sixth paragraph, the 15th line is corrected by inserting the phrase ''the source of the shares to fund the plan,'' after the word ''period'' and before the phrase ''the basis''.

10. On page 545, in the second column, in the sixth paragraph, the 16th line is corrected by inserting a comma after the word ''plan'' and before the word ''or''.

11. On page 545, in the second column, in the ninth paragraph commencing ''Business day'', the paragraph is revised to read as follows:

''*Business day* refers to a 24 hour period determined with reference to the principal market for the securities to be distributed, and that includes a complete trading session for that market.''

§ 242.102 [Corrected]

12. On page 547, in the third column, in the seventh paragraph, in the fifth line, the phrase ''paragraph (b)(6)(i)'' is corrected to read ''paragraph (b)(7)(i)''.

§ 242.104 [Corrected]

13. On page 549, in the first column, in paragraph (j)(2)(i), in the 11th line, the phrase ''preceding business day'' is corrected to read ''most recent prior day of trading in the principal market''.

14. On page 550, in the second column, in paragraph (j)(2)(ii), in the fifth line, the phrase ''paragraph (j)(1)'' is corrected to read ''paragraph (j)(2)(i)''.

By the Commission,
Dated: March 4, 1997.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that: amendments to Rule 100 under Regulation M, Rule 104 under Regulation M, Rule 10b–18 under the Securities Exchange Act of 1934 (''Exchange Act''), Rule 13e–4 under the Exchange Act, Item 508 under Regulation S–B, Item 508 under Regulation S–K, and Forms F–7, F–8, F–9, and F–10 under the Securities Act of 1933 (''Securities Act''), when promulgated, will not have a significant economic impact on a substantial number of small entities.

The amendments noted above are intended to correct mistakes or oversights in the drafting of Regulation M and amendments to related rules and regulations. They are technical changes that do not affect the application of the rules to small entities. Furthermore, these amendments do not affect the Final Regulatory Flexibility Act analysis prepared in conjunction with the adoption of Regulation M and amendments to related rules, available in Public File No. S7–11–96.

Dated: March 4, 1997.

Arthur Levitt,

Chairman.

[FR Doc. 97–5837 Filed 3–11–97; 8:45 am]

BILLING CODE 8010–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 216

RIN 3220–AB22

Eligibility for an Annuity

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board amends its regulations to add the Surface Transportation Board to the list of entities for which employment will not break a ''current connection'' with the railroad industry which is necessary for the payment of occupational disability annuities and survivor annuities under the Railroad Retirement Act.

EFFECTIVE DATE: March 12, 1997.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611 (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Public Law 104–88, the ICC Termination Act of 1995, 109 Stat. 803, abolished the Interstate Commerce Commission and transferred many of the functions of that agency to a new entity, the Surface Transportation Board, within the Department of Transportation. Section 323 of that Act amended section 1(o) of the Railroad Retirement Act (45 U.S.C. 231(o)) to add the Surface Transportation Board as an entity for whom a former railroad worker may

work and not break his or her current connection with the railroad industry. The Railroad Retirement Act requires that an employee have a current connection under the RRA for entitlement to certain benefits, including an occupational disability annuity, a supplemental annuity, and survivor benefits. The Board proposes to amend § 216.16 of its regulations in order to add the Surface Transportation Board to the list of non-railroad work that will not break a current connection.

It has been determined that this is not a significant regulatory action for purposes of Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule. Because the rule simply reflects a nomenclature change, the Board dispensed with the publication of a proposed rule.

List of Subjects in 20 CFR Part 216

Railroad employees, Railroad retirement, Railroads.

For the reasons set out in the preamble, title 20, chapter II, part 216, subpart B, is amended as follows:

PART 216—ELIGIBILITY FOR AN ANNUITY

1. The authority citation for part 216 continues to read as follows:

Authority: 45 U.S.C. 231f.

2. Section 216.16 is amended by removing the ''or'' at the end of paragraph (b)(5)(iv), by adding ''or'' to the end of paragraph (b)(5)(v), and by adding paragraph (b)(5)(v)(i) to read as follows:

§ 216.16 What is regular non-railroad employment.

* * * * *

(b) * * *

(5) * * *

(v)(i) Surface Transportation Board.

* * * * *

Dated: March 4, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–6142 Filed 3–11–97; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 45

RIN 1076–AD16

Special Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is eliminating 25 CFR Part 45—Special Education as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of new and existing regulations.

EFFECTIVE DATE: April 11, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth Whitehorn at (202) 208–3559, or Jim Martin at (202) 208–3550 Bureau of Indian Affairs, Office of Indian Education Programs, MS–3512-MIB, OIE–23, 1849 C Street NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: On July 2, 1996, at 61 FR 34399, the Bureau of Indian Affairs published a proposed rule to eliminate 25 CFR Part 45—Special Education. This rule is no longer necessary, as it is repetitive of 34 CFR Chapter III, Parts 300—399, and the Bureau of Indian Affairs has an agreement with the Department of Education to use those regulations. Tribes have been notified through the BIA consultation meetings and by the publication of the proposed rule. There have been no objections to this elimination. The authority to issue rules is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rule is not a significant regulatory action under Executive order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Executive Order 12630

The Department has determined that this rule does not have significant ''takings'' implications. The rule does not pertain to ''taking'' of private property interests, nor does it affect private property.

Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

List of Subjects in 25 CFR Part 45

Education of individuals with disabilities, Special education.

PART 45—[REMOVED]

Under the authority of Executive Order 12866 and for the reasons stated above, part 45 is removed from Chapter 1 of Title 25 of the United States Code of Federal Regualtions.

Dated: March 4, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–6218 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8699]

RIN 1545–AV06

Credit for Employer Social Security Taxes Paid on Employee Tips; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to the removal of temporary regulations.

SUMMARY: This document contains a correction to the removal of temporary regulations (TD 8699) which were published in the Federal Register on Friday, December 20, 1996 (61 FR 67212). That publication removes the temporary regulations pertaining to the credit for employer FICA taxes paid

with respect to certain tips received by employees of food or beverage establishments.

EFFECTIVE DATE: December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Jean M. Casey, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The removal of temporary regulations that is subject to this correction is under section 45B of the Internal Revenue Code.

Need for Correction

As published, the removal of temporary regulations (TD 8699) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the removal of temporary regulations (TD 8699) which is the subject of FR Doc. 96–32249 is corrected as follows:

On page 67212, column 3, in the heading, the RIN ''RIN 1545–AS19'' is corrected to read ''RIN 1545–AV06''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–6067 Filed 3–11–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS MOUNT WHITNEY (LCC 20) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia, 22332–2400, *Telephone Number:* (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS MOUNT WHITNEY (LCC 20) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS: Annex I, section 3(a), pertaining to the location of the foreward masthead light in the forward quarter of the ship; and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as an amphibious command vessel. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for the USS MOUNT WHITNEY to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Five

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*		*
USS MOUNT WHITNEY	LCC 20	N/A	N/A	X	84
* * *	*	*	*		*

Approved:

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

Dated: January 29, 1997.

[FR Doc. 97–6221 Filed 3–11–97; 8:45 am]

BILLING CODE 3810–FF–P

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS BATAAN (LHD 5) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate, General, Navy Department, 200 Stovall Street, Alexandria, Virginia, 22332–2400, Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BATAAN (LHD 5) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex I, section 2 (g), pertaining to the distance of the sidelights above the hull; Annex I, section 3(a), petaining to the location of the foreward masthead light in the forward quarter of the ship; and the horizontal distance between the forward and after masthead lights; and Annex I, section 3 (b), pertaining to the positioning of the sidelights in relationship to the forward masthead light, without interfering with its special functions as an amphibious assault ship. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Two of § 706.2 is amended by adding the entry for USS BATAAN following the entry for USS BOXER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
	*	*	*	*	*	*	*	*	*
USS BATAAN	LHD 5						2.9	98.6	
	*	*	*	*	*	*	*	*	*

3. Table Five of § 706.2 is amended by adding the entry for USS BATAAN following the entry for USS Boxer:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3 (a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	* *	*	*		
USS BATAAN	LHD 5		X	X	39.7
* * *	* *	*	*		

Approved:

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

Dated: January 29, 1997.

[FR Doc. 97–6220 Filed 3–11–97; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL138–1a; FRL–5660–2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves Illinois' May 5, 1995, May 26, 1995, and May 31, 1995, submittal of miscellaneous amendments to Illinois'' Volatile Organic Material (VOM) Reasonably Available Control Technology (RACT) rules as requested revisions to Illinois' State Implementation Plan (SIP) for ozone. VOM, as defined by the State of Illinois, is identical to ''volatile organic compounds'' (VOC), as defined by EPA. These amendments make certain clarifications to the State's VOM RACT rules, and includes an exemption of certain polyethylene foam packaging operations from these rules. In this action, EPA is approving the requested SIP revision through a ''direct final'' rulemaking; the rationale for this approval is set forth below. Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final rulemaking and address the comments received in a new final rule; otherwise, no further rulemaking will occur on this requested SIP revision.

DATES: This action will be effective May 12, 1997 unless adverse comments not previously addressed by the State or EPA are received by April 11, 1997. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the Illinois submittal are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address.

A copy of this SIP revision is also available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), Room 1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

On September 9, 1994 and October 21, 1996 (59 FR at 46562 and 61 FR at 54556), the EPA approved VOM reasonably available control technology (RACT) rules under 35 Illinois Administrative Code (IAC) parts 218 and 219. Part 218 covers the Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County), while part 219 covers the Metro-East ozone nonattainment area (Madison, Monroe, and St. Clair Counties). These rules were submitted by Illinois in order to comply with the RACT ''fix-up'' and ''catch-up'' requirements under sections 182(a)(2)(A) and 182(b)(2) of the Clean Air Act (Act).

On September 12, 1994, and October 27, 1994, the Illinois Environmental Protection Agency (IEPA) filed proposed amendments to parts 218 and 219 with the Illinois Pollution Control Board (Board). These amendments were proposed in order to clarify certain applicability provisions, control requirements, and compliance dates contained within these rules. Also included in these proposed amendments was an exemption for certain polyethylene foam packaging operations from the rules'' RACT requirements. Public hearings on the proposed amendments were held on November 4, December 2, December 15, December 16, 1994, and January 9, 1995, in Chicago, Illinois. On April 20, 1995, the Board adopted Final Opinions and Orders for the proposed amendments. The amendments became effective on May 9, 1995, and were published in the Illinois Register on May 19, 1995. The IEPA formally submitted the amendments to EPA in two submittals dated May 5, 1995, as a revision to the Illinois SIP for ozone; supplemental

submittals were submitted on May 26, 1995, and May 31, 1995.

II. State Submittal

A summary of the rule amendments contained in the State's requested SIP revision follows. Where the same change has been made in both Part 218 and Part 219, the change to both parts is discussed together.

Section 218.106

Section 218.106(e) affects coating operations on electromotive diesels in Cook County, Illinois, by extending the compliance date for meeting coating VOM content limits specified in sections 218.204(m) (2) and (3) to March 25, 1995. Illinois has submitted this amendment to make its rules consistent with a Chicago Federal Implementation Plan (FIP) revision for General Motors Corporation's Electromotive Division located in Cook County, Illinois promulgated on March 24, 1994 (59 FR 14110).

Sections 218.480 and 219.480

These amendments affect RACT rules under subpart T covering pharmaceutical manufacturing in the Chicago and Metro East ozone nonattainment areas. Sections 218/219.480(i) have been added to provide that equipment and operations emitting VOM at a source subject to the applicability provisions for pharmaceutical manufacturing under sections 218/219 (a) or (c), and are used to produce pharmaceutical products or a pharmaceutical-like product such as a hormone, enzyme, or antibiotic, shall be deemed to be engaged in the manufacture of pharmaceuticals for purposes of this Subpart.

These amendments clarify that equipment and processes which are already subject to the VOM RACT requirements for pharmaceutical manufacturing under subpart T are not additionally subject to subpart RR, the requirements for miscellaneous organic chemical manufacturing processes, when manufacturing a pharmaceutical-like product such as a hormone, enzyme, or antibiotic.

Section 218.686

This amendment affects aerosol can filling lines in the Chicago ozone nonattainment area. Section 218.686(a)(2)(B) is revised to clarify that a source only needs to demonstrate its inability to use the through-the-valve filling method for a particular product by meeting any one of the three factors listed, rather than all three. The previous language incorrectly used the word ''and,'' instead of ''or,'' which inadvertently required the source to meet all three factors instead of just one.

Section 218.966

Section 218.966(c) specifies control practices of components leaking VOM at Miscellaneous Organic Chemical Manufacturing Plants in the Chicago ozone subject to Part 218, Subpart RR. A compliance date of March 15, 1995, has been added to this subsection because Illinois inadvertently omitted this compliance date when this subsection was first adopted.

Sections 218.980 and Sections 219.980

Part 218/219, subpart TT contains non-Control Techniques Guidelines (CTG) RACT requirements for various sources which do not fall under any subpart of the rules. Sections 218/219.980(f), have been revised to add polyethylene foam packaging operations to the list of units exempted from the control requirements under subpart TT. This exemption would affect only one source, Freeflow Packaging (Freeflow), located in the Chicago ozone nonattainment area. Freeflow manufactures polyethylene foam sheets that are used as a wrapping to prevent marring and scratching during shipment of electronic equipment and cabinets. VOM emissions from this operation come mainly from the blowing agent, isobutane, which is used to expand polymeric resin to form the sheets. Without this exemption, Freeflow would be required under sections 218/219.986 to use either an emission capture and control techniques that achieve an overall reduction in uncontrolled VOC emissions of at least 81 percent from each emission unit, or comply with an equivalent alternative control plan which has been approved by IEPA and EPA in a federally enforceable permit or as a SIP revision.

In support of the rule exemption, Illinois submitted a November 25, 1996, RACT analysis which indicated that Freeflow's estimated control cost to comply with the regulation, $10,260 to $11,370 per ton of VOM emissions destroyed, is economically unreasonable for this particular source. To further support the exemption, Illinois investigated other state RACT regulations which covered polyethylene foam packaging. Two California regulations were identified: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4682, and South Coast Air Quality Management District (SCAQMD) Rule 1175. Illinois found that there were five polyethylene foam packaging operations covered under SJVUAPCD Rule 4682. These five sources, however, do not manufacture foam sheets such as Freeflow, and therefore utilize a different operation, which involves the extrusion of pelletized resin using steam or heat to form the final product without the need to employ VOM containing blowing agents. As for SCAQMD Rule 1175, no affected polyethylene foam packaging operations were identified by SCAQMD during the rulemaking process. Therefore, Illinois could not find any polyethylene foam packaging operation similar to Freeflow's operation which is subject to RACT regulations. Because Illinois has found that RACT control to be economically unreasonable for Freeflow's polyethylene foam packaging operation, and that Freeflow's particular type of operation is not covered under RACT in other states, Illinois is requesting that EPA approve the addition of polyethylene foam packaging operations to the list of operations exempted from control under subpart TT.

III. Review of Submittal

The EPA finds that the amendments contained in 35 IAC sections 218.106, 218.480, 218.686, 218.966, and 219.480 are acceptable clarifications to Illinois'' existing VOM RACT rules and represent no deviation from RACT. EPA also finds that the RACT exemption for polyethylene foam packaging operations contained in sections 218.980(f) and 219.980(f) is adequately justified by Illinois. EPA, therefore, approves these amendments as a revision to the Illinois SIP for ozone.

IV. Rulemaking Action

The EPA approves Illinois' May 5, 1995, May 26, 1995 and May 31, 1995, submittals requesting revisions to the Illinois SIP for ozone. These revisions include 35 IAC sections 218.106, 218.480, 218.686, 218.966, 218.980, 219.480, and 219.980.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on May 12, 1997 unless, by April 11, 1997, 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 rulemaking 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 on May 12, 1997.

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

V. 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 D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 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. sections 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 Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: November 27, 1996.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(123) to read as follows:

§ 52.720 Identification of plan.

(c) * * *

(123) On May 5, 1995, May 26, 1995, and May 31, 1995, the State of Illinois submitted miscellaneous revisions to its Volatile Organic Material (VOM) Reasonably Available Control Technology (RACT) rules contained in 35 Illinois Administrative Code Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, and Part 219: Organic Material Emission Standards and Limitations for the Metro East Area. These amendments clarify certain applicability provisions, control requirements, and compliance dates contained within these regulations. Also included in these amendments is an exemption for certain polyethylene foam packaging operations from VOM RACT requirements.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources.

(A) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart A: General Provisions, Section 218.106; Subpart T: Pharmaceutical Manufacturing, Section 218.480; Subpart DD: Aerosol Can Filling, Section 218.686; Subpart RR: Miscellaneous Organic Chemical Process, Section 218.966; Subpart TT: Other Emission Units, Section 218.980. Amended at 19 Ill. Reg. 6848; effective May 9, 1995.

(B) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart T: Pharmaceutical Manufacturing, Section 219.480; Subpart TT: Other Emission Units, Section 219.980. Amended at 19 Ill. Reg. 6958, effective May 9, 1995.

[FR Doc. 97–6076 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[DE027–1004a, DE020–1004a; FRL–5679–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware: Open Burning and Non-CTG RACT Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision consists of two control measures to reduce volatile organic compound (VOC) emissions. The intended effect of this action is to approve these two control measures which are creditable towards Delaware's 15 Percent Rate of Progress Plan (RPP). This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective May 12, 1997 unless notice is received on or before April 11, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III office, or via e-mail at quinto.rose@epamail. epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On February 17, 1995, the Delaware Department of Natural Resources & Environmental Control (DNREC) submitted revisions to its State Implementation Plan (SIP) for Delaware. One of those revisions pertains to the 15% Rate of Progress Plan (RPP) for the State of Delaware. The other revision is Delaware Regulation 13—Open Burning, which is one of the control measures to achieve the 15% reduction. Included in this latter revision are definitions pertaining to the open burning regulation, as well as additions and deletions from Delaware Regulation 1, Definitions and Administrative Principles. The definitions are for ceremonial fires, conservation practices, open burning, prescribed burning, rubbish, silviculture, and trade waste. The 15% Rate of Progress Plan, itself, which was submitted on February 17, 1995 is the subject of a separate rulemaking.

On January 20, 1994, Delaware submitted a revision to Regulation 24, section 43, Other Facilities that Emit Volatile Organic Compounds (VOCs). This section number was changed to section 50 on July 28, 1995 (60 FR 38712). A direct final approval was published for the Delaware VOC regulation on May 3, 1995 (60 FR 21707), excluding the Non-Control Technique Guideline (Non-CTG) RACT part: sections 50(a)(5) and 50(b)(3). These sections pertain to control requirements on wood furniture coatings, industrial wastewater, and shipbuilding and repair; and submitting an alternative control plan. This Non-CTG RACT regulation is one of the control measures for the 15% RPP.

Background

Section 182(b)(1) of the Clean Air Act as amended in 1990 (CAAA), requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide volatile organic compound (VOC) emissions by 15% from a 1990 baseline. The plans were to be submitted by November 15, 1993 and the reductions were to be achieved within 6 years of enactment or November 15, 1996. The VOC reductions achieved by Delaware Regulation 13—Open Burning and Delaware Regulation 24, Section 50—Non-CTG RACT are creditable toward the 15% plan.

Non-CTG RACT

Section 50 of Delaware Air Regulation 24 is entitled, Other Facilities that Emit Volatile Organic Compounds. This section is also called the Non-CTG RACT regulation since it applies to any facility that emits VOCs and is not otherwise subject to any other federally approved RACT regulation of the Delaware SIP that was developed pursuant to a CTG. The CAAA requires the implementation of RACT for all major stationary sources of VOCs not otherwise covered by a CTG. For severe nonattainment areas including Kent and New Castle Counties, the CAAA defines a major stationary source as any stationary source, or group of sources located within a contiguous area and under common control, that emits or has the potential to emit at least 25 tons per year (tpy) of VOCs. Prior to the passage of the CAAA, non-CTG RACT was required in New Castle county for stationary sources for which there was not a CTG, and which had the potential to emit 100 tpy or more of VOCs from all non-CTG processes. There was no requirement for non-CTG RACT in Kent County prior to the CAAA. Therefore, all VOC emissions reductions from non-CTG RACT in Kent County are creditable toward the 15% reduction requirement. However, reductions from non-CTG RACT in New Castle County are only creditable for sources that emit or have the potential to emit between 25 and 100 tpy of VOCs from processes not covered by a CTG. Delaware adopted its non-CTG RACT regulation in January 1993. Any facility located in Kent or New Castle County is subject to the regulation if it has sources not regulated by a CTG that as a group have the potential to emit VOC emissions of 25 tons or more per year. The regulation requires overall VOC emission reduction from affected sources at a facility of at least 81 percent by weight. This reduction can be achieved through the use of capture and control techniques or other methods as appropriate. Facilities may also comply with section 50 by submitting an alternative plan. These alternative plans must be approved by EPA as source-specific SIP revisions.

Open Burning

A revision to Delaware Air Regulation 13—Open Burning, was adopted in the autumn of 1994. New regulatory requirements prohibit open burning and prescribed burning in Kent and New Castle Counties during the peak ozone season, June 1 through August 31. Regulatory requirements also prohibit the disposal of refuse by open burning, open burning in the conduct of a salvage operation, and open burning of fallen leaves.

EPA's review of this material indicates that the two control measures mentioned are approvable, and their reductions creditable toward the 15% RPP. EPA is approving the Delaware SIP revisions for the two control measures for the 15% RPP: Open Burning and Non-CTG RACT, which were submitted on February 17, 1995 and January 20, 1994, respectively.

EPA has determined that the submittals made by the State of Delaware satisfy the relevant requirements of the CAAA. EPA's detailed review of Delaware's Open Burning and Non-CTG Regulations are contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA is approving these SIP revisions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revisions should

adverse or critical comments be filed. This action will become effective May 12, 1997 unless, by April 11, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 12, 1997.

Final Action

EPA is approving the Delaware Regulation 13—Open Burning and Regulation 24—sections 50(a)(5) and 50(b)(3)—Non-CTG RACT.

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.

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 Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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 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 CAAA, petitions for judicial review of this action to approve revisions to the Delaware SIP must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 1997. Filing a petition for reconsideration by the Administrator of this 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 regarding the Delaware Open Burning and Non-CTG RACT SIP revisions may not be challenged later in proceedings to enforce its requirements. (See section (b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 10, 1997.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.420 is amended by adding paragraphs (c)(48) and (c)(49) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(48) Revisions to the Delaware State Implementation Plan submitted on January 20, 1994 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of January 20, 1994 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 24—Control of Volatile Organic Compound Emissions—Sections 50(a)(5) and 50(b)(3), effective November 24, 1993.

(B) Regulation 24—Control of Volatile Organic Compound Emissions, Section 50—Other Facilities that Emit Volatile Organic Compounds—Sections 50(a)(5) and 50(b)(3)—Non-CTG RACT, effective November 24, 1993.

(ii) Additional material.

(A) Remainder of January 20, 1994 State submittal pertaining to Regulation 24, sections 50(a)(5) and 50(b)(30) referenced in paragraph (c)(48)(i) of this section.

(49) Revisions to the Delaware State Implementation Plan submitted on February 17, 1995 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of February 17, 1995 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 13—Open Burning, effective February 8, 1995.

(B) Regulation 13—Open Burning, effective February 8, 1995.

(C) Administrative changes to Regulation 1, Definitions and Administrative Principles: addition of the following definitions: ''ceremonial fires'', ''conservation practices'', ''prescribed burning'', and ''silviculture''; and revision to the following definitions: ''open burning'', ''rubbish'', and ''trade waste'' adopted February 8, 1995.

(ii) Additional material.

(A) Remainder of the February 17, 1995 State submittal pertaining to Regulation 13—Opening Burning referenced in paragraph (c)(49)(i) of this section.

* * * * *

[FR Doc. 97–6073 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[VA021–5015; FRL–5697–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Rule Pertaining to VOC RACT Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to amendments to Virginia's reasonably available control technology (RACT) requirements for major stationary sources of volatile organic compounds (VOCs) located in the Richmond moderate ozone nonattainment area and the Northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. The intended effect of this action is to approve the submitted amendments to Virginia's major source VOC RACT requirements because they strengthen Virginia's SIP. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on April 11, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 566–2092.

SUPPLEMENTARY INFORMATION:

I. Background Information

A formal SIP revision was submitted by Virginia on November 6, 1992 amending its VOC RACT regulation applicable to non-CTG sources. Non-CTG sources are those major stationary sources or categories of stationary sources of VOC that are not otherwise subject to RACT by a SIP-approved regulation developed pursuant to a control technique guideline (CTG) document.

On September 27, 1995, EPA published a direct final approval of the SIP revision (60 FR 49767). The intended effect of this action was to approve the amendments Virginia submitted for its major source VOC RACT requirements because those amendments strengthened the SIP and satisfied the ''RACT Catch-Up'' requirements of section 182 (a)(2)(A) of the Clean Air Act (the Act). EPA issued the direct final rulemaking without prior proposal because the Agency viewed it as noncontroversial and anticipated no adverse public comments. The final approval was published in the Federal Register with a provision for a 30 day comment period (60 FR 49767). Concurrently, a notice of proposed rulemaking (NPR) pertaining to the same amendments to Virginia's VOC RACT requirements was also published in the Federal Register on September 27, 1995 (60 FR 49813). EPA announced that the final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the final rule. Since EPA received one adverse comment regarding the direct final rule during the prescribed comment period, the final rule converted to a proposal, and on December 8, 1995 (60 FR 62990), EPA withdrew its otherwise effective date.

Today's final rulemaking action addresses the comment received during the public comment period and announces EPA's final action on this SIP revision. Other specific requirements of VOC RACT ''Catch-Ups'' and the rationale for EPA's action were explained in the rulemaking notices published on September 27, 1995 and will not be restated here.

II. Public Comment and EPA's Response

One letter of comment was submitted on the action taken by EPA on September 27, 1995. The letter was submitted on behalf of the Bear Island Paper Company on October 26, 1995. The following discussion summarizes and responds to the comments received.

Comment: The commenter stated that EPA should not approve the revision to Virginia's SIP because the regulation does not address circumstances where, despite the best efforts of Virginia and the subject source, the compliance deadline cannot be met because an appropriate RACT level cannot be determined within a timely fashion. The commenter suggests that the SIP revision be rewritten to set forth a new compliance deadline or, alternatively, set forth a mechanism for establishing a new deadline. The commenter argues that these provisions are warranted because EPA has not issued the relevant guidance documents required by section 183 of the CAA. The commenter asserts that Virginia has not been able to rely on EPA guidance in determining RACT for many sources.

EPA Response: EPA disagrees with the commenter's remarks. The Commonwealth of Virginia chose the appropriate deadline of May 31, 1995, for compliance of all Non-CTG sources subject to RACT. The May 31, 1995 deadline for compliance with RACT was established in the CAA section 182(b)(2). Section 182(b)(2) requires states to submit SIP revisions requiring RACT on major stationary sources of VOCs that ''provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.'' Sources wishing to receive an extension of the RACT compliance deadline have the ability to request a compliance date extension from the Commonwealth of Virginia. In those instances where a source can clearly demonstrate the need for a compliance date extension from a SIP regulation's deadline, and the Commonwealth of Virginia determines such a compliance date extension is justifiable, the Commonwealth may

request a approval of a source-specific SIP revision.

III. Final Action

EPA is approving the revisions to Virginia rule § 120–04–0407 ''Standard for Volatile Organic Compounds'' submitted on November 6, 1992 as a revision to the Virginia SIP.

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 Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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 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 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 to approve revisions to the Virginia SIP VOC control requirements must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Dated: February 25, 1997.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

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 VV—Virginia

2. Section 52.2420 is amended by adding paragraphs (c)(106) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(106) Revisions to the Virginia State Implementation Plan submitted on November 6, 1992 by the Virginia Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of November 6, 1992 from the Virginia Department of Environmental Quality transmitting revisions to Virginia's State Implementation Plan, pertaining to volatile organic compound requirements in Virginia's air quality regulations adopted by the Virginia State Air Pollution Control Board on October 30, 1992 and effective on January 1, 1993.

(B) Revisions to § 120–04–0407 (A), (B), and (C) that lower the applicability threshold for RACT to 50 tons per year in the Virginia portion of the Metropolitan Washington, D.C. serious ozone nonattainment area and add a RACT compliance date of May 31, 1995 for major VOC sources in the Richmond moderate ozone nonattainment area, and the Virginia portion of the Metropolitan Washington, D.C. nonattainment area, effective January 1, 1993.

(ii) Additional material.

(A) Remainder of State submittal pertaining to § 120–04–0407.

* * * * *

[FR Doc. 97–6080 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[VA059–5016a and VA060–5016a; FRL–5698–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Standards for Volatile Organic Compound (VOC) Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions pertain to amendments to Virginia's controls on sources of volatile organic compound (VOC) emissions in the Northern Virginia portion of the Metropolitan Washington DC serious ozone nonattainment area and the Richmond moderate ozone nonattainment area. These revisions were submitted to impose additional control measures on sources of VOC emissions to provide emissions reductions which are creditable toward the 15% Rate of Progress Plan (15% ROP Plan) in the Northern Virginia portion of the Metropolitan Washington DC nonattainment area; and to impose additional control measures in the Richmond nonattainment area to reduce VOC emissions. The intended effect of today's action is to approve the submitted amendments to Virginia's rules imposing additional controls on sources of VOCs because they strengthen the Virginia SIP and provide creditable measures upon which Virginia can rely in the 15% ROP Plan for Northern Virginia. Additionally, EPA is taking action in this rulemaking to approve a renumbering of the revised Virginia regulations submitted in these SIP revisions. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective April 28, 1997, unless within April 11, 1997, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 566–2092, or via e-mail at gaffney.kristeen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the CAA requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide VOC emissions by 15 percent from a 1990 baseline. These 15% Rate of Progress (ROP) Plans were to be submitted by November 15, 1993 and the reductions were required to be achieved within 6 years of enactment or November 15, 1996.

This rulemaking addresses two SIP revisions submitted by the Commonwealth of Virginia. The first revision, submitted on April 22, 1996, consists of two new regulations and revisions to previously SIP-approved State regulations to regulate sources of volatile organic compounds (VOCs). The second SIP revision also addressed in this rulemaking, submitted by the Virginia Department of Environmental Quality on April 26, 1996, consists of revisions to Virginia Regulation 120–04–40—''Emission Standards for Open Burning.''

The amendments to Virginia's SIP require reasonably available control technology (RACT) determinations on all sources with the theoretical potential to emit 25 tons per year (TPY) or greater of VOCs in the Northern Virginia portion of the Metropolitan Washington DC nonattainment area. This amendment lowers the RACT applicability threshold from the CAA mandated 50 TPY to 25 TPY in the Northern Virginia area. The Commonwealth relies, in part, on the reductions achieved by lowering the RACT applicability threshold to satisfy the Northern Virginia portion of the 15% ROP Plan for the Metropolitan Washington DC nonattainment area. These SIP revisions impose additional VOC reduction measures on graphic arts processes, lithographic printing processes, and impose restrictions on open burning in both the Northern Virginia portion of the Metropolitan Washington DC nonattainment area and in the Richmond nonattainment area. Elsewhere in today's Federal Register, EPA is proposing conditional interim approval of the 15% ROP Plan for the Northern Virginia portion of the Metropolitan Washington DC nonattainment area. It should be noted that a redesignation request and maintenance plan for the Richmond area are currently pending before EPA. The reductions achieved by these SIP revisions in the Richmond area are part of the maintenance plan portion of the Commonwealth's redesignation request for Richmond. The redesignation request and maintenance plan themselves will be the subject of a separate rulemaking by EPA.

II. Summary of the Virginia Submittals

The April 22, 1996 submittal consists of revisions to Virginia rule 120–1 ''General Definitions'', rule 120–4–4, ''Emission Standards for General Process Operations'', rule 120–4–36, ''Emission Standards for Flexographic, Packaging Rotogravure, and Publication Rotogravure Printing Lines'', and Appendix S (''Air Quality Programs Policies and Procedures''), plus submittal of new rules 120–4–43 ''Emission Standards for Sanitary Landfills'' and rule 120–4–45, ''Emission Standards for Lithographic Printing Processes''. Please note that EPA is not taking action on rule 120–4–43 ''Emission Standards for Sanitary Landfills,'' (renumbered to be Article 43, Rule 4–43, 9 VAC 5–40–5800) in this direct final rulemaking. That revision to the Virginia SIP will be the subject of a separate rulemaking. The April 26, 1996 SIP revision consists of revisions to Virginia regulation 120–04–40, ''Emission Standards for Open Burning.''

The Commonwealth of Virginia is in the process of renumbering its Regulations for the Control and Abatement of Air Pollution. The regulations submitted for revision as part of this review have been renumbered and adopted by the Commonwealth as follows:

Virginia regulation	Former rule number	Revised rule number
General Definitions	VA 120–01–01	9 VAC 5–10–10.
	VA 120–01–02	9 VAC 5–10–20.
General Process Operations	VA 120–04–04	9 VAC 5–40–240–420.
Flexographic and rotogravure printing	VA 120–04–36	9 VAC 5–40–5060–5190.

Virginia regulation	Former rule number	Revised rule number
Open Burning	VA 120–04–40	9 VAC 5–40–5600–5640.
Lithographic Printing	VA 120–04–45	9 VAC 5–40–7800–7940.

While the purpose of this rulemaking is to act upon the SIP revisions as meeting the requirements of the CAA and achieving reductions creditable for the 15% ROP Plan, EPA is also taking action to approve of the renumbering of the above regulations in today's rulemaking and incorporating them in the Virginia SIP. Please note that throughout the rest of this rulemaking, the rules will be referred to by the newly revised numbering scheme.

The SIP revision submitted by the Commonwealth on April 22, 1996, also contains revisions to the requirements for sources of nitogen oxides (NO_X) in section 9 VAC 5–40–310 (formerly numbered 120–04–0408). Virginia's rule to impose RACT on major stationary NO_X sources in Northern Virginia was originally submitted as a SIP revision to EPA on November 9, 1992. EPA has not yet taken final rulemaking action on this SIP revision. The Commonwealth's April 22, 1996 submittal revises section 9 VAC 5–40–310 from the version of the rule originally submitted to EPA on November 9, 1992. EPA is currently evaluating the combined revisions submitted by the Commonwealth to impose RACT on major stationary sources of NO_X, and shall take action on section 9 VAC 5–40–310 in a separate rulemaking notice.

III. Detailed Description of the SIP Revisions

A. Revisions to 9 VAC 5–10–20 ''General Definitions''

Definitions were added for ''Federally enforceable'', ''Implementation plan''; ''Potential to Emit'' and ''State enforceable''; and definitions were revised for ''Administrator'' and ''Volatile organic compound''.

B. Revisions to Article 4 ''Emission Standards for General Process Operations'' (Rule 4–4), Subsection 9–VAC 5–40–300 ''Standard for Volatile Organic Compounds''

Subsection 9–VAC 5–40–300 applies to any facility with the theoretical potential to emit 25 tpy or greater of VOCs that is not already subject to a SIP regulation developed pursuant to a federal Control Technique Guideline (CTG) or to any other federally approved SIP RACT rule. The CAA requires RACT for all major stationary sources (defined in serious ozone nonattainment areas as sources emitting 50 tons per year) of VOCs in nonattainment areas not otherwise covered by a CTG-based SIP regulation. Section 5–40–300 meets this requirement and requires source-specific RACT determinations for all sources meeting the major source definition not already subject to a CTG or source category based RACT limit.

In the April 22, 1996 SIP revision, the applicability threshold has been lowered from the CAA mandated 50 TPY to 25 TPY in the Northern Virginia portion of the Metropolitan Washington DC ozone nonattainment area. The VOC RACT requirement now applies to all facilities that are within a stationary source and have a theoretical potential to emit 25 tpy or greater in the Northern Virginia portion of the nonattainment area. The 15% ROP Plan for the Northern Virginia portion of the Metropolitan Washington D.C. area relies on this control strategy to satisfy the 15% VOC reduction goal. The revised Virginia regulation requires sources with the potential to emit 50 tpy VOCs or greater in Northern Virginia and sources with the potential to emit 100 tpy VOCs or greater in Richmond to meet the CAA-mandated May 31, 1995 RACT compliance deadline. The revised Virginia regulation requires sources with the potential to emit equal to or greater than 25 tpy but less than 50 tpy in Northern Virginia to comply with RACT no later than May 31, 1996.

Article 4 ''Emission Standards for General Process Operations'' (Rule 4–4), subsection 9 VAC 5–40–420 ''Permits'' was clarified by adding that the ''operation'' of a facility is also an activity for which a source may be required to obtain a permit.

C. Article 36 ''Emission Standards for Flexographic, Packaging Rotogravure, and Publication Rotogravure Printing Lines'' (Rule 4–36)

Rule 4–36 is an existing SIP approved rule that has been revised to lower the applicability from 100 tpy to 25 tpy in the Northern Virginia area, add applicability to surface coatings other than printing inks, add alternative procedures for determining compliance, add compliance requirements for single and multiple printing lines and averaging periods, and clarify certain terms and provisions.

D. Article 45, ''Emission Standards for Lithographic Printing Processes'' Rule 45, All Sections 9 VAC 5–40–7800 Through 9 VAC 5–40–7940

This is a new regulation being added to Virginia's SIP to control VOC emissions from lithographic printing processes that use a substrate other than a textile. This rule applies to all non-exempted lithographic printing processes that use a substrate other than a textile in the Northern Virginia and Richmond areas with the theoretical potential to emit VOCs equal to or greater than 10 tons per year and 100 tons per year, respectively, for these areas.

E. Revisions to Virginia regulation Part IV, ''Emission Standards for Open Burning'' Rule 4–40

Effective April 1, 1996 new regulatory provisions prohibit open burning of construction waste, debris waste and demolition waste both on site and in landfills in the Northern Virginia portion of the Metropolitan Washington DC ozone nonattainment area during the peak ozone season, the months of June, July and August. Effective in January 2000, this ban will extend to the Richmond and Hampton Roads ozone nonattainment areas.

F. Revisions to Appendix S ''Air Quality Program Policies and Procedures''

Appendix S describes materials available to the public on the Commonwealth's procedures and guidelines for meeting certain VOC regulations. Revisions being approved today include administrative changes to I.D and II.C; and revisions to AQP–3 ''Procedures For the Measurement of Capture Efficiency For Determining Compliance With Volatile Organic Compound Emission Standards Covering Surface Coating Operations and Graphic Arts Printing Processes (Flexographic, Packaging Rotogravure, and Publication Rotogravure Printing Lines)''.

IV. Final Action

EPA is approving the April 22, 1996 and April 26, 1996 SIP revisions submitted by the Commonwealth of Virginia as revisions to the Virginia SIP except for rule 9 VAC 5–40–5800, pertaining to sanitary landfills, and section 9 VAC 5–40–310, pertaining to

sources of NO_X, for the reasons discussed in this notice. EPA is approving the SIP revisions, as discussed in this notice, because they satisfy CAA requirements and comport with all applicable federal policies and guidance.

EPA is approving these revisions without prior proposal because the Agency views them as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve these SIP revisions should adverse or critical comments be filed. This action will be effective April 28, 1997 unless, by April 11, 1997, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 28, 1997.

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.

VI. 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 Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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 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 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 section 5 U.C.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 to approve revisions to the Virginia SIP must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 1997. Filing a petition for reconsideration by the Regional 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 to approve revisions to the Virginia SIP to control VOCs may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: February 25, 1997.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart VV of chapter I, title 40 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 VV—Virginia

2. Section 52.2420 is amended by adding paragraphs (c)(113) and (c)(114) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(113) Revisions to the Virginia State Implementation Plan submitted April 22, 1996 by the Virginia Department of Environmental Quality.

(i) Incorporation by reference.

(A) Letter of April 22, 1996 from the Virginia Department of Environmental Quality transmitting revisions to Virginia's State Implementation Plan, pertaining to regulations to control sources of volatile organic compounds (VOC).

(B) Revisions to the following Virginia regulations adopted by the Virginia

State Air Pollution Control Board on December 19, 1995 and effective April 1, 1996:

(*1*) Added Definitions to 9–VAC 5–10–20 (General Definitions) (Former SIP Section 120–01–02)—''Federally enforceable'', ''Implementation plan'', ''Potential to Emit'', and ''State enforceable''; and revised definitions to 9–VAC 5–10–20 for ''Administrator'' and ''Volatile organic compound''.

(*2*) Revisions to Article 4, Rule 4–4, ''Emission Standards for General Process Operations'' (Former SIP Citation—Part IV, Rule 4–4), sections 9 VAC 5–40–300A. (citation only), B., and C. (Former SIP Sections 120–04–0407A., B, and C).

(*3*) Revisions to Article 4, Rule 4–4, section 9–VAC 5–40–420 (Former SIP Section 120–04–0419)—Introductory paragraph and paragraphs 5–40–420.1 through .5 are revised, while paragraph 5–40–420.6 is added.

(*4*) Revisions to Article 36, Rule 4–36 ''Emission Standards for Flexographic, Packaging Rotogravure, and Publication Rotogravure Printing Lines'' (former Part IV, Rule 4–36), sections 9 VAC 5–40–5060, subsections A., B. (citation only), C., and E.1 and .2 (Former SIP sections 120–04–3601.A. through D.1 and D.2); additions of sections 9 VAC 5–40–5060.D and .E.3.

(*5*) Revisions to Article 36, Rule 4–36, sections 9 VAC 5–40–5070.A., B. (citations only), (Former SIP section 120–04–3602.A., B.); C. (revised definitions for ''Flexographic printing'', ''High-solids ink or surface coating'', ''Low-solvent ink or surface coating'', ''Packaging rotogravure printing'', ''Printing'', ''Publication rotogravure printing'', ''Waterborne ink or surface coating'' and added definitions for ''Compliant ink or surface coating'', ''Cleaning solutions'', ''Electrostatic duplication'', ''Letterpress printing'', ''Lithographic printing'', ''Non-compliant ink or surface coating'', ''Printing Line'', ''Surface coating'' and ''Web''; deletion of ''Roll printing'') (Former SIP section 120–04–3602.C.).

(*6*) Revisions to Article 36, Rule 4–36, Sections 9 VAC 5–40–5080.A. (Former SIP section 120–04–3603.A.); Addition of Section 9 VAC 5–40–5080.B.; Deletion of SIP Sections 120–04–3603.B., C.; Revisions to Sections 9 VAC 5–40–5130.A., B. (Former SIP sections 120–04–3609.A., B.); Addition of Sections 9 VAC 5–40–5130.C., D., E.; Revisions to Section 9 VAC 5–40–5140.A. (Former SIP section 120–04–3610.A.); Addition of Section 9 VAC 5–40–5140.B.; Revisions to Sections 9 VAC 5–40–5190 (Former SIP Section 120–04–3615)—Introductory paragraph and paragraphs 5–40–5190.1 through .5 are revised, while paragraph 5–40–5190.6 is added.

(*7*) Revised citations of Article 36, Rule 4–36, Sections 9 VAC 5–40–5090, 5–40–5100, 5–40–5150, 5–40–5160, 5–40–5170 and 5–40–5180 (SIP Sections 120–04–3605, 120–04–3606, 120–04–3611, 120–04–3612, 120–04–3613, and 120–04–3614 respectively).

(*8*) Addition of Article 45, ''Emission Standards for Lithographic Printing Processes'' (Rule 4–45), Sections 9 VAC 5–40–7800 through 9 VAC 5–40–7850 inclusive; Sections 9 VAC 5–40–7880 through 9 VAC 5–40–7940 inclusive.

(*9*) Revisions to Appendix S (''Air Quality Program Policies and Procedures''), sections I.D and II.C.

(*10*) Revisions to AQP–3 ''Procedures For the Measurement of Capture Efficiency For Determining Compliance With Volatile Organic Compound Emission Standards Covering Surface Coating Operations and Graphic Arts Printing Processes (Flexographic, Packaging Rotogravure, and Publication Rotogravure Printing Lines)''.

(ii) Additional material.

(A) Remainder of April 22, 1996 Commonwealth submittal pertaining to regulations 4–4, 4–36, 4–45 and Appendix S.

(114) Revisions to the Virginia State Implementation Plan submitted April 26, 1996 by the Virginia Department of Environmental Quality.

(i) Incorporation by reference.

(A) Letter of April 26, 1996 from the Virginia Department of Environmental Quality transmitting revisions to Virginia's State Implementation Plan.

(B) Revisions to the following Virginia regulation adopted by the Virginia State Air Pollution Control Board on December 19, 1995 and effective April 1, 1996:

(*1*) Revisions to Article 40, Rule 4–40 ''Emission Standards for Open Burning'' [former Part IV, Rule 4–40], Sections 9 VAC 5–40–5600.A.(all revisions) and B. (citation only) (Former SIP Sections 12–04–4001.A. and .B.) Addition of Section 9 VAC 5–40–5600.C.

(*2*) Revisions to Article 40, Rule 4–40, Sections 9 VAC 5–40–5610.A.and B. (citations only) (Former SIP Sections 120–04–4002.A. and B.); revised citation for the definitions ''refuse'' and ''household refuse'' in Section 5–40–5610.C. (Former SIP Section 120–04–4002.C.), added definitions in Section 5–40–5610.C for ''Clean burning waste'', ''Landfill'', ''Local landfill'', ''Sanitary landfill'' and ''Special incineration device''.

(*3*) Addition of Sections 9 VAC 5–40–5620 (Open Burning Prohibitions), 9 VAC 5–40–5630 (Permissible Open Burning), and 9 VAC 5–40–5640 (Waivers).

(*4*) Revisions to Appendix D (Forest Management and Agricultural Practices), Sections II (introductory sentence), II.E. and III.F.

(ii) Additional material.

(A) Remainder of April 22, 1996 Commonwealth submittal pertaining to regulation 4–40.

[FR Doc. 97–6079 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Parts 52 and 81

[VA068–5018a, VA066–5018a; FRL–5688–8]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Virginia; Redesignation to Attainment of the Hampton Roads Ozone Nonattainment Area, Approval of the Maintenance Plan and Mobile Emissions Budget

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a redesignation request and two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. On August 27, 1996, the Commonwealth of Virginia submitted a request to redesignate the Hampton Roads marginal ozone nonattainment area to attainment and a maintenance plan as a SIP revision. This request is based upon three years of complete, quality-assured ambient air monitoring data for the area which demonstrate that the National Ambient Air Quality Standard (NAAQS) for ozone has been attained. On August 29, 1996 Virginia submitted a second SIP revision establishing the mobile emissions budget (also known as a motor vehicle emissions budget) for the Hampton Roads ozone nonattainment area. The SIP revisions establish a maintenance plan for Hampton Roads including contingency measures which provide for continued attainment of the ozone NAAQS until the year 2008; and adjust the motor vehicle emissions budget established in the maintenance plan for Hampton Roads to support the area's transportation plans in the horizon years 2015 and beyond. Under the Clean Air Act (the Act), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the Act's other redesignation requirements. The intended effect of this action is to approve the redesignation request, the

maintenance plan and the motor vehicle emissions budget for Hampton Roads. This action is being taken under sections 107 and 110 of the Act.

DATES: This action will become effective April 28, 1997 unless notice is received on or before April 11, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2092. Questions may also be addressed via e-mail, at the following address: Gaffney.Kristeen@epamail.epa.gov [Please note that only written comments can be accepted for inclusion in the docket.]

SUPPLEMENTARY INFORMATION:

I. Background

Under section 107(d)(1) of the Act as amended in 1990, in conjunction with the Governor of Virginia, EPA was required to designate Hampton Roads as nonattainment because the area violated the ozone standard during the years 1987–1989. The Hampton Roads marginal ozone nonattainment area consists of the following localities: James City County, Poquoson City, York County, Portsmouth City, Chesapeake City, Suffolk City, Hampton City, Virginia Beach City, Newport News City, Williamsburg City and Norfolk City.

Section 107(d)(3)(E) of the Act outlines the requirements to be met for an area to be redesignated from nonattainment to attainment. These requirements are: (1) The area must have attained the applicable NAAQS; (2) the area must meet all applicable requirements under section 110 and part D of the Act; (3) the area must have a fully approved SIP under section 110(k) of the Act; (4) the air quality improvement must be due to permanent and enforceable measures; and, (5) the area must have a fully approved maintenance plan pursuant to section 175A of the Act.

Attainment of the ozone NAAQS is determined by the expected number of exceedances in a calendar year. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9 and appendix H to that section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances of the 0.12 parts per million (ppm) ozone NAAQS at each monitoring site over a three year period. An area is in attainment of the standard if this average results in expected exceedances for each monitoring site in the area of 1.0 or less per calendar year. When a valid daily maximum hourly average value is not available for each required monitoring day during the year, the missing days must be accounted for when estimating exceedances for the year.

Ambient air quality data recorded in the Hampton Roads area, between the years 1993–1995 shows attainment of the ozone NAAQS. The data for these years meets EPA's completeness criteria of 75% or greater data capture. Furthermore, the area remained free of violations during the 1996 ozone season.

In the ''Review of Virginia's Submittals'' below, EPA will explain how the redesignation request and maintenance plan SIP revision meet the requirements of Section 107 (d)(3)(E) of the Act pertaining to redesignations to attainment. In Section IV, EPA will review Virginia's motor vehicle emissions budget SIP revision. A Technical Support Document (TSD) has also been prepared by EPA on these rulemaking actions, which explains EPA's review in further detail. Copies of the TSD are available from the EPA Regional office listed in the **ADDRESSES** section of this document in addition to being available for public inspection at that office.

II. Review of Virginia's Submittals

Following is a brief description of how the Commonwealth of Virginia's August 27, 1996 submittal fulfills the five requirements of redesignation requests from section 107(d)(3)(E) of the Act. 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.

1. Attainment of the Ozone NAAQS

The submittal contains an analysis of ozone air quality data which is relevant to the maintenance plan and to the redesignation request for the Hampton Roads ozone nonattainment area. Ambient ozone monitoring data during 1993 through 1995 show attainment of the ozone NAAQS in Hampton Roads, Virginia. *See* 40 CFR Section 50.9 and Appendix H. The Commonwealth of Virginia's request for redesignation includes documentation that the entire area has complete quality assured data showing attainment of the standard over the most recent consecutive three calendar year period prior to submittal of the request (1993–1995). This request is based on ambient air ozone monitoring data collected from three ozone monitoring stations in the area. Furthermore, it is relevant to note that the Hampton Roads area showed continued attainment of the ozone NAAQS during the most recent ozone season 1996. The data clearly show an expected exceedance rate of less than 1.0 per year since 1993. The technical support document (TSD) explains the calculation of the air quality monitoring data in more detail. The Hampton Roads area has met the first statutory criterion for redesignation to attainment of the ozone NAAQS. Virginia has committed to continue monitoring the air quality in this area in accordance with the Act's requirements as prescribed in 40 CFR Part 58, which is required, among other things, to meet the second statutory criterion for redesignation to attainment.

2. Meeting Applicable Requirements of Section 110 and Part D

For purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA has reviewed the SIP to ensure that it contains all measures that were due under the Act prior to or at the time the Commonwealth submitted its redesignation request. The Commonwealth of Virginia has been fully implementing the EPA approved section 110 (a)(2) and Part D requirements of the 1977 Act applicable to the Hampton Roads area. The Clean Air Act Amendments of 1990, however, modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, EPA has reviewed the SIP

and determined that it contains all measures that were due under the Act as revised in 1990, discussed below.

2.A. Section 110 Requirements

Under section 107(d)(3)(E)(v) of the Act, for a redesignation request to be approved, the Commonwealth must have met all requirements that applied to the subject area prior to or at the same time as the submission of a complete redesignation request. Virginia submitted a complete redesignation request on August 27, 1996.

Requirements of the Act that come due subsequently continue to be applicable to the area at later dates (see section 175A of the Act) and, if redesignation of any of the areas is disapproved, the Commonwealth remains obligated to fulfill those requirements. These requirements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

Although section 110 of the Act was amended in 1990, the Hampton Roads, Virginia SIP meets the requirements of section 110 (a)(2) of the amended Act. A number of the requirements did not change in substance and, therefore, the preamendment SIP met these requirements. As to those requirements that were amended, many duplicate other requirements of the Act (see 57 FR 23936 and 23939, June 23, 1992). EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2) of the Act. The SIP revision has been adopted by the Commonwealth after reasonable notice and public hearing. The SIP contains enforceable emission limitations adequate to produce attainment, requires monitoring, compiling, and analyzing ambient air quality data. It provides for adequate funding, staff, and associated resources necessary to implement SIP requirements, has provisions for Prevention of Significant Deterioration (PSD) and New Source Review (NSR), and requires stationary source emissions monitoring and reporting. There are no outstanding requirements for volatile organic compound (VOC) reasonably available control technology requirements (RACT) in the Hampton Roads area, as discussed further under ''Part D Requirements'' below.

2.B. Part D Requirements

Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override the general provisions of subpart 1 (57 FR 13501). The Hampton Roads area is classified as marginal. Therefore, in order to be redesignated to attainment, it must meet the requirements of subpart 1 of part D, specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D that apply to marginal areas (subsection 182(a)).

2.B.1. Subpart 1 of part D—Section 172(c) Plan Provisions

Under section 172(b), the section 172(c) requirements are applicable no later than three years after an area has been designated as nonattainment under the Act. In the case of Hampton Roads, the Commonwealth has satisfied all of the section 172(c) requirements necessary for redesignation.

The Hampton Roads area was designated marginal nonattainment on November 6, 1991 [56 FR 56694]. In the case of marginal ozone nonattainment areas, the section 172(c)(1) Reasonably Available Control Measures requirement was superseded by the section 182(a)(2) RACT requirements, which did not require nonattainment areas newly designated marginal after enactment of the 1990 amendments to submit RACT corrections.[1] Thus, no additional RACT submissions were required for the Hampton roads area to be redesignated. Also, by virtue of provisions under section 182(a), areas designated as marginal do not have to submit an attainment demonstration.

With respect to the section 172(c)(2) Reasonable Further Progress (RFP) requirement, because Hampton Roads has attained the ozone NAAQS, no RFP requirements apply.

The section 172(c)(3) emissions inventory requirement has been met by the submission and approval of the 1990 base year inventory for Hampton Roads required under subpart 2 of part D, section 182(a)(1). Virginia submitted its 1990 base year inventory for the Hampton Roads area, which was approved by EPA on September 16, 1996 [61 FR 48629].

As for the section 172(c)(5) NSR requirement, EPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. *See* memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.'' The rationale for this view is described fully in that memorandum, and is based on EPA's authority to establish de minimis exceptions to statutory requirements. See Alabama Power Co. v. Costle, 636 F. 2d 323, 360–61 (D.C. Cir. 1979). Upon redesignation of this area to attainment, the prevention of significant deterioration provisions (PSD) contained in part C of title I of the Act are applicable. Virginia received full delegation of authority of the Federal PSD program on June 3, 1981. [See 40 CFR 52.2451]

2.B.2. Subpart 1 of Part D—Section 176 Conformity Plan Provisions

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

[1] Refer to the General Preamble for the Implementation of Title 1, [57 FR 13503], and the VOC RACT Fix-Up rulemaking published at 58 FR 49458.

The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that states adopt both transportation and general conformity provisions in their SIPs for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the Commonwealth of Virginia is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the federal rule. Similarly, Virginia is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the federal rule.

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 has interpreted the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d) of the Act. 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 even after redesignation to attainment. Therefore, the Commonwealth remains obligated to adopt the transportation and general conformity rules even after redesignation. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D of the Act, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting state rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under federal rules if state rules are not yet adopted, these requirements are not 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) of the Act concerning the applicable requirements for purposes of reviewing an ozone redesignation request. Under this new policy, for the reasons just discussed, EPA believes that the ozone redesignation request for Hampton Roads may be approved notwithstanding the lack of approved Commonwealth transportation and general conformity rules.

2.B.3. Subpart 2 of part D—Section 182 Provisions for Ozone Nonattainment Areas

The Hampton Roads nonattainment area is classified as marginal and is subject to the requirements of section 182(a) of the Act. The Commonwealth was required to meet the emission inventory requirement of section 182(a)(1) and the emissions statement program requirement of section 182(a)(3)(b).

Section 182(a)(1) required an emissions inventory as specified by section 172(c)(3) of actual emissions of carbon monoxide (CO), volatile organic compounds (VOC) and nitrogen oxides (NO_X) from all sources by November 15, 1992. Virginia submitted its 1990 base year inventory for the Hampton Roads area which was approved by EPA on September 16, 1996 [61 FR 48629].

Section 182(a)(3)(B) required a SIP revision by November 15, 1992 to require stationary sources of VOC and NO_X emissions to report the actual emissions of these pollutants annually. On November 4, 1992, Virginia submitted rule revisions implementing the emission statement requirement. EPA approved Virginia's Emission Statement program as a SIP revision on May 2, 1995, codified at 40 CFR 52.2420(c)(103).

As discussed above, RACT corrections are not required under section 182(a)(2) for areas such as Hampton Roads that were not designated nonattainment until after the 1990 CAA Amendments. Additionally, section 182(a)(2) does not require the submission of an inspection and maintenance SIP revision for Hampton Roads. Likewise, as discussed above under the part 172 requirements, the Commonwealth need not comply with the requirements of section 182(a) concerning revisions to the part D NSR program in order to be redesignated.

Section 182(3) requires submission of periodic inventories every three years from 1990 until the area is redesignated attainment. The maintenance plan for Hampton Roads contains a full emission inventory for the attainment year 1993, as discussed below in section 5.A. Because the attainment year is the same as the year the first periodic inventory came due, the maintenance plan satisfies this requirement.

3. Fully Approved SIP Under Section 110(k) of the Act

EPA has determined that the Commonwealth of Virginia has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D as discussed above. Therefore, the redesignation requirement of section 107(d)(3)(E) (ii) has been met.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

The Commonwealth must be able to reasonably attribute air quality improvements in the area to emission reductions which are permanent and enforceable. Attainment resulting from temporary reductions in emission rates or unusually favorable meteorological conditions does not qualify for redesignation.

Under the 1977 Act, EPA approved the Commonwealth of Virginia SIP control strategy for the Hampton Roads, Virginia area. EPA determined the emission reductions were achieved as a result of those enforceable rules.

Several other enforceable control measures have come into place since the Hampton Roads, Virginia area violated the ozone NAAQS. Significant reductions in ozone precursor emissions are attributed to federal mobile source emission control programs. Specifically, reductions occurred due to the Federal Motor Vehicle Control Program (FMVCP) due to the mandatory lowering of fuel volatility and automobile fleet turnover. Effective in 1993, the Reid Vapor Pressure (RVP) of gasoline decreased from 9.9 pounds per square inch (psi) to 7.8 psi in the Hampton Roads area. Beginning in 1995, federal reformulated gasoline (RFG) was implemented in Hampton Roads as a replacement to low RVP gasoline. The benefits of RFG will be discussed later in this document under the maintenance plan control strategies.

Virginia developed a design year emissions inventory representing the ''worst case'' emissions scenario that contributes to ozone violations as a starting point for the redesignation request. The design year chosen by Virginia for Hampton Roads is 1988, a year that was particularly conducive to ozone violations in eastern U.S. nonattainment areas. The maintenance plan contains a comprehensive emissions inventory of ozone precursors, VOCs, NO_X and CO, for the

year 1988 to establish the amount of emission reductions achieved to reach attainment with the ozone NAAQS in the 1993 attainment year.

The amount of reductions achieved from FMVCP and RVP programs between 1988 and 1993 was determined using EPA's mobile emission inventory model MOBILE 5.0a and relevant vehicle miles traveled (VMT) data. As a result of these permanent and enforceable reductions, VOC emissions were reduced by 49.115 tons/day (1988–1993); emissions of NO_X increased by 8.481 tons/day in Hampton Roads. The Commonwealth of Virginia's maintenance plan requires the continuation of the federal RVP program. The Commonwealth demonstrated that point source VOC emissions were not artificially low due to local economic downturn during the period in which Hampton Roads air quality came into attainment. Reductions due to decreases in production levels or from other unenforceable scenarios such as voluntary reductions were not included in the determination of the emission reductions.

EPA finds that the combination of measures contained in the SIP and federal measures have resulted in permanent and enforceable reductions in ozone precursors that have allowed Hampton Roads to attain the NAAQS, and therefore, that the redesignation criterion of section 107(d)(3)(E)(iii) has been met.

5. Fully approved Maintenance Plan Under Section 175A

Section 175A of the Act 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 Commonwealth 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. EPA is approving the Virginia maintenance plan for the Hampton Roads, Virginia area because EPA finds that Virginia's submittal meets the requirements of section 175A of the Act as discussed below.

5.A. Emissions Inventories

The Commonwealth developed an attainment emissions inventory to identify the level of emissions sufficient to achieve the ozone NAAQS. The maintenance plan submitted on August 27, 1996 contains comprehensive inventories for the years 1993, 2000 and 2008 prepared according to EPA guidance for ozone precursors, VOCs, NO_x, and CO emissions to demonstrate attainment and maintenance for Hampton Roads. The inventories include area, stationary, non-road mobile and mobile sources. The 1993 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1993 and was one of the three years upon which the attainment demonstration was based. The plan includes a demonstration that emissions will remain below the 1993 attainment year levels for a 10 year period (2008) and provides an interim year inventory as required by EPA guidance for the year 2000. The Commonwealth has demonstrated that emissions for ozone precursors through the year 2008 will remain below the 1993 attainment year levels because of permanent and enforceable measures, while allowing for growth in population and vehicle miles traveled (VMT).

The Commonwealth's submittal contains detailed inventory data and summaries by county and source category. Growth Projections for point, non-road and area sources were derived using EPA's Economic Growth Analysis System (E-GAS) and the Bureau of Economic Analysis Factors. These factors were applied to the 1993 inventory to reflect the expected emission levels through 2008. VMT growth was provided by the Virginia Department of Transportation. These projected year inventories were prepared in accordance with EPA guidance. EPA's TSD includes a more detailed analysis of the projected year inventories for the nonattainment area. The following table summarizes the average peak ozone season weekday VOC, NO_x, and CO emissions for the major anthropogenic (non-biogenic) source categories for the 1993 attainment year inventory and projected 2000 and 2008 inventories.

Emissions (tons per year)	1993	2000	2008
VOCs:			
Point sources	25.044	27.395	30.040
Area sources [2]	129.702	128.491	136.641
Mobile sources [3]	73.244	50.853	51.862
Subtotal	227.990	206.739	218.543
NO_x:			
Point sources	85.209	86.634	81.072
Area sources	66.887	72.184	78.088
Mobile sources	77.983	70.064	70.061
Subtotal	230.079	228.882	229.221
CO:			
Point sources	13.324	14.673	14.699
Area sources	300.167	320.364	340.541
Mobile sources	590.918	370.022	366.121
Subtotal	904.409	705.059	721.361
TOTALS	1362.478	1140.680	1169.125

[2] Area source category includes non-road mobile emissions and emissions from motor vehicle refueling.

[3] Mobile source estimates include emissions safety margins. A safety margin exists when the total emissions (stationary, mobile, area) projected for the attainment year (or years of a maintenance plan) are less than the emissions level necessary to demonstrate attainment or maintenance. That difference in emissions constitutes a safety margin. In this case, Virginia allocated such safety margins to the on-road portion of the mobile emissions budget to satisfy conformity requirements.

5.B. Demonstration of Maintenance

As shown in the previous table, decreases in VOC emissions are projected in the Hampton Roads nonattainment area throughout the maintenance period. While NO_x emissions are projected to increase slightly, the decrease in VOC emissions is sufficient to offset the NO_x increase.

Virginia attributes the projected reductions of VOC emissions to the following national control measures: Federal Motor Vehicle Control Program (Tier 1); Reformulated Gasoline (on-road and non-road), and pending EPA rules regulating emissions from Consumer/Commercial Solvents reformulations; Architectural/Industrial Maintenance Coatings reformulation; and Automobile Refinishing. Additionally, the Commonwealth implemented source specific seasonal NO_x emission limits (emission caps) on two point sources of NO_x in the nonattainment area. Each control program and the anticipated emissions benefit is discussed briefly below. EPA believes these measures will contribute significant emissions reductions that will help keep the Hampton Roads area in attainment of the ozone NAAQS. Refer to the TSD for further detail.

1. Federal Motor Vehicle Control Program (Tier 1): EPA is required under the Clean Air Act to issue new and cleaner motor vehicle emission standards to be phased in beginning with the model year 1994, as well as a uniform level of evaporation emission controls. EPA promulgated a national rule establishing ''new car'' standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). In the Hampton Roads maintenance plan, Virginia projects an anticipated reduction from Tier 1 of VOCs of 18.187 tons/day in the year 2000 and 30.835 tons/day by the year 2008; and of NO_x of 15.924 tons/day in 2000 and 24.778 tons/day in 2008. These benefits were calculated using the Mobile 5.0a model. EPA has reviewed Virginia's calculation of the benefits for this measure and finds the amount of reduction Virginia claims acceptable.

2. Reformulated Gasoline (on-road and non-road): Section 211(k) of the Clean Air Act requires that, beginning January 1, 1995, only reformulated gasoline be sold or dispensed in ozone nonattainment areas classified as severe or above. Gasoline is reformulated to reduce combustion by-products and to produce fewer evaporative emissions. Section 211(k)(6) allows other nonattainment areas to ''opt in'' to the program. Virginia submitted a request to opt-in to the Reform Gas program in the Hampton Roads nonattainment area beginning in 1995, which EPA approved on December 23, 1991. The Commonwealth claims the following projected reductions in tons/day from this program:

	2000 (TPD)	2008 (TPD)
On-road sources	14.8	14.5
Non-road sources	1.15	1.2
Area sources	1.8	1.95

EPA's Mobile 5.0a model was used to determine the emission benefit. EPA has reviewed Virginia's calculation of the benefits for this control program and finds the amount of reduction Virginia claims is acceptable.

3. Architectural and Industrial Maintenance Coatings (AIM): Emission reductions have been projected from AIM coatings due to the expected promulgation by the EPA of a national rule. VOC emissions emanate from the evaporation of solvents used in the coating process. In a memo dated March 7, 1996, EPA allowed states to claim a 20% reduction of total AIM emissions from the national rule. As a result of legal challenges to the proposed national rule for AIM, EPA has negotiated a compliance date of no earlier than January 1, 1998. In the maintenance plan for Hampton Roads, Virginia projects a 20% reduction in VOC emissions from the 1993 attainment year inventory for this category which translates into 2.821 tons/day by 2000 and 2.831 tons/day by 2008. EPA has reviewed Virginia's calculation of the benefits for this measure and finds the amount of reduction Virginia claims acceptable.

4. Consumer and Commercial Products: Section 183(e) of the Clean Air Act required EPA to conduct a study of VOC emissions from consumer and commercial products and to compile a regulatory priority list. EPA is then required to regulate those categories that account for 80% of the consumer product emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule, including personal, household, and automotive products. Per a June 22, 1996 EPA policy memo, states may claim credit for up to a 20% reduction of total consumer product emissions. At this time, the final rule for consumer products is expected to be signed by the Administrator in March 1997 and require compliance by July 1997. In the maintenance plan for Hampton Roads, Virginia projects a 20% reduction in VOC emissions from the 1993 attainment year inventory in this category which translates into 1.664 tons/day by 2000 and 1.765 tons/day by 2008. EPA has reviewed Virginia's calculation of the benefits for this measure and finds the amount of reduction Virginia claims acceptable.

5. Automobile Refinishing: EPA is in the process of adopting a national rule to control VOC emissions from solvent evaporation through reformulation of coatings used in auto body refinishing processes. These coatings are typically used by industry and small businesses, or by vehicle owners. VOC emissions emanate from the evaporation of solvents used in the coating process. In a November 24, 1994 memo, EPA set forth policy on the creditable reductions to be assumed from the national rule for auto body refinishing. That memo stipulated a 37% reduction from current emissions. In the maintenance plan for Hampton Roads, Virginia projects a 37% reduction in VOC emissions from the 1993 attainment year inventory in this category which translates into 1.803 tons/day by 2000 and 1.809 tons/day by 2008. EPA has reviewed Virginia's calculation of the benefits for this measure and finds the amount of reduction Virginia claims acceptable.

6. Source Specific NO_X Emission Limits: The Commonwealth established seasonal NO_X emission limits for selected major point sources in the Hampton Roads area. The limits have been established through SIP approved federally enforceable state operating permits. The emission limits are only effective during the peak ozone season months, June-August. In the maintenance plan, the permitted emission limits will result in 5.845 tons/day (2000) and 26.148 tons/day (2008) reduction in NO_X emissions from the previously permitted emission levels in the 1993 attainment year inventory. EPA has reviewed Virginia's calculation of the benefits for this measure and finds the amount of reduction Virginia claims acceptable.

As discussed earlier, Hampton Roads has continued to monitor attainment of the ozone NAAQS through 1996. EPA believes that these emissions projections and the associated control measures demonstrate that the nonattainment area will continue to maintain the ozone NAAQS until the year 2008.

5.C. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in Hampton Roads depends, in part, on the Commonwealth of Virginia's efforts toward tracking indicators of continued attainment

during the maintenance period. The Commonwealth of Virginia will track the status and effectiveness of the maintenance plan by updating the emissions inventory annually and through periodic evaluations. Virginia has committed to develop and submit to EPA comprehensive tracking inventories every three years during the maintenance period.

The Commonwealth of Virginia will acquire source emissions data through the annual emission statements program. The Commonwealth of Virginia will continue to monitor ambient ozone levels by operating its ambient ozone air quality monitoring network in accordance with 40 CFR part 58. The Commonwealth will continue to follow appropriate quality assurance and quality control procedures and enter the data into AIRS.

5.D. Contingency Plan

The level of VOC and NO_X emissions in Hampton Roads will largely determine its ability to stay in compliance with the ozone NAAQS. Despite the Commonwealth of Virginia's best efforts to demonstrate continued compliance with the NAAQS, Hampton Roads may exceed or violate the NAAQS. Therefore, Virginia has provided the following triggering events and contingency measures with a schedule for implementation in the event of future ozone air quality problems.

1. In the event that VOC or NO_X emissions exceed the projected emissions inventories, RACT regulations will be implemented for either VOC or NO_X sources that have emissions of 100 tons per year or more, depending on the pollutant of concern.

2. In the event that a violation of the ozone NAAQS occurs at any individual monitor, either VOC RACT or NO_X RACT regulations will be implemented for all sources with emissions of over 100 tons per year or more.

These contingency measures will be implemented on the following schedule:

A. Notification received from EPA that a contingency measure must be implemented, or three months after a recorded violation;

B. Applicable regulation to be adopted 12 months after date established in A above;

C. Regulation implemented within 6 months of adoption;

D. Compliance with regulation achieved within 12 months of adoption.

5.E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the Commonwealth of Virginia has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

EPA has determined that the maintenance plan adopted by the Commonwealth of Virginia and submitted to EPA on August 27, 1996 meets the requirements of section 175A of the Act. Therefore, EPA is approving the maintenance plan.

III. Interim Implementation Policy (IIP) Impact

On December 13, 1996, EPA published proposed revisions to the ozone and particulate matter NAAQS. Also on December 13, 1996, EPA published its proposed policy regarding the interim implementation requirements for ozone and particulate matter during the time period following any promulgation of a revised ozone or particulate matter NAAQS (61 FR 65751). This IIP includes proposed policy regarding ozone redesignation actions submitted to and approved by EPA prior to promulgation of a new ozone standard, as well as those submitted prior to and approved by EPA after the promulgation date of a new or revised ozone standard.

Complete redesignation requests, submitted and approved by EPA prior to the promulgation date of the new or revised ozone standard, will be allowed to redesignate to attainment based on the maintenance plan's ability to demonstrate attainment of the current 1-hour standard and compliance with existing redesignation criteria. Any redesignation requests submitted prior to promulgation, which are not acted upon by EPA prior to that promulgation date, must then also include a maintenance plan which demonstrates attainment of both the current 1-hour standard and the new or revised ozone standard to be considered for redesignation.

As discussed previously, the Hampton Roads redesignation request demonstrates attainment under the current 1-hour ozone standard.

Since the EPA plans to approve this request prior to the promulgation date of the new or revised ozone standard, the Hampton Roads redesignation request meets the proposed IIP.

IV. Motor Vehicle Emissions Budget

To achieve expeditious attainment of the NAAQS, the Clean Air Act provisions at section 176 require that any project, program or plan in any way approved, accepted or funded by the federal government conform to the applicable SIP. As discussed earlier in this rulemaking in 2.B.2. Conformity Provisions, conformity determinations are required in both maintenance and nonattainment areas. Transportation projects, Transportation Improvement Programs (TIPs) and Long Range Transportation Plans must demonstrate conformity.

In 40 CFR 51.392 EPA defines a motor vehicle emissions budget as that portion of the total allowable emissions of any criteria pollutant or its precursors, which is defined in a revision to the SIP required to meet reasonable further progress, attainment or maintenance demonstrations, and which is allocated to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area designates a motor vehicle emissions budget for volatile organic compounds and may also allocate a similar budget for oxides of nitrogen (NO_X) in the case of the Post 1996 Reasonable Further Progress Plans required in ozone nonattainment areas classified as serious or above. The applicable SIP for an ozone nonattainment area may also include a NO_X budget if NO_X reductions are being substituted for reductions of VOCs in milestone years required for reasonable further progress. The applicable SIP must demonstrate that this NO_X budget will be achieved with measures contained therein.

40 CFR 51.404 requires that long range transportation plans specifically describe the transportation system envisioned for certain future years, which are called horizon years. For maintenance areas, the regional analysis of emissions from this transportation system in each horizon year must be less than or equal to the motor vehicle emissions budget established by the maintenance plan. EPA's transportation conformity regulations require long range transportation plans to demonstrate conformity for a period of time (20 years) that goes well beyond the actual control strategy period on which the budget is based. The maintenance plan requires adopted rules to cover only a ten year maintenance period (Virginia's maintenance period for Hampton Roads lasts until 2008).

Virginia is required by the Clean Air Act to perform a regional emissions analysis on their long range transportation plans and compare the ozone precursor emissions from this analysis to the VOC and NO_X motor vehicle emissions budgets, in ten year increments for the 20 year timeframe of the long range transportation plan. The Commonwealth chose to create a VOC and NO_X motor vehicle emissions budget for the Hampton Roads area for

the years after the 10-year timeframe of the maintenance plan in order to facilitate transportation conformity determinations. To accommodate the projected mobile emissions growth in the Hampton Roads area in the horizon years of the transportation planning cycle (2015 and beyond), additional emission reductions from enforceable control measures are necessary for positive conformity determination purposes. To be creditable, such reductions must be included in the SIP for the area.

Virginia's August 29, 1996 SIP revision modifies the motor vehicle emissions budgets in the Hampton Roads maintenance plan in support of the area's transportation plans for the period beginning in 2015. Although mobile source emissions of NO_X and VOC are predicted to rise in the year 2015 as VMT increases, Virginia anticipates that emission reductions will occur during this time period from pending national emission control programs on non-road sources to offset this growth, specifically new engine standards for marine engines, locomotive engines and heavy duty diesel engines. The Act requires that EPA promulgate new emission standards for marine engines, locomotive engines and heavy duty diesel engines. For the purposes of conformity, the motor vehicle emissions budgets in the maintenance plan are increased to 53.730 tons per day of VOC and 80.617 tons per day of NO_X, with an effective date of January 1, 2015. The emissions reductions from the national control programs create a safety margin. For Hampton Roads the safety margin for VOC is 1.868 tons/day and for NO_X 10.610 tons/day. All these reductions from the non-road source category are allocated to the motor vehicle emissions budget for the purposes of conformity determinations. Virginia used applicable EPA guidance[4] in calculating the anticipated emission benefits from the national control programs.

In general, approved budgets in the SIP are not superseded until the replacement budgets in the next SIP are actually SIP approved. However, because budgets after 2008 are not required by the Act for this maintenance plan and are being established for conformity purposes only to bridge the gap between the end of the first maintenance plan and the horizon years, these budgets will cease to apply once the second ten-year maintenance plan is submitted to EPA. The new submitted budget prepared by the Commonwealth for the second 10-year maintenance plan will replace the budget being approved today, as soon as it is submitted to EPA because these budgets will be a more appropriate basis of conformity. If the national emission control programs relied on in this SIP revision are not implemented according to the current schedule or do not produce the emission benefits anticipated, the Commonwealth commits to revising the SIP to include other measures as necessary to compensate any shortfall. Furthermore, the long range motor vehicle emission budget approved today will have to be incorporated into the second ten-year maintenance plan demonstrating continued attainment of the ozone NAAQS developed for the Hampton Roads area. To satisfy conformity requirements in outlying years, EPA is approving the motor vehicle emissions budget for the Hampton Roads area submitted on August 29, 1996 into the Virginia SIP.

V. Final Action

The EPA has evaluated the Commonwealth's redesignation request for Hampton Roads for consistency with the Act, EPA regulations, and EPA policy. The EPA believes that the redesignation request and monitoring data demonstrate that this area has attained the ozone standard. In addition, EPA has determined that the redesignation request meets the requirements of section 107(d)(3)(E) and policy set forth in the General Preamble and policy memorandum discussed in this document for area redesignations, and today is approving Virginia's redesignation request for Hampton Roads submitted on August 27, 1996. Furthermore, EPA is approving into the Virginia SIP the required maintance plan because it meets the requirements of section 175A and the motor vehicle emissions budget for the Hampton Roads area.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 28, 1997 unless by April 11, 1997, adverse comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 28, 1997.

The Hampton Roads nonattainment area is subject to the Act's requirements for marginal ozone nonattainment areas until and unless it is redesignated to attainment.

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.

VI. 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.

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. The Administrator certifies that the approval of the redesignation request

[4] EPA's guidance includes two policy memos ''Future Nonroad Emission Reduction Credits for Locomotives'' dated January 3, 1995 and ''Future Nonroad Emission Reduction Credits for Court Order Nonroad Standards'' dated November 28, 1996.

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 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 proposed/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 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 EPA's approval of the Hampton Roads redesignation request, maintenance plan and mobile emissions budget must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 5, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

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 VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(117) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(117) The ten year ozone maintenance plan for Hampton Roads, Virginia ozone nonattainment area submitted by the Virginia Department of Environmental Quality on August 27, 1996:

(i) Incorporation by reference.

(A) Letter of August 27, 1996 from the Virginia Department of Environmental Quality transmitting the 10 year ozone maintenance plan for the Hampton Roads marginal ozone nonattainment area.

(B) The ten year ozone maintenance plan including emission projections, control measures to maintain attainment and contingency measures for Hampton Roads ozone nonattainment area adopted on August 27, 1996.

(ii) Additional Material.

(A) Remainder of August 27, 1996 Commonwealth submittal pertaining to the redesignation request and maintenance plan referenced in paragraph (c)(117)(i) of this section.

3. Section 52.2424 is added to read as follows:

§ 52.2424 Motor Vehicle Emissions Budgets.

Motor vehicle emissions budget for the Hampton Roads maintenance area adjusting the mobile emissions budget contained in the maintenance plan for the horizon years 2015 and beyond adopted on August 29, 1996 and submitted by the Virginia Department of Environmental Quality on August 29, 1996.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671.

Subpart C—Section 107 Attainment Status Designations

4. In § 81.347 the ''Virginia-Ozone'' table is amended by revising the entry for ''Norfolk-Virginia Beach-Newport News (Hampton Roads) Area'' to read as follows:

§ 81.347 Virginia.

* * * * *

VIRGINIA—OZONE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Norfolk-Virginia Beach-Newport News (Hampton Roads) Area Chesapeake Hampton James City County Newport News Norfolk Poquoson Portsmouth Suffolk Virginia Beach Williamsburg York County	[insert date 45 days after publication date].	Unclassifiable/ Attainment	.....	.....

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

* * * * *

[FR Doc. 97–6078 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 80

[FRL–57–02–2]

RIN 2060–AD27

Regulation of Fuels and Fuel Additives; Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of petition for reconsideration.

SUMMARY: Pursuant to section 553(e) of the Administrative Procedure Act, the American Petroleum Institute requested that EPA reconsider and repeal the Phase II reformulated gasoline emission reduction standard for oxides of nitrogen. For the reasons provided below, EPA is denying this petition. EPA's review of new data concerning the air quality benefits and cost-effectiveness of the reformulated gasoline emission reduction standard for oxides of nitrogen demonstrates the continued appropriateness of the standard.

EFFECTIVE DATE: March 12, 1997.

ADDRESSES: Information relevant to this action is contained in Docket No. A–96–27 at the EPA Air and Radiation Docket, room M–1500 (mail code 6102), 401 M St., SW., Washington, DC 20460. The docket may be inspected at this location from 8:30 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Debbie Wood, Office of Mobile Sources, Fuels and Energy Division, (202) 233–9000.

SUPPLEMENTARY INFORMATION

I. Introduction and Background

On February 16, 1994, EPA published a final rule establishing various content and emission reduction standards for reformulated gasoline (RFG), including provisions for the certification of RFG and enforcement of RFG standards, and establishing certain requirements regarding unreformulated or conventional gasoline (59 FR 7716). The purpose of the RFG program is to improve air quality by requiring that gasoline sold in certain areas of the U.S. be reformulated to reduce emissions from motor vehicles of toxics and tropospheric ozone-forming compounds, as specified by section 211(k) of the Clean Air Act (CAA or the Act). Section 211(k) mandates that RFG be sold in nine specific metropolitan areas with the most severe summertime ozone levels; RFG must also be sold in any ozone nonattainment area reclassified as a severe area, and in other ozone nonattainment areas that choose to participate or ''opt in'' to the program. The Act further requires that conventional gasoline sold in the rest of the country not become any more polluting than it was in 1990 by requiring that each refiner's and importer's gasoline be as clean, on average, as it was in 1990. This has resulted in regulatory requirements referred to as the ''anti-dumping'' program.

The Act mandates certain requirements for the RFG program. Section 211(k)(1) directs EPA to issue regulations that:

> Require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

Section 211(k) specifies the minimum requirement for reduction of volatile organic compounds (VOCs) and toxics for 1995 through 1999, or Phase I of the RFG program; the section specifies that EPA must require the more stringent of a formula fuel or an emission reduction performance standard, measured on a mass basis, equal to 15 percent of baseline emissions. Baseline emissions are the emissions of 1990 model year technology vehicles operated on a specified baseline gasoline. Section 211(k)(2) compositional specifications for RFG include a 2.0 weight percent oxygen standard and a 1.0 volume percent benzene standard. Section 211(k)(2) also specifies that emissions of oxides of nitrogen (NO_X) may not increase in RFG over baseline emissions.

For the year 2000 and beyond, or Phase II of the RFG program, the Act specifies that the VOC and toxic performance standards must be no less than either a formula fuel or a 25 percent reduction from baseline emissions, whichever is more stringent. EPA can adjust these standards upward or downward taking into account such factors as technological feasibility and cost, but in no case can the standards be less than 20 percent.

Shortly after passage of the CAA Amendments in 1990, EPA entered into a regulatory negotiation with interested parties to develop specific proposals for implementing both the RFG and anti-dumping programs. In August 1991, the negotiating committee reached

consensus on a program outline that would form the basis for a notice of proposed rulemaking, addressing emission content standards for Phase I (1995–1999), emission models, certification, use of averaging and credits, and other important program elements.

The regulatory negotiation conducted by EPA did not address the Phase II VOC and toxic standards for RFG, nor did it address a reduction in NO_X emissions beyond the statutory cap imposed under section 211(k)(2)(A). The final rule promulgated by EPA closely followed the consensus outline agreed to by various parties in the negotiated rulemaking process. The final rule also adopted a NO_X emission reduction performance standard for Phase II RFG, relying on authority under section 211(c)(1)(A).

In December 1995, the American Petroleum Institute (API) submitted a petition to EPA requesting reconsideration and repeal of the Phase II RFG NO_X standard. API also requested suspension of the effective date of the standard, pending deliberations on the cost-effectiveness of NO_X control. EPA's initial review of the API petition indicated that it presented no compelling new evidence or argument that would warrant revisiting the decision made in promulgating the Phase II RFG NO_X reduction standard. EPA also conducted a review of relevant and available new information on costs and benefits developed since promulgation of the final rule to ensure that EPA's conclusions on the appropriateness of the Phase II RFG NO_X reduction standard remain well-founded. EPA published a Federal Register notice requesting comment on the issues raised in the API petition.[1] In December 1996, EPA reopened the comment period, to allow public comment on a draft Department of Energy report on RFG costs, and held a meeting with interested parties to discuss the draft report.

The arguments presented in the API petition are summarized below, followed by a summary of the public comments received, and EPA's response to the petition and comments. A complete copy of the API petition, public comments, and new information generated by EPA may be found in the docket for this action.

[1] 61 FR 35960 (July 9, 1996).

II. Summary of API Petition

A. Consistency With CAA and Negotiated Rulemaking

In its petition, API argues that the Phase II RFG NO_X emission reduction standard is inconsistent with the 1990 Clean Air Act Amendments and the 1991 regulatory negotiation.[2] API cites provisions of the statute that specifically require reductions in various pollutants, and contrasts those explicit NO_X reduction mandates with the ''no NO_X increase'' approach toward RFG in section 211(k).[3] API also argues that the 1991 agreement reached in the regulatory negotiation does not address a Phase II NO_X reduction, and that the focus of debate during the regulatory negotiation was whether *de minimis* increases in NO_X would satisfy the no NO_X increase standard.[4]

B. Air Quality Benefits

In its petition, API argues that ozone benefits for the Phase II NO_X standard are overstated.[5] API states that the primary basis for the NO_X standard is ozone attainment, because of the role NO_X emissions play with VOC emissions in the formation of ozone.[6] API cites EPA's 1994 Trends Report[7] to support its statement that substantial progress toward ozone attainment has been made.[8] API argues that progress toward attainment of the National Ambient Air Quality Standard (NAAQS) for ozone can be expected to continue because of new federal programs and state obligations established under the Clean Air Act Amendments of 1990.[9]

API further argues that EPA's section 182(f) waiver decisions show that NO_X reductions are not always warranted for ozone attainment.[10] API states that, in establishing section 182(f) waivers, Congress recognized that NO_X reductions do not always contribute to ozone attainment, because of atmospheric meteorology and the complex relationship of NO_X and VOC emissions.[11] API characterizes section 182(f) as stating that major stationary source requirements for NO_X do not apply where NO_X reductions do not contribute to ozone NAAQS attainment or do not yield net air quality benefits in the affected nonattainment area.[12] API argues that the Phase II RFG NO_X standard emphasizes those portions of a 1991 National Research Council study[13] and other studies that show NO_X control to be an effective ozone control strategy, while discounting those parts of the same studies showing that NO_X control may be counterproductive in a particular area.[14] API cites studies to contradict EPA's discounting of the adverse effects of NO_X reductions on ozone.[15] API points to parts of EPA's 1993 report to Congress (pursuant to section 185B of the CAA) to support its contention that NO_X control may not always be appropriate to reduce ozone.[16]

API argues that in granting section 182(f) waivers, EPA has concluded in most cases that additional NO_X reductions are not needed for ozone attainment; however, in a few cases, EPA has found that NO_X reductions would be detrimental to ozone attainment.[17] Moreover, three waivers would suspend major stationary source NO_X control in cities required to use RFG: Chicago, Milwaukee, and Houston.[18] API states that the waivers have no set period of duration and stay in place so long as the conditions in section 182(f) are met.[19] API concludes that the Phase II NO_X standard is incongruous with the granting of section 182(f) waivers in RFG areas.[20] API also argues that the Phase II RFG NO_X standard is incongruous with the two-phased approach EPA adopted for submittal of ozone SIP attainment demonstrations.[21] API concludes that given the substantial progress toward ozone NAAQS attainment, and the CAA requirement of continued steady progress, EPA's Phase II RFG NO_X standard applicable in all RFG areas is incongruous with the granting of state

[2] API Petition for Reconsideration and Rulemaking on NO_X Reduction Portion of the Reformulated Gasoline Rule (hereinafter ''Pet.'') at p. 1.

[3] Pet. at p. 2.

[4] Pet. at p. 3.

[5] Pet. at p. 5.

[6] Ibid.

[7] U.S. EPA, *National Air Quality and Emissions Trends Report 1993*, EPA 454/R–94–026, October 1994, p. 6.

[8] Pet. at p. 6.

[9] Ibid.

[10] Pet. at p. 7.

[11] Pet. at p. 8.

[12] Ibid.

[13] National Research Council, *Rethinking the Ozone Problem in Urban and Regional Air Pollution*, National Academy Press, Washington, DC., 1991.

[14] Pet. at p. 9.

[15] Pet. at p. 10.

[16] Pet. at p. 11.

[17] Pet. at p. 12.

[18] Pet. at p. 13. API also points out that Dallas, which chose to implement the RFG program, has been granted a section 182(f) waiver. The Dallas waiver is based on a showing that Dallas would attain the ozone NAAQS without implementation of the additional NO_X controls required under section 182. 59 FR 44386 (August 29, 1994).

[19] Ibid.

[20] Pet. at p. 14.

[21] Ibid.

petitions for waiver from section 182 NO_X reduction requirements.[22]

API also argues that non-ozone benefits claimed for the Phase II RFG NO_X standard are wholly speculative; no evidence is offered by EPA to show that the assumed effects are measurable, let alone significant.[23] Non-ozone benefits claimed include less acid rain, reduced toxic nitrated compounds, reduced nitrate deposition, improved visibility, lower levels of nitrogen dioxide, lower levels of PM–10, and protection against increases in fuel olefin content which could increase the reactivity of vehicle emissions.[24]

C. Cost-Effectiveness

API argues that the impact of the NO_X reduction standard on gasoline refining costs and on refinery flexibility is understated.[25] API cites statements by EPA acknowledging that a NO_X performance standard restricts the flexibility of refiners in producing qualifying RFG.[26] API discounts EPA's assertion that the performance standard is not a fuel recipe and refiners may produce gasoline in any way that achieves the desired result.[27] According to API, any NO_X reduction ''interferes with refining flexibility and leaves refiners with unduly costly and narrow choices for producing RFG.''[28]

API argues that the cost-effectiveness of NO_X reduction is overstated because sulfur removal costs are understated and ozone benefits are overstated.[29] API references detailed information submitted during the RFG rulemaking that criticizes inadequacies in the Bonner & Moore refinery model used by EPA.[30] API also cites a 1994 DOE study[31] that API characterizes as suggesting that EPA's desulfurization costs are too low.[32] API cites cost estimates recently prepared by EPA for the Ozone Transport Assessment Group (OTAG) to illustrate its point that EPA and API are far apart on cost estimates.[33] API states that if EPA used more accurate desulfurization costs, the cost of Phase II NO_X reductions would increase above the $10,000 per ton benchmark EPA rejected as too high during the RFG rulemaking.[34]

API also argues that EPA's analysis of cost-effectiveness does not take into account that NO_X reductions do not contribute to ozone attainment in certain areas.[35] API states that the Chicago, Milwaukee, Houston and Dallas areas each have section 182(f) waivers and comprise 33 percent of the non-California RFG market.[36] API argues that the benefit of NO_X reductions in these areas is at least zero, if not less than zero, thereby driving EPA's cost-effectiveness up to about $7,500 per ton, based on this factor alone.[37]

API further argues that EPA understated the relative cost-effectiveness of major stationary source NO_X control strategies, by dwelling on motor vehicle and engine controls.[38] API argues that stationary source controls can discriminate between areas where NO_X reductions contribute to ozone attainment and areas where they do not, unlike motor vehicle, engine, and fuel controls.[39] API cites several studies conducted by or for EPA between July 1991 and July 1994 that contain more comprehensive information about stationary source controls, including cost-effectiveness.[40] API provides a table citing data from those studies, and includes its estimate of incremental cost-effectiveness for several technologies.[41] API concludes that its incremental cost-effectiveness values compare favorably even to EPA's incremental cost-effectiveness estimate of $5,000 per ton of NO_X removed for a 6.8 percent NO_X emission reduction.[42]

API argues that control of major stationary sources for NO_X offers a far larger potential for overall reduction in air pollution.[43] API cites EPA's 1994 Trends Report that combustion stationary sources account for about 50 percent of national NO_X emissions with a NO_X reduction potential of 75 to 95 percent.[44] API further argues that major stationary source controls can be targeted to avoid the economic waste of NO_X controls where they are not needed and the adverse effect on ozone because of atmospheric chemistry.[45]

API concludes that EPA should repeal the Phase II RFG NO_X emission reduction standard or, at least, suspend the effective date until a comprehensive consideration of NO_X control cost-effectiveness is performed.[46] API claims EPA should sequence NO_X controls where NO_X reductions are appropriate, targeting major stationary source NO_X controls first as they are claimed to be more cost-effective and can be targeted where needed geographically. Other controls should not be considered until major stationary source controls are employed and evaluated, according to API.[47] Finally, API concludes that Phase II RFG NO_X emission reductions are not compelled by the statute, are not necessary, and are not the most cost-effective controls for NO_X reduction and, thus, satisfy none of the criteria for regulatory action set out in Executive Order 12866.[48]

III. Summary of Public Comment

EPA received public comment on the API petition from 26 commenters, including the oil, automotive, and utility industries, and from states and state organizations. This section summarizes those comments.

A. Consistency With CAA and Regulatory Negotiation Agreement in Principle

Whether the Phase II RFG NO_X reduction standard is consistent with the CAA and the regulatory negotiation is addressed in comments by several oil companies, and by oil, automotive, utility, and state associations. Most comments from the oil industry restate the points made by API in its petition to EPA, described in the previous section. One oil company also argued that EPA did not give proper consideration to the statutory factors required under section 211(c)(1)(A) of the Act, given that EPA is still trying to define the complex relationships involving NO_X, atmospheric chemistry, and ozone formation.

The automotive, utility, and state association comments argue that although the Phase II RFG NO_X reduction standard is not mandated by section 211(k) of the CAA, it is not inconsistent with the CAA, and that the Phase II program was not addressed by the regulatory negotiation's Agreement in Principle, so the NO_X reduction standard does not contradict or supersede any specific term of the agreement.

[22] Id.
[23] Pet. at p. 15.
[24] Ibid.
[25] Pet. at p. 16.
[26] Ibid.
[27] Id.
[28] Pet. at pp. 17–18.
[29] Pet. at pp. 18–19.
[30] Pet. at p. 19.
[31] U.S. DOE, Estimating the Costs and Effects of Reformulated Gasolines, DOE/PO–0030, December 1994 (hereinafter ''1994 DOE study'').
[32] Pet. at p. 20.
[33] Pet. at pp. 20–21.
[34] Pet. at p. 21.
[35] Pet. at p. 22.
[36] Pet. at p. 22.
[37] Pet. at p. 22.
[38] Pet. at p. 23.
[39] Pet. at p. 23.
[40] Pet. at pp. 23–24.
[41] Pet. at p. 25.
[42] Pet. at p. 26.
[43] Pet. at p. 27.
[44] Pet. at p. 27.
[45] Pet. at p. 29.
[46] Pet. at p. 31.
[47] Pet. at p. 30.
[48] Pet. at pp. 30–31.

B. Air Quality Benefits

Most comments address the issue of whether EPA overstated the air quality benefits of the Phase II RFG NO_X emission reduction standard. Several oil industry comments cite air quality modeling data generated by OTAG to support the API argument that NO_X reductions may cause urban ozone increases, also referred to as NO_X disbenefits. One oil company argues that the OTAG modeling results present compelling new evidence against the Phase II RFG NO_X emission reduction standard, citing one day each of two modeling runs as evidence that aggressive NO_X controls significantly increase ozone concentrations in the urban areas where ozone levels are highest. Those runs include a 60 percent reduction in elevated NO_X emissions, and a 60 percent reduction in elevated NO_X emissions plus a 30 percent reduction in low-level NO_X emissions.

Another oil company argues that the OTAG modeling results are significant new evidence to support the API petition, and show that the NO_X disbenefit phenomenon is consistently present and most pronounced in the Chicago metropolitan area. That company further argues that OTAG modeling results show that urban VOC reductions do not eliminate the disbenefit from NO_X reductions, although the company notes that VOC reductions do mitigate the disbenefit. That company argues that the scale of significant ozone transport tends to be substantially localized rather than OTAG domain-wide, undercutting the transport rationale for widespread imposition of NO_X controls. The commenter bases its arguments on modeling results for three days for each of three ozone episodes; one with 60 percent elevated point source NO_X reductions, the second with 60 percent elevated point source NO_X reductions plus 30 percent low-level NO_X reductions, and the third with 30 percent VOC reductions plus 60 percent elevated NO_X reductions and 30 percent low-level NO_X reductions. Also included was one day of a run of 30 percent low-level NO_X reductions only.

In its comments on the petition, API argues that OTAG air quality modeling sensitivity runs as of August 1996 show that downwind air quality benefits of NO_X control are far less than expected, undercutting the core transport rationale for widespread imposition of RFG NO_X controls. API argues that OTAG modeling confirms its central thesis that NO_X emissions reductions increase ozone levels immediately downwind of several urban nonattainment areas, notably Chicago and New York. Finally, API argues that the OTAG modeling shows that the ozone increases were not fully ameliorated by larger NO_X reductions or VOC reductions; even if VOC controls were effective, this would put affected states in the position of imposing extra VOC controls to offset the adverse air quality impact of RFG NO_X controls.

Several states, and state and utility associations also addressed the air quality benefits issue. States and state associations stress the importance of the Phase II RFG NO_X standard in state ozone attainment and maintenance planning. State associations argue that OTAG has projected that, in 2007, mobile sources will still contribute 43 percent of all NO_X after implementation of CAA controls; given the challenges facing so many areas in identifying and implementing programs that will lead to attainment of the ozone standard, the air quality benefits associated with the NO_X reduction potential of Phase II RFG cannot be overstated. One state points out that with the anticipated lowering of the federal ozone standard, the Phase II RFG NO_X emission reduction standard will become even more critical for states. A state association argues that although there has been progress toward attainment, loss of a tool as significant as Phase II RFG in reducing VOC and NO_X would only exacerbate state emission reduction shortfalls.

While state and state association comments acknowledge that in certain urban areas, NO_X reductions can increase ozone, state associations argue that API's advocacy of repeal of the NO_X standard is both premature and shortsighted; premature because OTAG is still seeking to define the extent and impact of NO_X disbenefits and how disbenefits should be accommodated, and shortsighted because for many areas of the country it has been conclusively ascertained that NO_X reductions will be imperative if the ozone standard is to be attained and maintained.

Several states and state associations argue that modeling demonstrates that NO_X reductions are beneficial, and for many areas imperative, notwithstanding potential disbenefits in some limited geographic areas. One state and a state association argue that all major regional modeling efforts performed or underway through such organizations as OTAG and the Ozone Transport Commission have demonstrated that NO_X reductions are beneficial in reducing ozone levels and will be needed to achieve attainment of the ozone standard in many areas, and particularly in the eastern U.S. They argue that the importance of NO_X reductions in reducing ozone levels is becoming even more pronounced as modeling efforts utilize the newer and more accurate methodology for estimating biogenic VOC emissions.

A state association argues that the regional photochemical modeling results prepared for OTAG are confirmatory of previous modeling that both elevated and low-level control of NO_X are beneficial at reducing the regional extent of ozone, and that the combination of NO_X and VOC control, especially in urban areas, can be very effective in reducing regional ozone levels. Another state association also argues that modeling studies have shown that urban VOC reductions, such as those provided by RFG, are effective at addressing any limited NO_X disbenefits, while leaving in place the very extensive regional benefits of NO_X emission reductions. One state argues that there is no definitive data that Phase II RFG could be a significant disbenefit to ground level ozone attainment and, in the absence of evidence to the contrary, the state will operate under the assumption that all reductions of ground level ozone precursors are both important and beneficial.

A state association argues that granting contingent waivers on a local nonattainment area basis does not negate EPA recognition and support for regional efforts to use NO_X reductions to address ozone transport and attainment issues. It argues that NO_X waivers do not take into account that when controls are removed or absent in one area, particularly a control of regional significance, this would generally cause or exacerbate problems for any area downwind of that area. It argues that while the understanding and development of mechanisms for regional ozone reductions over large areas is still evolving, mechanisms that have the greatest potential continue to rely on a balance of both VOC and NO_X control.

A utility industry group argues that the API petition fails to buttress its argument that EPA overstated the air quality benefits of the Phase II RFG NO_X standard with new evidence; instead, API relies upon arguments already rejected by EPA. API's section 182(f) waiver argument fails because the grant of a waiver says nothing about the value of the Phase II RFG NO_X standard; the utility group argues that the section 182(f) waiver provisions do not apply to the RFG program and that, although temporary waivers have been granted in some places based on highly specific localized facts, the Agency has made it clear waivers would be reevaluated in

light of additional data. The utility group also argues that progress by the states toward attainment as indicated in the 1994 Trends Report does not establish that the Phase II RFG NO_X standard is unnecessary or unwise; although progress has been made toward attainment, more still needs to be done.

C. Cost-Effectiveness

Most commenters addressed whether EPA understated the cost-effectiveness of the Phase II RFG NO_X standard. Several oil companies cite data from OTAG both on the comparative cost of stationary source reduction measures and the cost of implementing Phase II RFG throughout the OTAG region. Several companies submitted or cite a ranking developed by the New Hampshire Department of Environmental Services for OTAG of cost per ton ranges for NO_X reduction measures. The ranking places Phase II RFG as the second most expensive NO_X control measure at $25,000 to $45,000 per ton. The cost ranges are comprised of the lowest and highest marginal cost estimates provided by EPA, the states, industry, and other OTAG participants, and represents the extent of disagreement over the ''true'' costs of each measure, according to one oil company comment. One company argues that these data may be interpreted to show that a NO_X reduction strategy that includes the Phase II RFG NO_X reduction standard is purchasing a much smaller reduction at a much higher price than is available from alternative measures. That commenter also claims that DOE's analysis indicates a significantly higher cost per ton of NO_X removed than estimated by EPA in its Regulatory Impact Analysis (RIA) for the final RFG rule.

In its comments, API also cites the OTAG region-wide cost-effectiveness estimate for the Phase II RFG NO_X standard. API argues that even if that figure is adjusted for comparison with only those areas that will use Phase II RFG, the adjusted figure would still ''dwarf'' EPA's $5,000 per ton estimate; however, API did not include such an adjusted figure in its comments. API also cites the New Hampshire list as evidence that the NO_X standard is not cost-effective.

Two state associations argue that it would be more accurate to characterize the cost of Phase II RFG from combined VOC and NO_X reductions; the combined OTAG range for the OTAG region is $3,500 to $6,200. One state argues that the cost of the NO_X standard is within a reasonable range of cost-effectiveness. That state also argues that the cost of the NO_X standard is highly favorable compared to the cost of typical transportation control measures.

An automobile industry association argues that the API focus on sulfur reduction overlooks the fact that sulfur reductions also decrease hydrocarbon (HC) and carbon monoxide (CO) emissions. That association argues that recent industry data show that when advanced technology vehicles are operated on high sulfur fuels, their emissions will be no better than Tier 0 level vehicles; comparing those new data with expected costs of compliance compiled by Turner, Mason & Company in April 1992 yields a cost-effectiveness estimate of about $200 per ton of pollutant removed when the benefits of sulfur removal on HC, CO, and NO_X are considered.

A clean fuel industry association evaluated capital investment options for reducing the sulfur level in gasoline to meet the Phase II RFG NO_X emission reduction standard. That association argues that average costs from the investment options evaluated were generally equal to or less than EPA's original cost estimates for reducing sulfur levels in RFG; therefore, that association argues, the cost of the Phase II RFG NO_X emission reduction standard has not fundamentally changed and it is still a cost-effective standard.

The utility industry argues that API presented no compelling new evidence that desulfurization costs are understated. One utility industry group argues that API's claim that EPA underestimated desulfurization costs does not address the fact that desulfurization is not required; nor did API address the ability of industry to meet the standard without desulfurization. That group also argues that the fact that it might be cheaper to reduce emissions from stationary sources than to reduce NO_X in fuels does not mean the same ozone reduction benefits would be produced. Another utility industry association argues that, even if API's claim that regulating stationary sources is more cost-effective is true, that does not justify forcing stationary sources to subsidize the petroleum industry by paying for that industry's share of clean air compliance costs.

IV. EPA Response

A. Consistency With CAA and Negotiated Rulemaking

As EPA pointed out in the RFG final rule, the regulatory negotiation conducted by EPA did not address Phase II RFG VOC and toxic standards; neither did it address a reduction in NO_X emissions beyond the statutory cap imposed under section 211(k)(2)(A).[49] Because the regulatory negotiation did not address Phase II RFG standards, including the NO_X reduction standard, Phase II RFG standards are consistent with the Agreement in Principle that resulted from the regulatory negotiation. A reduction in NO_X emissions does not interfere with or reduce the benefits gained by the parties from the elements of the Agreement in Principle that were finally adopted in the RFG rule. While it adds costs and gains benefits, these are in addition to, and not at the expense of, the elements addressed in the regulatory negotiation. The costs and air quality benefits of the Phase II RFG NO_X emission reduction standard are discussed in more detail in later sections of this notice.

The Phase II RFG NO_X standard is also fully consistent with the Act. EPA proposed and finalized the NO_X emission reduction performance standard for Phase II RFG relying on EPA's authority under section 211(c)(1)(A) of the Act, based on EPA's view that NO_X reductions from summertime RFG are important to achieve attainment of the ozone NAAQS in many nonattainment areas.[50] Section 211(c)(1)(A) of the Act allows the Administrator to regulate fuels or fuel additives if ''any emission product of such fuel or fuel additive causes, or contributes to, air pollution which may reasonably be anticipated to endanger the public health or welfare.'' Section 211(c)(2)(A) further provides that EPA may control those fuels and fuel additives ''after consideration of all relevant medical and scientific evidence available * * * including consideration of other technologically or economically feasible means of achieving emissions standards under [section 202 of the Act].''

EPA used this authority to require reformulated fuels to also achieve NO_X reductions in order to reduce ozone formation, based on scientific evidence regarding the benefits of NO_X control and on the cost-effectiveness of NO_X reductions. A detailed discussion of the determination of the need for and scientific justification for NO_X control is presented in the RIA for the final rule.[51] The fact that scientific understanding of atmospheric chemistry and ozone formation continues to evolve does not

[49] 59 FR 7744 (February 16, 1994).

[50] Ibid.

[51] U.S. EPA, Final Regulatory Impact Analysis for Reformulated Gasoline, December 13, 1993, pp. 313–326.

negate that determination. In addition, as discussed below, EPA's review of the air quality benefits and cost-effectiveness of the NO_X reduction standard does not show that the rulemaking determinations supporting this standard were inappropriate.

B. Air Quality Benefits

1. The Need for Regional NO_X Reduction

At present, there are 74 areas in the United States, with a population exceeding one hundred million, that do not meet the ozone NAAQS of 120 parts per billion (ppb) for a one-hour daily maximum. The following section describes ozone formation, the regional scale of the ozone problem, and the reductions needed to meet the ozone standard.

Ozone Formation. Ozone is a naturally occurring trace constituent of the atmosphere. Background ozone concentrations vary by geographic location, altitude, and season. Part of this background ozone concentration is due to natural sources and part is due to long-range transport of anthropogenic or man-made precursor emissions. The natural component of background ozone originates from three sources: (1) Stratospheric ozone (which occurs at about ten to 50 kilometers altitude) that is transported down to the troposphere (i.e., from the ground level through about ten kilometers), (2) ozone formed from the photochemically-initiated oxidation of biogenic (i.e., produced by living organisms) and geogenic (i.e., produced by the earth) methane and carbon monoxide with nitric oxide, and (3) ozone formed from the photochemically-initiated oxidation of biogenic VOCs with NO_X. NO_X plays an important role in the oxidation of methane, carbon monoxide, and biogenic VOC, though the magnitude of this natural component cannot be precisely determined.[52] The background ozone concentration near sea level in the U.S. for a one-hour daily maximum during the summer is usually in the range of 30–50 ppb.[53]

While ozone formation in the atmosphere involves complex non-linear processes, a simplified description is offered here. For more information on ozone chemistry, see, for example, the 1991 National Research Council study. In short, nitric oxide (NO) is formed during combustion or any high temperature process involving air (air being largely N_2 and O_2). NO is formed, for example, when fuel is burned to generate power for stationary or mobile sources. The NO is converted to NO_2 by reacting with certain compounds formed from oxidized VOCs, called radicals. It is also converted to NO_2 by reacting with ozone (O_3). Sunlight then causes the NO_2 to decompose, leading to the formation of ozone and NO. The NO that results is then able to start this cycle anew. A reaction path that converts NO to NO_2 without consuming a molecule of ozone allows ozone to accumulate; this can occur by the presence of oxidized VOCs.[54] That is:

1. NO is formed from combustion involving air:

N_2+O_2==>NO molecules.

2. NO_2 (nitrogen dioxide) is formed when NO reacts with radicals from oxidized VOCs.

3. NO_2 is also formed when NO reacts with ozone; this removes ozone:

$NO+O_3$==>NO_2+O_2.

4. Sunlight causes NO_2 to decompose, or photolyze, into NO and O. Ozone is formed when an oxygen molecule (O_2) reacts with the oxygen element (O), formed from the decomposition of NO_2:

NO_2==>NO+O; and

$O+O_2$==>Ozone.

A general explanation for the formation of ozone in or near urban areas follows.[55] NO_X is produced when combustion temperatures are above 2500°K, and air is used as an oxidizer in the combustion process. Incomplete combustion of the fuel also results in the emission of raw fuel components and oxygenated organic components or VOCs from the fuels. In sunlight, these components form free radicals (e.g., OH, HO_2, RO, RO_2) that oxidize NO to NO_2 (reaction 2 above). The free radical is recreated in the process. Each free radical is cycled up to five times. The NO_2 then reacts with sunlight to recreate NO and to produce ozone (reaction 4 above). After the first oxidation of NO to NO_2, every subsequent operation of the cycle produces ozone with an efficiency greater than 90 percent. In current chemical reaction mechanisms, a typical nitrogen is cycled three to five times. Some of the ozone produced reacts with organics and with sunlight to produce more free radicals to maintain the cyclic oxidation process.

Ozone itself is a major source of the free radicals that oxidize NO into NO_2. This represents a powerful positive feedback process on the formation of more ozone, given available NO_X. The oxidation of the VOCs also leads to the production of more free radicals. As the cycle operates, NO_2 reacts with free radicals and is converted into nitrates. This form of nitrogen cannot cycle. This also removes free radicals. A system that converts all NO_X to nitrogen products cannot create any more ozone.

NO_2 reacts rapidly with free radicals. In situations that have a limited supply of radicals, NO_2 effectively competes with VOCs for the limited free radicals, and is converted into nitrates. This results in virtually no production of ozone. Where there are large amounts of NO relative to the sources of radicals (such as VOCs), then the reaction between NO and existing ozone removes ozone (a radical source), and the large amount of NO_2 formed competes effectively with VOCs for the other available radicals, thus leading to an overall suppression of ozone.

In general, areas with high VOC to NO_X concentration ratios (greater than eight to ten) can effectively reduce local ozone concentrations with local NO_X emission reductions.[56] In areas where VOCs are abundant relative to NO_X, ozone formation is controlled primarily by the amount of NO_X available to react with the oxidized VOCs (reaction 2 above).[57] These ''NO_X limited'' areas generally include rural, suburban, and downwind areas.[58] In contrast, in areas with low VOC to NO_X ratios, ozone formation is controlled primarily by the amount of VOC available. Ozone scavenging by the NO–O_3 reaction (reaction 3 above) is more effective than the reaction of oxidized VOC with NO producing NO_2 (reaction 2 above).[59] Such areas are ''VOC limited'' and generally include the central core areas of large urban areas with significant vehicle emissions.

The rate of ozone formation varies with the VOC to NO_X ratio. By reducing local emissions of VOC, the formation rate generally slows down, leading to lower ozone levels locally, but with eventual production of approximately the same total amount of ozone. Reduction of NOx emissions can lead to

[52] U.S. EPA, Office of Air Quality Planning and Standards, ''Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information,'' OAQPS Staff Paper, EPA–452/R–96–007, June 1996.

[53] Ibid.

[54] Seinfeld, John H., ''Urban Air Pollution: State of the Science,'' February 10, 1989 vol., *Science.*

[55] Jeffries, H.E., communication to Clinton Burklin, ERG, October 27, 1996.

[56] National Research Council, *Rethinking the Ozone Problem in Urban and Regional Air Pollution,* National Academy Press, Washington, D.C., 1991.

[57] Seinfeld, John H., ''Urban Air Pollution: State of the Science,'' February 10, 1989 vol., *Science.*

[58] Finlayson-Pitts, B.J. and J.N. Pitts, Jr., ''Atmospheric Chemistry of Tropospheric Ozone Formation: Scientific and Regulatory Implications,'' *Air and Waste Management Association,* Vol. 43, August 1993.

[59] Seinfeld, John H., ''Urban Air Pollution: State of the Science,'' February 10, 1989 vol., *Science.*

a more rapid formation of ozone, though with less total amount of ozone formed.[60]

Different mixtures of VOC and NO_X, therefore, can result in different ozone levels such that the total system is non-linear. That is, large amounts of VOC and small amounts of NO_X make ozone rapidly but are quickly limited by removal of the NO_X. VOC reductions under these circumstances show little effect on ozone. Large amounts of NO and small amounts of VOC (which usually implies smaller radical source strengths) result in the formation of inorganic nitrates, but little ozone. In these cases, reduction of NO_X results in an increase in ozone.

The preceding is a static description. In the atmosphere, physical processes compete with chemical processes and change the outcomes in complex ways. The existence of feedback and non-linearity in the transformation system confound the description. Competing processes determine the ambient concentration and there are an infinite set of process magnitudes that can give rise to the same ambient concentrations and changes in concentrations. Lack of any direct measurement of process magnitudes results in the need to use inferential methods to confirm any explanation of a particular ozone concentration.

The formation of ozone is further complicated by biogenic emissions, meteorology, and transport of ozone and ozone precursors. The contribution of ozone precursor emissions from biogenic sources to local ambient ozone concentrations can be significant, especially emissions of biogenic VOCs. Important meteorological factors include temperature, and wind direction and speed. Long-range transport results in interactions between distant sources in urban or rural areas and local ambient ozone. Peroxyacetyl nitrate (PAN), formed from the reaction of radicals with NO_2, can transport NO_X over relatively large distances through the atmosphere. Its rate of decomposition significantly increases with temperature, so that it can be formed in colder regions, transported, and then decomposed to deliver NO_2 to downwind areas.[61]

Regional Scale of the Ozone Problem. Peak ozone concentrations typically occur during hot, dry, stagnant summertime conditions. Year-to-year meteorological fluctuations and long-term trends in the frequency and magnitude of peak ozone concentrations can have a significant influence on an area's compliance status.

Typically, ozone episodes last from three to four days on average, occur as many as seven to ten times per year, and are of large spatial scale. In the eastern United States, high concentrations of ozone in urban, suburban, and rural areas tend to occur concurrently on scales of over 1,000 kilometers.[62] Maximum values of non-urban ozone commonly exceed 90 ppb during these episodes, compared with average daily maximum values of 60 ppb in summer. Thus, an urban area need contribute an increment of only 30 ppb over the regional background during a high ozone episode to cause a violation of the ozone NAAQS of 120 ppb.[63]

The precursors to ozone and ozone itself are transported long distances under some commonly occurring meteorological conditions. The transport of ozone and precursor pollutants over hundreds of kilometers is a significant factor in the accumulation of ozone in any given area. Few urban areas in the U.S. can be treated as isolated cities unaffected by regional sources of ozone.[64]

NO_X Reductions Needed to Meet the Ozone Standard. Over the past two decades, great progress has been made at the local, state and national levels in controlling emissions from many sources of air pollution. Substantial emission reductions are currently being achieved through implementation of the 1990 CAAA measures for mobile and stationary sources. These measures include the retrofit of reasonably available control technology on existing major stationary sources of NO_X and implementation of enhanced vehicle inspection and maintenance programs under Title I; new emission standards for new motor vehicles and nonroad engines, and the RFG program under Title II; and controls on certain coal-fired electric power plants under Title IV. The effects of these programs on total NO_X emissions over time indicate a decline in emissions from 1990 levels of about 12 percent until the year 2007. However, continued industrial growth and expansion of motor vehicle usage threaten to reverse these past achievements; NO_X emissions will gradually increase for the foreseeable future, unless new initiatives are implemented to reduce NO_X emissions.

For many years, control of VOCs was the main strategy employed in efforts to reduce ground-level ozone. More recently, it has become clearer that additional NO_X controls will be needed in many areas, especially areas where ozone concentrations are high over a large region (as in the Midwest and Northeast, where RFG is mandated in several nonattainment areas). The extent of local controls that will be needed to attain and maintain the ozone NAAQS in and near seriously polluted cities is sensitive both to the amount of ozone and precursors transported into the local area and to the specific photochemistry of the area.

In some cases, preliminary local modeling performed by the states indicates that it may not be feasible to find sufficient local control measures for individual nonattainment areas unless transport into the areas is significantly reduced; this may include transport from attainment areas and from other nonattainment areas. These modeling studies suggest that reducing NO_X emissions on a regional basis is the most effective approach for reducing ozone over large geographic areas, even though local NO_X controls may not be effective by themselves in the urban centers of selected nonattainment areas. Thus, large reductions in NO_X emissions may be needed over much of the nation if all areas are to attain the ozone standard.

The following discussion examines the need for NO_X reductions in those regions of the country where RFG is required.

California. The State of California adopted its ozone SIP on November 15, 1994. The SIP covers most of the populated portion of the state and relies on both NO_X and VOC reductions for most California nonattainment areas to demonstrate compliance with the ozone NAAQS. Specifically, the revised SIP projects that the following NO_X reductions are needed (from a 1990 baseline): South Coast, 59 percent; Sacramento, 40 percent; Ventura, 51 percent; San Diego, 26 percent; and San Joaquin Valley, 49 percent.

The South Coast's control strategy for attainment of the ozone standard specifies a 59 percent reduction in NO_X emissions. The design of this strategy took into account the need to reduce NO_X as a precursor of particulate matter, as described in the SIP submittal. This represents a reduction of over 800 tons of NO_X per day. The reductions are to be achieved from a combination of national, state, and local control measures.

The Sacramento metropolitan area's control strategy for attainment of the ozone standard specifies a 40 percent reduction in NO_X emissions. Modeling results indicate that NO_X reductions are

[60] Ibid.

[61] National Research Council, *Rethinking the Ozone Problem in Urban and Regional Air Pollution*, National Academy Press, Washington, D.C., 1991.

[62] Ibid.

[63] Id.

[64] Id.

more effective than VOC reductions on a tonnage basis in reducing ambient ozone concentrations. The reductions are to be achieved from a combination of national, state, and local control measures, especially mobile source measures such as standards for heavy duty vehicles and nonroad engines.

Lake Michigan Region. Modeling and monitoring studies performed to date for the states surrounding Lake Michigan (Illinois, Indiana, Michigan, and Wisconsin) indicate that reducing ozone and ozone precursors transported into the region's nonattainment areas would have a significant effect on the number and stringency of local control measures necessary to meet the ozone NAAQS. In many cases, boundary conditions appear to contribute significantly to peak ozone concentrations; ozone and ozone precursors flowing into a metropolitan area can greatly influence the peak ozone concentration experienced in the metropolitan area. For example, the 1991 Lake Michigan Ozone Study found that transported ozone concentrations entering the region were 40 to 60 percent of the peak ozone concentrations in some of the region's metropolitan areas. That is, the air mass entering the study area was measured by aircraft at 70 to 110 ppb (compared to the ozone NAAQS of 120 ppb) on episode days.[65]

Separate modeling analyses in the Lake Michigan region indicate that reduction in ozone and ozone precursor emissions would be effective at reducing peak ozone concentrations. In the Lake Michigan case, a modeled 30 percent reduction in boundary conditions was found to reduce peak ozone concentrations as much as a 60 percent decrease in local VOC emissions.[66]

These studies suggest that without reductions in transport and boundary conditions, the necessary degree of local control will be difficult to achieve, even with very stringent local controls. The EPA Matrix Study[67] looked at region-wide NO_X control, and the results indicate it would be effective in reducing ozone across the Midwest. The objective of the EPA Matrix Study was to obtain a preliminary estimate of the sensitivity of ozone in the eastern U.S., from Texas to Maine, to changes in VOC and NO_X emissions applied region-wide. The modeled control strategy of region-wide 75 percent NO_X reduction with 50 percent VOC reduction produced substantial ozone reductions throughout the eastern U.S., with ozone standard exceedances limited to several grid cells in the southeast corner of Lake Michigan, over Toronto, and immediately downwind of New York City.

Taken together, the information available to date suggests that additional reductions in regional NO_X emissions will be necessary to attain the ozone NAAQS in the Chicago/Gary/Milwaukee area and downwind (including western Michigan). NO_X control in nonattainment areas, such as RFG provides, contributes to regional NO_X emission reductions. The information available to date has not shown that upwind controls are all that is needed. Emerging data indicates that NO_X controls in Lake Michigan nonattainment areas can contribute to the ozone reduction benefits derived from regional NO_X reductions. *See* discussion *infra*.

New York Study. New York State's recent urban airshed modeling (UAM) studies show that substantial reductions in the ozone transported from other regions would be necessary for several areas within the UAM domain to achieve ozone attainment.[68] The UAM domain includes areas in New York and Connecticut within and surrounding the New York Consolidated Metropolitan Statistical Area (CMSA). This UAM study demonstrates the potential effectiveness of a regional NO_X reduction strategy in combination with a local VOC reduction strategy. The New York study showed that the combination of a regional strategy reflecting a 25 percent reduction in VOCs and a 75 percent reduction in NO_X outside the New York urban airshed, with a local strategy reflecting a 75 percent reduction in VOCs and a 25 percent reduction in NO_X inside the New York urban airshed, would be necessary for all areas throughout the New York UAM domain to reduce predicted ozone levels to 120 ppb or less during adverse meteorological conditions.

Northeast Ozone Transport Region. The Northeast Ozone Transport Region (OTR) includes the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and the CMSA that includes the District of Columbia and northern Virginia. In its analysis supporting the approval of a Low Emission Vehicle program in the mid-Atlantic and Northeast states comprising the OTR, EPA reviewed existing work and performed analyses to evaluate in detail the degree to which NO_X controls are needed.[69] These studies showed that NO_X emissions throughout the OTR must be reduced by 50 to 75 percent from 1990 levels to obtain predicted ozone levels of 120 ppb or less throughout the OTR.

Other recent studies have confirmed these conclusions.[70] Additional modeling simulations suggest that region-wide NO_X controls coupled with urban-specific VOC controls would be needed for ozone attainment in the northeastern United States.[71] Taken together, these studies point to the need to reduce NO_X emissions in the range of 50 to 75 percent throughout the OTR, and VOC emissions by the same amount in and near the Northeast urban corridor, to reach and maintain predicted hourly maximum ozone levels of 120 ppb or less.

Eastern Texas. There has been limited modeling work to date that focuses on the air quality characteristics of the eastern Texas region. The State of Texas has been granted section 182(f) waivers for the Houston/Galveston and Beaumont/Port Arthur nonattainment areas based on preliminary UAM modeling which predicted that local NO_X reductions would not contribute to ozone attainment because predicted area ozone concentrations are lowest when only VOC reductions are modeled.[72] Additional modeling is underway by the State, including UAM modeling using data from the Coastal Oxidant Assessment for Southeast Texas

[65] Roberts, P.T., T.S. Dye, M.E. Korc, H.H. Main, ''Air Quality Data Analysis for the 1991 Lake Michigan Ozone Study,'' final report, STI–92022–1410–FR, Sonoma Technology, 1994.

[66] Lake Michigan Air Directors Consortium, ''Lake Michigan Ozone Study—Evaluation of the UAM–V Photochemical Grid Model in the Lake Michigan Region,'' 1994.

[67] Chu, Shao-Hung and W.M. Cox, ''Effects of Emissions Reductions on Ozone Predictions by the Regional Oxidant Model during the July 1988 Episode,'' *Journal of Applied Meteorology*, Vol. 34, No. 3, March 1995.

[68] John, K., S.T. Rao, G. Sistla, W. Hao, and N. Zhou, ''Modeling Analyses of the Ozone Problem in the Northeast,'' EPA–230–R–94–018, 1994. John, K., S.T. Rao, G. Sistla, N. Zhou, W. Hao, K. Schere, S. Roselle, N. Possiel, R. Scheffe, ''Examination of the Efficacy of VOC and NO_X Emissions Reductions on Ozone Improvement in the New York Metropolitan Area,'' printed in *Air Pollution Modeling and Its Application*, Plenum Press, NY, 1994.

[69] 60 FR 48673 (January 24, 1995).

[70] Kuruville, John et al., ''Modeling Analyses of Ozone Problem in the Northeast,'' prepared for EPA, EPA Document No. EPA–230–R–94–108, 1994. Cox, William M. and Chu, Shao-Hung, ''Meteorologically Adjusted Ozone Trends in Urban Areas: A Probabilistic Approach,'' Atmospheric Environment, Vol. 27B, No. 4, pp 425–434, 1993.

[71] Rao, S.T., G. Sistla, W. Hao, K. John and J. Biswas, ''On the Assessment of Ozone Control Policies for the Northeastern United States,'' presented at the 21st NATO/CCMS International Technical Meeting on Air Pollution Modeling and Its Application, Nov. 6–10, 1995.

[72] 60 FR 19515 (April 19, 1995).

(COAST) study, but there is not yet enough data to draw conclusions about the potential effect of transport of ozone and its precursors on these areas. This uncertainty has led the State to request that the waivers from local NO_X controls in these areas be granted on a temporary basis while more sophisticated modeling is conducted. Texas has requested a one-year extension of its temporary waivers for Houston/Galveston and Beaumont/Port Arthur, citing the need for additional time to complete its UAM modeling.[73]

Ozone Transport Assessment Group. EPA is supporting a consultative process involving 37 eastern states that includes examination of the extent to which NO_X emissions from as far as hundreds of kilometers away are contributing to smog problems in downwind cities in the eastern U.S. Known as the Ozone Transport Assessment Group (OTAG) and chaired by the State of Illinois, this group is looking into ways of achieving additional cost-effective reductions in ground-level ozone throughout a region consisting of the eastern half of the U.S. Preliminary findings from the first and second of three rounds of control strategy modeling indicate that regional reductions in NO_X emissions would be effective in lowering ozone on a regional scale. The relative effectiveness varies by subregion and episode modeled.[74] Preliminary OTAG modeling results are described in more detail later in this section.

Summary. The preceding discussion demonstrates that substantial region-wide NO_X reductions will be needed in regions of the country where RFG is required for those regions to reach attainment of the ozone standard. Reduction in NO_X emissions is needed locally in some areas in order to attain the ozone NAAQS while, in some of these or other areas, NO_X emission reductions may be needed to help attain the ozone NAAQS in downwind areas or to help maintain ozone levels below the standard in attainment areas. As a local control (except along the Northeast corridor where its use is so widespread as to constitute a regional control), the RFG program will reduce NO_X emissions in nonattainment areas and contribute to needed regional NO_X reductions.

Control strategies must consider efforts to reduce regional scale NO_X emissions as well as local emissions. In general, NO_X emissions reductions in upwind, rural areas coupled with VOC reductions in urban nonattainment areas appears to be an effective strategy in some cases. In some cases however, the urban nonattainment area is also upwind of another urban nonattainment area or contains so much biogenic VOC emissions that reducing only anthropogenic VOC emissions has too little ozone benefit. For example, the Atlanta nonattainment area has very high biogenic VOC, while in the Northeast, many urban nonattainment areas are upwind of other urban nonattainment areas. In cases like these, local NO_X reductions may be needed in urban nonattainment areas in addition to, or instead of, VOC reductions for purposes of ozone attainment. Thus, effective ozone control will require an integrated strategy that combines cost-effective reductions in emissions at the local, state, regional, and national levels.

2. Section 182(f) Waivers and State Implementation Plans for Ozone Attainment

Because Title I focuses on measures needed to bring nonattainment areas into attainment, the CAA requires EPA to view section 182(f) NO_X waivers in a narrow manner. In part, section 182(f) provides that waivers must be granted if states outside an ozone transport region (OTR) show that reducing NO_X within a nonattainment area would not contribute to attainment of the ozone NAAQS in that nonattainment area.[75] Only the role of local NO_X emissions on local attainment of the ozone standard is considered in nonattainment areas outside an OTR. Any exemption may be withdrawn if the basis for granting it no longer applies. For modeling-based exemptions, this will occur if updated modeling analyses reach a different conclusion than the modeling on which the exemption was based.[76] Thus all local NO_X waivers should be considered temporary and do not shield an area from NO_X requirements demonstrated to be needed for ozone attainment in that area or in downwind areas.

EPA has independent statutory authority under CAA section 110(a)(2)(D) to require a state to reduce emissions from sources where there is evidence that transport of such emissions contributes significantly to nonattainment or interferes with maintenance of attainment in other states. That is, the CAA requires a SIP to conform provisions addressing emissions from one state that significantly pollute another downwind state. EPA has stated, in all Federal Register notices approving section 182(f) NO_X petitions, that it will use its section 110(a)(2)(D) authority where evidence of significant contribution is found to require needed NO_X (and/or VOC) reductions. EPA recently published a notice of intent that it plans to call for SIP revisions in the eastern half of the U.S. to reduce regional ozone transport across state boundaries, in accordance with section 110(a)(2)(D) and (k)(5).[77]

EPA's granting of exemptions from local NO_X controls should be seen in the broader context of SIP attainment plans. For ozone nonattainment areas designated as serious, severe, or extreme, state attainment demonstrations involve the use of dispersion modeling for each nonattainment area. Although these attainment demonstrations were due November 15, 1994, the magnitude of this modeling task, especially for areas that are significantly affected by transport of ozone and ozone precursors generated outside of the nonattainment area, has delayed many states in submitting complete modeling results. Recognizing these challenges, EPA issued guidance on ozone demonstrations[78] that includes an intensive modeling effort to address the problem of long distance transport of ozone, NO_X, and VOCs, and submittal of attainment plans in 1997. Considering its modeling results, a state must select and adopt a control strategy that provides for attainment as expeditiously as practicable.

When the attainment plans are adopted by the states, these new control strategies will, in effect, replace any NO_X waivers previously granted. To the extent the attainment plans include NO_X controls on certain major stationary sources in the nonattainment areas, EPA will remove the NO_X waiver for those sources. To the extent the plans achieve attainment without additional NO_X reductions from certain sources, the waived NO_X reductions would be considered excess reductions and, thus, the exemption would continue. EPA's rulemaking action to reconsider the initial NO_X waiver may occur simultaneously with rulemaking action on the attainment plans. Thus,

[73] 61 FR 65505 (December 13, 1996).

[74] Ozone Transport Assessment Group, joint meetings of RUSM and ISI workgroups, ''First Round Strategy Modeling,'' October 25, 1996, and ''Round 2 Strategy Modeling,'' December 17, 1996.

[75] 42 U.S.C. § 7511a(f)(1)(A).

[76] Seitz, John S., Director, OAQPS, EPA, ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria,'' EPA memoranda to Regional Air Directors, dated May 27, 1994, and revised February 8, 1995.

[77] 62 FR 1420 (January 10, 1997).

[78] Nichols, Mary D., Assistant Administrator for Air and Radiation, ''Ozone Attainment Demonstrations,'' memorandum to EPA Regional Administrators, March 2, 1995.

many or all areas, including NO_X waiver areas, are potentially subject to NO_X controls as needed to attain the ozone standard throughout the nation and/or meet other NAAQSs.

API selectively cites to those portions of EPA's 1993 section 185B report to Congress that support its contention that NO_X control may not always be appropriate to reduce ozone, but ignores the report's overall conclusions regarding the need for many areas across the nation to reduce NO_X emissions if ozone attainment is to be achieved. API in particular overlooks the report's finding that, in some cases, even if ozone initially increases in response to small NO_X reductions, ozone levels in many areas will decline if NO_X levels are more significantly reduced. *See* section 2.2.2. Thus, in some cases, state and local agencies may need to reduce NO_X emissions even though doing so may cause a potential increase in ozone concentrations in central urban areas, as part of a larger plan to enable many nonattainment areas to meet the ozone NAAQS. For example, NO_X reductions in the New York metropolitan area are needed for downwind areas within the state and in other states to attain the ozone standard; yet additional VOC controls may be needed in the metropolitan area to offset the local impact of NO_X reductions. Similarly, NO_X reductions in areas upwind of the Northeast Ozone Transport Region may be needed to help downwind areas attain and maintain the ozone standard, even though those NO_X reductions may not in some cases help the upwind areas reduce local peak ozone concentrations. In such cases, a previously granted NO_X waiver will not allow an area to avoid implementing NO_X control requirements deemed necessary for itself or another area's attainment.

The progress toward ozone attainment that has been achieved by states to date and the continued progress by states toward ozone attainment, required by the CAA, are not convincing rationales to EPA for dropping the Phase II RFG NO_X standard, as suggested in the API petition. The previous discussion demonstrates that substantial region-wide reductions in NO_X will be needed in areas of the country where RFG is required for those areas to reach attainment of the ozone standard. Progress toward attainment achieved by states to date and the continued progress toward attainment required under the CAA will not be sufficient without additional combined NO_X and VOC emission reductions for some RFG areas, including the Northeast corridor and the Lake Michigan region, as discussed above, to achieve attainment. Moreover, a NO_X waiver does not excuse an area from reasonable further progress (RFP) requirements. Thus, progress toward attainment is not a convincing rationale for dropping the Phase II RFG NO_X standard, because progress toward attainment is not the same as attainment and, thus, doesn't demonstrate that the Phase II RFG NO_X standard is unnecessary or inappropriate. Because the need for extensive NO_X control is clear, it is not necessary or appropriate for EPA to delay establishing federal NO_X control programs until individual state ozone attainment demonstrations have been developed and presented. EPA agrees with comments that loss of the Phase II RFG NO_X standard would only exacerbate state emission reduction shortfalls.

Moreover, for the reasons discussed above, EPA does not agree that the Phase II RFG NO_X standard is incongruous or at odds with the granting of section 182(f) waivers in RFG areas, as suggested in the API petition. EPA does agree with API's comments that point out that the section 182(f) waiver process alone does not take into account the downwind impact of NO_X controls, but notes that API, in doing so, has ignored EPA's stated intent to require NO_X reductions from states with areas that received NO_X exemptions, pursuant to its section 110(a)(2)(D) authority if such areas are shown to contribute significantly to downwind states' ozone problems.

3. Comparison of Benefits and Disbenefits From NO_X Reductions

The following discussion focuses on another aspect of API's section 182(f) argument: the potential for disbenefits, or increases in urban ozone, that occur as a result of reductions in NO_X. The best data currently available to examine this air quality and ozone attainment issue are the photochemical grid modeling results being generated by OTAG. The OTAG model (UAM–V) includes the best emission inventory information available, provided by the states and reviewed by stakeholders and experts, an improved biogenic inventory (BEIS2), and updated chemistry (CB–IV). Data are available from four ozone episodes.[79] All stakeholders, including states and the oil, automotive, and utility industries, have been involved in OTAG modeling inputs and modeling runs. Further information describing OTAG is available electronically on the OTAG Home Page at http://www.epa.gov/oar/OTAG/otag.html. All OTAG data discussed here are available electronically on the TTN2000 Web Site at http://ttnwww.rtpnc.epa.gov.

OTAG modeling conducted to date consistently demonstrates that NO_X reductions applied equally by source type throughout the 37 state OTAG region result in widespread ozone reductions across most of that region, and in geographically and temporally limited increases in urban ozone.[80] The OTAG sensitivity modeling cited in oil industry comments included large NO_X reductions (i.e., a 60 percent reduction in elevated utility system point source NO_X emissions plus a 30 percent reduction in low-level, or non-utility point and area source and mobile source, including nonroad and on-highway, NO_X emissions), or large NO_X reductions combined with VOC reductions (i.e., a 60 percent reduction in elevated NO_X emissions with a 30 percent reduction in low-level NO_X emissions plus a 30 percent reduction in VOC emissions) over the 37 state OTAG region. That modeling indicates that such emission reductions would result in widespread ozone decreases in high ozone areas. That modeling also indicates ozone increases, or disbenefits, particularly within the Northeast corridor and southwestern Lake Michigan area but only in some grid cells on some days of some episodes.

For example, for July 8, 1988, the OTAG modeling run of a 60 percent reduction in elevated NO_X emissions plus a 30 percent reduction in low-level NO_X emissions, throughout the 37 state region (OTAG run 5e), shows decreases in ozone throughout most of the 37 state region ranging from four to at least 36 ppb.[81] That modeling run also shows increases in ozone of four to 12 ppb in Boston, Savannah, Wheeling, and Houston, and increases of four to 28 ppb in the Norfolk/Virginia Beach area and along the coasts of Connecticut, New York, and New Jersey.

For July 18, 1991, the same modeling run shows decreases in ozone ranging from four to at least 36 ppb throughout most of the 37-state region. Ozone increases of four to 12 ppb appear in Nashville, Paducah, Detroit, Bay City, and Philadelphia, and increases of four to at least 36 ppb in the Lake Michigan area and in Memphis, Louisville, Indianapolis, and Cincinnati. For July

[79] July 1–11, 1988; July 13–21, 1991; July 20–30, 1993; and July 7–18, 1995.

[80] Ozone Transport Assessment Group, joint meeting of the RUSM and ISI workgroups, ''Sensitivity Modeling'' and 5g scatter plots, August 22, 1996, ''First Round Strategy Modeling,'' October 25, 1996, and ''Round 2 Strategy Modeling,'' December 17, 1996.

[81] The upper end of the scale of changes in ozone concentrations modeled by OTAG was 36 ppb.

15, 1995, modeling shows ozone decreases ranging from four to at least 36 ppb throughout most of the OTAG region, and ozone increases of four to 12 ppb in Milwaukee, Chicago, Youngstown, and Philadelphia, and increases of four to 28 ppb on Long Island and in Memphis.

OTAG modeling indicates that urban ozone increases from region-wide NO_X control are smaller in magnitude and area when NO_X reductions are combined with VOC reductions. In a modeling run with a 60 percent elevated source NO_X reduction, a 30 percent low-level NO_X reduction and a 30 percent VOC reduction (OTAG run 5c), for July 8, 1988, ozone increases of four to 12 ppb were confined to Memphis and Norfolk/Virginia Beach, with increases of four to 28 ppb along the coast of Connecticut, New York, and New Jersey. For July 18, 1991, ozone increases of four to 12 ppb appear in Paducah and Philadelphia, with increases of four to 20 ppb in Chicago, Milwaukee, Cincinnati, and Louisville. For July 15, 1995, increases of four to 12 ppb appear in Memphis, Youngstown, Philadelphia, and Long Island.

The above OTAG results for ozone changes were cited without regard to the actual ozone levels. A closer look at OTAG modeling indicates that urban NO_X reductions, as part of region-wide reductions, produce widespread decreases in ozone concentrations on high ozone days. Urban NO_X reductions also produce limited increases in ozone concentrations, but the magnitude, time, and location of these increases generally do not cause or contribute to high ozone concentrations; most urban ozone increases occur in areas already below the ozone standard and, thus, in most cases, urban ozone increases resulting from NO_X reductions do not cause exceedance of the ozone standard. There are a few days in a few urban areas where NO_X reductions produce ozone increases in portions of an urban area that are detrimental. OTAG defined detrimental as an increase exceeding four ppb in a grid cell on a day with ozone exceeding 100 ppb. However, those portions of an urban area with disbenefits on one day of an ozone episode get benefits on later days of the same episode, and later days generally are higher ozone days.[82]

In other words, OTAG has found that, in general, NO_X reduction disbenefits are inversely related to ozone concentration. On the low ozone days leading up to an ozone episode (and sometimes the last day or so) the increases are greatest, and on the high ozone days, the increases are least (or nonexistent); the ozone increases generally occur on days when ozone is low and the ozone decreases generally occur on days when ozone is high. This indicates that, in most cases, urban ozone increases may not produce detrimental effects when viewed alone, and the overall effects over the episode are positive. However, OTAG modeling (run 5e) indicates that at least one area for one day of one episode experienced an increase in ozone on a high ozone day. Concentration difference plots show ozone increases over Lake Michigan and the adjacent shoreline at least as high as 36 ppb on July 18, 1991, when the highest modeled ozone concentration was about 110 ppb. However, concentration difference plots also show ozone decreases in downwind states. Decreases in ozone of five ppb extend into Michigan, and decreases of one ppb extend as far as New York, New Hampshire, Vermont, and Maine. The magnitude of the ozone decrease is as high as ten ppb.[83]

For July 19, 1991, with peak ozone levels of 130 ppb and, therefore higher than for July 18, OTAG modeling (run 4b)[84] showed ozone increases for only two of the 20 highest grid cells in the Lake Michigan region. On July 20, ozone increases are only apparent for ozone levels less than 100 ppb. OTAG modeling thus demonstrates that the ozone reduction benefits of urban NO_X control far outweigh the disbenefits of urban ozone increases in both magnitude of ozone reduction and geographic scope.

Ozone benefits and disbenefits occur from both elevated and low-level NO_X reductions; the relative effectiveness of elevated and low-level NO_X reductions varies by region and ozone episode, according to OTAG modeling.[85] Elevated and low-level NO_X reductions appear to act independently, with little synergistic effect. The pattern of ozone benefits and disbenefits is similar whether the one-hour or the proposed eight-hour ozone standard is modeled.

The NO_X reduction scenarios modeled by OTAG are for large NO_X reductions, greater than the Phase II RFG NO_X emission reduction standard of 6.8 percent of gasoline-fueled vehicle emissions on average. Although EPA believes the direction of the effect is reliable, disbenefits from the Phase II RFG NO_X emission reduction standard would be smaller than the urban disbenefits modeled by OTAG for larger NO_X reductions. EPA recognizes that the OTAG model's coarse grid size (even in fine part of the domain) may cause the modeling to show fewer disbenefit areas than actually exist and would be revealed by finer grid modeling, such as urban-scale modeling. As API points out, urban-scale modeling demonstrations of NO_X disbenefits supported the section 182(f) waivers approved by EPA for three mandated RFG areas (Chicago, Milwaukee, and Houston). The OTAG model's grid size and wide field treatments are not precise enough to be used to balance population exposures to ozone benefits and disbenefits from NO_X control. However, these facts do not change EPA's conclusion that OTAG modeling demonstrates that the ozone reduction benefits of NO_X control far outweigh the disbenefits of urban ozone increases in both magnitude of ozone reduction and geographic scope.

It should be noted that no scenario modeled by OTAG to date completely mitigates the ozone problem throughout the 37 state domain, so some areas, including the Northeast and the Lake Michigan region, will have to go beyond OTAG scenarios to reach attainment. Since OTAG modeling shows that more NO_X emission reductions produce more ozone reductions, the ultimate ozone mitigation level of emissions may not produce urban disbenefits.

OTAG modeling of the transport of ozone and ozone precursors among subregions is less complete than its modeling of various region-wide emission reduction scenarios. Preliminary OTAG sensitivity tests did include a set of four regional impact runs to examine the effect of controls applied differently within the OTAG domain. For this purpose, OTAG was divided into four subregions: Northeast, Midwest, Southeast, and Southwest.[86] The regional impact runs provide

[82] Lopez, Bob, ''Localized Ozone Increases Due to NO_X Control—Transmittal of Technical Evaluation Summary and Draft Policy Options Paper,'' memorandum and attachments from OTAG Task Group on Criteria for Modeling and Strategy Refinement Regarding NO_X Disbenefits to OTAG Implementation and Strategies Workgroup and Criteria Evaluation Miniworkgroup, second draft, December 12, 1996, and Koerber, Mike, OTAG Policy Group Meeting, December 18, 1996.

[83] Ibid.

[84] OTAG run 4b represents the deepest level of controls that has been modeled by OTAG for nonutility point source NO_X emissions, and for NO_X and VOC emissions from area and mobile sources. If the deepest level of NO_X controls being modeled by OTAG for utility NO_X and for utility and nonutility point source VOC is then added (OTAG run 2), ozone increases are not as large on July 19, 1991 and some become ozone reductions.

[85] Koerber, Mike, OTAG Policy Group Meeting, December 18, 1996.

[86] Subsequent to the subregional modeling described here, OTAG has further divided its modeling domain into 13 smaller subregions for purposes of assessing transport between these subregions. This modeling was not complete enough to have been considered in the decision announced today.

preliminary information on the spatial and temporal scales of ozone transport. NO_X reductions of 60 percent from elevated sources and 30 percent from low level sources plus a VOC reduction of 30 percent (OTAG run 5c) were applied to one region at a time for each of the four OTAG ozone episodes. In general, surface plots show that emission reductions in a given region have the most ozone reduction benefit in that same region, although downwind benefits outside the region were also apparent. Northeast reductions benefited the Southeast in one episode. Midwest reductions benefited the Northeast in four episodes and the Southeast in one episode. Southeast reductions benefited the Midwest during two episodes and the Southwest during two episodes. Southwest reductions benefited the Midwest during two episodes.[87]

Although OTAG modeling of ozone transport is incomplete, it indicates that NO_X reductions have downwind ozone reduction benefits, although those benefits attenuate with distance. NO_X reductions in Chicago and Milwaukee may help nearby states such as Michigan and perhaps, to some extent, the Northeast as well. NO_X reductions in the southern end of the Northeast corridor will help the northern end.

The API petition requests that EPA eliminate or delay the Phase II RFG NO_X emission reduction standard.[88] EPA disagrees, as the evidence does not support eliminating or delaying the Phase II RFG NO_X standard. The NO_X reductions obtained from RFG in the metropolitan nonattainment areas are an important component of a regional NO_X reduction strategy, and modeling and analysis to date strongly supports the need for such regional NO_X reductions. Such reductions, especially when combined with urban VOC reductions, lead to ozone reductions on high ozone days across large areas of the country, including all of the major ozone nonattainment areas covered by the RFG program. While the potential for disbenefits is clear, with few exceptions, disbenefits appear on low ozone days and do not cause exceedance of the ozone standard, while benefits appear on high ozone days when they are most needed. As described above, OTAG found only one day of one episode in one area where an urban ozone increase could be classified as detrimental, with detrimental being defined as an increase in ozone of four ppb in a grid cell on a day with ozone exceeding 100 ppb.[89] NO_X control resulted in ozone decreases for the following days of that episode . EPA does not believe the evidence when viewed overall supports forgoing the ozone reduction benefits of NO_X reduction from RFG.

In conclusion, API's arguments that the Phase II RFG NO_X standard may cause limited urban disbenefits, and that additional VOC reductions may be necessary to ameliorate such disbenefits, are not compelling new evidence or arguments that support elimination or delay of the Phase II RFG NO_X emission reduction standard.[90] EPA has concluded that reducing NO_X emissions in required RFG areas as part of a region-wide strategy will contribute to attainment of the ozone standard, even if those NO_X emission reductions do not improve air quality in some portions of some RFG areas on some low ozone days. Additional VOC reductions are an option states may choose to avoid or reduce urban ozone increases from NO_X control.

API recently submitted the results of air quality modeling undertaken by Systems Applications International on API's behalf. API's modeling used the same photochemical grid model, inventory, and episode data as OTAG. API examined the effect in 2007 of a 6.8 percent reduction in mobile source NO_X emissions in RFG areas during the 1991 episode. API's modeling shows benefits and disbenefits in RFG areas, and no change in most non-RFG areas throughout the OTAG domain.[91] On the basis of this modeling, API argues that the Phase II RFG NO_X standard will be ineffective in reducing ozone, underscoring the cost-ineffectiveness of the Phase II RFG NO_X standard, according to API.

However, API's modeling does not indicate whether disbenefits occurred in grid cells with high or low ozone, so EPA cannot determine if the projected disbenefit would actually be detrimental. As discussed previously, OTAG modeling demonstrates that most urban ozone increases from NO_X control occur on low ozone days and do not cause exceedance of the ozone standard, while ozone reductions occur on high ozone days when reductions are most needed. Moreover, API's modeling sets the threshold level of ozone reduction at two ppb, which effectively eliminates benefits below two ppb. The Phase II RFG NO_X standard is estimated to achieve a one to two percent reduction in the national NO_X inventory, and that reduction would translate into a relatively small reduction in the ozone level at levels above 100 ppb. By setting the threshold at two percent, API's modeling may not capture the benefits of the standard. Thus, EPA is not persuaded by API's modeling that the Phase II RFG NO_X standard will be ineffective in reducing ozone; nor does EPA agree that API's modeling underscores the Phase II RFG NO_X standard's cost-ineffectiveness.

4. Non-ozone Benefits

In the RFG final rule, EPA cited non-ozone benefits of NO_X control, such as reductions in emissions leading to acid rain formation, reductions in toxic nitrated polycyclic aromatic compounds, lower secondary airborne particulate (i.e., ammonium nitrate) formation, reduced nitrate deposition from rain, improved visibility, and lower levels of nitrogen dioxide. A complete discussion of these benefits can be found in the RIA accompanying the RFG final rule.[92] EPA did not attempt to quantify the non-ozone benefits of NO_X control in the rulemaking, and did not include non-ozone benefits in its cost-effectiveness determination.

API claims that because EPA did not quantify non-ozone benefits, such benefits are speculative; API presented no evidence to support this claim. EPA does not agree. The fact that EPA did not quantify non-ozone benefits of NO_X control does not render those benefits speculative. In a directional sense, at least, the non-ozone benefits of NO_X reductions, including the Phase II RFG NO_X standard, are clear.

[87] Ozone Transport Assessment Group, joint meeting of the RUSM and ISI workgroups, ''Sensitivity Modeling,'' August 22, 1996.

[88] One commenter suggested that an ''opt out'' provision from the NO_X reduction standard be provided for areas that can document a disbenefit from NO_X reductions. For the reasons discussed above, the evidence does not support such a waiver for RFG standards at this time.

[89] Lopez, Bob, ''Localized Ozone Increases Due to NO_X Control—Transmittal of Technical Evaluation Summary and Draft Policy Options Paper,'' memorandum and attachments from OTAG Task Group on Criteria for Modeling and Strategy Refinement Regarding NO_X Disbenefits to OTAG Implementation and Strategies Workgroup and Criteria Evaluation Miniworkgroup, second draft, December 12, 1996, and Koerber, Mike, OTAG Policy Group Meeting, December 18, 1996.

[90] See discussion in the RFG final rule at 59 FR 7751.

[91] EPA was puzzled by effects that appear in Georgia and Alabama, which are not RFG areas, and contacted API for an explanation. API's contractor, SAI, explained in a February 14, 1997 telephone call that some anomalies of the modeled results can be explained by the differences in the results when directly comparing modeling runs made on two different computers. However, the differences in results from directly comparing modeling runs made on two different computers may also confound the modeled effects of RFG in terms of ozone concentration differences, casting doubt on the credibility of the results, since the modeled effects of RFG are in the same range as the anomalies claimed by SAI.

[92] See the RIA at pp. 321–322. See also 59 FR 7751.

Since publication of the RFG final rule, EPA has identified additional non-ozone benefits from NO_X reductions. The following describes how NO_X emissions contribute to adverse impacts on the environment:

Acid Rain. NO_X and sulfur dioxide are the two key air pollutants that cause acid rain and result in adverse effects on aquatic and terrestrial ecosystems, materials, visibility, and public health. Nitric acidic deposition plays a dominant role in the acid pulses associated with the fish kills observed during the springtime melt of the snowpack in sensitive watersheds and recently has also been identified as a major contributor to chronic acidification of certain sensitive surface waters.

Drinking Water Nitrate. High levels of nitrate in drinking water are a health hazard, especially for infants. Atmospheric nitrogen deposition in sensitive forested watersheds can increase stream water nitrate concentrations; the added nitrate can remain in the water and be transported long distances downstream because plants in most freshwater systems do not take up the added nitrate.

Eutrophication. NO_X emissions contribute directly to the widespread accelerated eutrophication of U.S. coastal waters and estuaries. Atmospheric deposition direct to surface waters and deposition to watershed and subsequent transport into the tidal waters has been documented to contribute from 12 to 44 percent of the total nitrogen loadings to U.S. coastal water bodies. Nitrogen is the nutrient limiting growth of algae in most coastal waters and estuaries. Thus addition of nitrogen results in accelerated algal and aquatic plant growth in the water body causing adverse ecological effects and economic impacts that range from nuisance algal blooms to oxygen depletion and fish kills.

Global Warming. Nitrous oxide (N2O) is a greenhouse gas. Anthropogenic nitrous oxide emissions in the U.S. contribute about two percent of the greenhouse effect, relative to total U.S. anthropogenic emissions of greenhouse gases. In addition, emissions of NO_X lead to the formation of tropospheric ozone, which is another greenhouse gas.

Nitrogen Dioxide (NO2). Exposure to NO2 is associated with a variety of acute and chronic health effects. The health effects of most concern at ambient or near-ambient concentrations of NO2 include mild changes in airway responsiveness and pulmonary function in individuals with preexisting respiratory illnesses, and increases in respiratory illnesses in children.

Nitrogen Saturation of Forest Ecosystems. Forests accumulate nitrogen inputs. While nitrogen inputs in forest ecosystems have traditionally been considered beneficial, recent findings in North America and Europe suggest that, because of chronic nitrogen deposition from air pollution, some forests are showing signs of nitrogen saturation, including undesirable nitrate leaching to surface and ground water and decreased plant growth.

Particulate Matter. NO_X compounds react with other compounds to form fine nitrate particles and acid aerosols. Nitrates are especially damaging because of their small size, which results in penetration deep into the lungs. Particulate matter has a wide range of adverse health effects, including premature death.

Stratospheric Ozone Depletion. A layer of ozone located in the upper atmosphere (stratosphere) protects the surface of the earth (troposphere) from excessive ultraviolet radiation. Tropospheric emissions of nitrous oxide (N2O) are very stable and slowly migrate to the stratosphere, where solar radiation breaks it into nitric oxide (NO) and nitrogen (N). The nitric oxide reacts with ozone to form nitrogen dioxide and oxygen. Thus, additional N2O emissions would result in a slight decrease in stratospheric ozone.

Toxics. In the atmosphere, NO_X emissions react to form nitrogen compounds, some of which are toxic. Compounds of concern include transformation products, nitrate radical, peroxyacetyl nitrates, nitroarenes, and nitrosamines.

Visibility and Regional Haze. NO_X emissions can interfere with the transmission of light, limiting visual range and color discrimination. Most visibility and regional haze problems can be traced to carbon, nitrates, nitrogen dioxide, organics, soil dust, and sulfates.

Cost-Effectiveness

1. Cost-Effectiveness of Phase II RFG NO_X Standard

To update its evaluation of the cost-effectiveness of the Phase II RFG NO_X standard, EPA asked DOE to update the 1994 DOE study. EPA used the Bonner & Moore refinery model to estimate costs in the RFG rulemaking, and included the 1994 DOE study and additional industry cost studies in its consideration. EPA determined to update the DOE study for purposes of considering API's petition, rather than the Bonner & Moore analysis, because since the 1994 study, EPA, DOE, and API have worked closely to improve the refinery modeling used by DOE to develop cost estimates. Over 200 improvements and changes to the model have been made in response to suggestions from API.

EPA notified each party that commented on the API petition when DOE's draft report became available and sent copies to interested parties for their review. EPA also reopened the comment period and held a meeting with interested parties to discuss the draft DOE report.

DOE's improved model provides a range of cost-effectiveness, rather than a single number. DOE's regionally-weighted cost range per summer ton of NO_X removed is $5,400 to $11,300. Based on that range, EPA calculated the annual incremental cost range at $2,180 to $6,000 per ton of NO_X removed. Although the high end of EPA's cost-effectiveness range exceeds $5,000, EPA does not consider that to be significant, since the midpoint of the range is $4,090. EPA views DOE's updated estimate as new information that confirms the information relied upon in the RFG rulemaking to evaluate the cost-effectiveness of the Phase II RFG NO_x standard. The improvements to the DOE model and EPA's updated cost-effectiveness calculations are described in detail in an EPA technical memorandum available in the docket for this action.[93]

EPA received comments from the oil and automotive industries on DOE's draft report. Both the oil and automotive industries' comments are critical of certain technical aspects of DOE's refinery modeling. These comments and EPA's responses are discussed in an EPA technical memorandum, and in DOE's final report; both documents are available in the docket for this action.[94]

Overall, oil industry comments argued that the lower end of the DOE cost range should be dropped because the model form that produced it is not representative. DOE produced a cost range by using both a ''ratio free'' and ''ratio constrained'' form of its refinery model. The ratio free form is similar to the model version used for the 1994 DOE study, with improvements in process descriptions. The ratio free model includes a modeling concept in which refinery streams with identical

[93] See A–96–27, Memorandum dated February 1997 from Lester Wyborny, Chemical Engineer, Fuels and Energy Division, ''Cost of Phase II RFG NO_X Control,'' to Charles Freed, Director, Fuels and Energy Division.

[94] Ibid and U.S. DOE, Re-estimation of the Refining Cost of Reformulated Gasoline NO_X Control, February 1997.

distillation cut points are kept separate through different processes, and this modeling concept may produce over-optimized results. The ratio constrained form has the same improvements in process descriptions as the ratio free form, with added constraints on the proportions of streams entering a process, to avoid unrealistic stream separation; however, the ratio constrained form may under-optimize refinery operations. DOE has concluded that both model forms can provide credible estimates of the refining cost range, given the variations within and among refineries, uncertainties in the range of refinery costs, and the over-optimization and under-optimization possibilities of the model forms. EPA agrees with DOE that both model forms are useful in exploring the plausible range of refining costs.

Oil industry comments argue that the upper end of DOE's range exceeds a benchmark of $5,000 per ton of NO_X removed. DOE's regionally-weighted cost-effectiveness estimate for the ratio constrained model form is $11,300 per summer ton of NO_X removed, which DOE calculates as $5,200 per annual ton, and which EPA calculates as $6,000 per annual ton.[95] Both EPA and DOE believe that the high end of the range reflected by the ratio constrained model estimate is not significantly different from the benchmark of $5,000 per annual ton.

EPA believes that the updated DOE cost study is the best available evidence concerning the costs of the Phase II RFG NO_X standard, including the desulfurization processes that drive those costs. This evidence indicates that the cost-effectiveness analysis used by EPA when setting the standard continues to be valid. The detailed information on desulfurization costs submitted by API to support its petition was previously submitted during the RFG rulemaking and was considered at that time; it is not new information and does not change EPA's view, based on the updated DOE cost modeling, that the Phase II RFG NO_X standard remains cost-effective.

API argues that the 1994 DOE study supports its argument that EPA's desulfurization costs are too low, citing the study's observation that: ''The actual NO_X reduction standard for Phase II RFG should reflect margins for enforcement tolerance, temporal production variations* * *, variations among refiners of differing capability, and potential inaccuracies and over-optimization in the refinery yield model* * *,[96] However, the 1994 DOE study supports EPA's view that the 6.8 percent average NO_X emission reduction standard will cost approximately $5,000 per annual ton of NO_X removed. The 1994 DOE study's reference to $10,000 per summer ton is equivalent to EPA's $5,000 per annual ton.[97] Furthermore, the 1994 DOE study used inflated year 2000 dollars, while EPA's estimates were in 1990 dollars.

Oil industry comments also point out that DOE's updated report states that its cost estimates do not include the impact of the requirement that RFG achieve a three percent minimum NO_X reduction per batch under the averaging provisions, or the impact of any potential enforcement tolerance associated with that three percent minimum NO_X standard. EPA believes that any costs associated with the minimum NO_X reduction requirement and any associated enforcement tolerance compliance costs are separate costs associated with these provisions and do not change the cost-effectiveness analysis of the 6.8 percent average NO_X emission reduction standard. While EPA is denying API's petition to reconsider the 6.8 percent average standard, it will continue to evaluate and plans to reach a decision on the separate issues associated with the three percent minimum requirement under the averaging provisions.

As discussed above, NO_X reductions from Phase II RFG in several cities with NO_X waivers are expected to contribute to ozone attainment in those areas, downwind areas, or both. As discussed previously, EPA believes that the benefits of NO_X reduction in these and other RFG areas far outweigh the disbenefits. Thus, EPA does not believe that the benefit of the NO_X reductions in Chicago, Milwaukee, and Houston should be calculated as zero when analyzing the cost-effectiveness of the Phase II RFG NO_X reduction standard.

API also argues that the Phase II RFG NO_X emission reduction standard interferes with refining flexibility and leaves refiners with unduly costly and narrow choices for producing RFG. However, as the updated DOE study indicates, as discussed above, the Phase II RFG NO_X standard is not unduly costly even considering the high end of the range reflected by the ratio constrained model estimate. In the final rule, EPA clarified that the Phase II RFG standards are performance standards and may be met by the refiner's choice of fuel parameter controls. In addition, EPA elected to allow both a per gallon and an averaging standard for NO_X to provide greater flexibility to refiners. API has provided no compelling new evidence or argument to the contrary.

2. Stationary Source Cost-Effectiveness

API argues that EPA understated the relative cost-effectiveness of major stationary source NO_X controls. API cites incremental cost-effectiveness estimates for coal-fired utility boilers of $1,300 to $2,200 per ton for selective non-catalytic reduction and $1,250 to $6,600 per ton for selective catalytic reduction.[98] For gas and oil-fired utility boilers, API cites $2,100 to $5,650 per ton for selective catalytic reduction, and for gas-fired industrial boilers, $3,300 to $5,500 per ton for selective catalytic reduction.[99] In its RIA, EPA cited cost-effectiveness estimates for stationary source NO_X emission controls based on utility boilers. Low NO_X burner technology was cited at $1,000 per ton and selective catalytic reduction at $3,000 to $10,000 per ton.[100]

In stationary source regulations promulgated since the RFG rule, cost-effectiveness estimates have ranged from $200 per ton for certain coal fired power plants[101] to about $3,000 per ton for municipal waste combustors.[102] Recent NO_X control estimates developed by the Mid-Atlantic Regional Air Management Association (MARAMA) and Northeast States for Coordinated Air Use Management (NESCAUM) for those regions for retrofits range from a low of $320 to $1,800 for natural gas reburn for oil and gas boilers to $3,400 to $6,900 for natural gas conversion for coal-fired boilers.[103]

API and other oil industry sources cited cost-effectiveness estimates and rankings that were developed in the OTAG process for Phase II RFG and other NO_X reduction programs, as evidence that the Phase II RFG NO_X standard is not cost-effective compared to other NO_X reduction programs, particularly stationary source programs.

[95] The annual per ton cost estimates of DOE and EPA differ because EPA uses a different method of annualizing costs than DOE. EPA's calculations are described in a technical memorandum to docket A–96–27; see the memorandum dated February 1997 from Lester Wyborny, Chemical Engineer, Fuels and Energy Division, ''Cost of Phase II RFG NO_X Control,'' to Charles Freed, Director, Fuels and Energy Division. Although Phase II RFG NO_X emission reductions are required only during the summer ozone season, EPA annualizes the cost so that it may be compared with other emission reduction programs.

[96] Pet. at p. 20, citing the 1994 DOE study at xii.

[97] 1994 DOE study, pp. 56–58.

[98] Pet. at p. 26.

[99] Ibid.

[100] RIA at p. 385.

[101] 60 FR 18751 (April 13, 1995).

[102] 54 FR 52293 (December 20, 1989); 60 FR 65387 (December 19, 1995).

[103] Phase II NO_X Controls for the MARAMA and NESCAUM Regions, EPA–453/R–96–002, November 1995, Table 1–7.

API argues these other programs offer a larger potential for overall reduction in NO_X emissions. The figure of $25,000 to $45,000 per ton of NO_X reduced developed in the OTAG process ascribes all the costs of RFG to NO_X control, including costs incurred to reduce toxics and VOCs, and to meet the various content requirements. If VOC and NO_X reductions are valued equally, as OTAG has done, the incremental cost per ton of NO_X removed falls by more than a factor of four to under $7,000 per ton, and the average cost falls to $3,000 to $4,000 per ton. That incremental cost is higher than projected by EPA for the Phase II RFG NO_X standard because it assumes that all the gasoline in the 37 state OTAG region, over 90 percent of the gasoline sold in the U.S. outside of California, would be included in the RFG program. Costs rise rather than fall as volume of RFG produced increases because less efficient refineries would be drawn into producing RFG. Moreover, EPA's $5,000 per ton cost estimate for the Phase II RFG NO_X standard applies to the final increment of emission reduction pursued under the program, while API compares this incremental cost to average costs of other control programs. Average costs are always less than incremental costs; if Phase II RFG costs are evaluated on an average-cost basis, the cost per ton for RFG areas falls to between $2,000 and $3,000.

Based on the evidence presented, EPA concludes that some stationary source NO_X controls are more cost-effective than the Phase II RFG NO_X standard, and some are not. The fact that some stationary source NO_X controls are more cost-effective does not vitiate the cost-effectiveness of the Phase II RFG NO_X standard. EPA cited stationary source costs both above and below the cost of Phase II RFG NO_X standard in the RFG rulemaking. EPA does not find that it understated the relative cost-effectiveness of stationary source NO_X controls.

API argues that stationary sources offer more potential for reducing air pollution. API argues that EPA should sequence NO_X controls and target major stationary sources first, since stationary source NO_X control is more cost-effective and can be targeted geographically to avoid controls where controls are not needed. Other NO_X controls should not be considered until major stationary source controls are employed and evaluated, according to API.

As discussed previously, some stationary source NO_X controls are more cost-effective than the Phase II RFG NO_X standard, and some are not. However, OTAG has projected that, in 2007, mobile sources will still contribute 42 percent of all NO_X after implementation of 1990 CAAA controls for mobile and stationary sources. These measures include the retrofit of reasonably available control technology on existing major stationary sources of NO_X and implementation of enhanced inspection and maintenance programs under Title I; new emission standards for new motor vehicles and nonroad engines, and the RFG program under Title II; and controls on certain coal-fired electric power plants under Title IV. Given the challenges facing so many areas in identifying and implementing programs that will lead to attainment of the ozone standard, and the need for additional NO_X controls, EPA believes that NO_X reductions in urban areas where mobile sources are concentrated, as part of a region-wide NO_X reductions, are still essential to achieve ozone attainment. In addition, OTAG modeling demonstrates that even with unrealistically large NO_X reductions, such as an 80 percent reduction in elevated NO_X plus a 60 percent reduction in low level NO_X, without VOC reductions, attainment still would not be reached throughout the OTAG region. EPA believes that both stationary source and mobile source controls will be necessary for many areas to reach attainment.

3. Executive Order 12866

API argues that the Phase II RFG NO_X emission reduction standard does not satisfy the provisions of Executive Order 12866. API argues that the Phase II RFG NO_X standard is not compelled by statute or necessary to interpret the statute, or made necessary by public need, or the most cost-effective NO_X control to achieve the regulatory objective.

EPA believes the Phase II RFG NO_X reduction standard meets the substantive requirements of the Executive Order 12866. Although the Phase II RFG NO_X standard is not required by statute, it is ''made necessary by compelling public need'' [104] and is a cost-effective standard. As discussed earlier, the authority EPA used to establish the standard, section 211(c)(1)(A), allows EPA to regulate fuels or fuel additives if their emission products cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. EPA used this authority based on scientific evidence regarding the benefits of NO_X control and the cost-effectiveness of NO_X reductions. The preceding discussion indicates that EPA's RFG rulemaking properly complied with Executive Order 12866.

V. Conclusion

A detailed discussion of the determination of the need for, scientific justification for, and cost-effectiveness of NO_X control is presented in the RIA for the final rule.[105] EPA's review here of the air quality benefits and cost-effectiveness of the Phase II RFG NO_X reduction standard does not show that the prior rulemaking determinations supporting this standard were inappropriate. After considering API's petition, public comment, and other relevant information available to EPA, API's petition for reconsideration of the Phase II RFG NO_X emission reduction standard is denied.

Dated: February 28, 1997.

Mary D. Nichols,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 97–6217 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

[104] 58 FR 51735 (October 4, 1993), section 1(a) at 51735.

[105] RIA at pp. 313–326.

---

40 CFR Part 180

[OPP–300458; FRL–5593–1]

RIN 2070–AB78

Clopyralid; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the herbicide clopyralid in or on the raw agricultural commodity cranberries in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of clopyralid on cranberries in the states of Massachusetts, Oregon, and Washington. This regulation establishes maximum permissible levels for residues of clopyralid in this food. The tolerance will expire July 31, 1998.

DATES: This regulation becomes effective March 12, 1997. This regulation expire on July 31, 1998. Objections and requests for hearings must be received by EPA on or before May 12, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300458], must be submitted to: Hearing Clerk (1900), Environmental Protection

Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300458], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300458]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308–8326, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of clopyralid on cranberries at 2 parts per million (ppm). This tolerance will expire on July 31, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 CFR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18. Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Clopyralid on Cranberries and FFDCA Tolerances

EPA has authorized use under FIFRA section 18 of clopyralid on cranberries for control of various weeds. Cancellations of the most effective registered alternatives have left growers with few tools to control weeds in a crop which cannot be cultivated. Over time, since control has been less than adequate, the problems have gotten steadily worse, resulting in near-epidemic levels of herbaceous perennial weeds over the past few years on many cranberry farms. The projected yield loss on the affected acres would cause those growers to suffer a significant economic loss.

As part of its assessment of these specific exemptions, EPA assessed the potential risks presented by residues of clopyralid on cranberries. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. This tolerance for residues of clopyralid will permit the marketing of cranberries treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on these emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e) as

provided in section 408(l)(6). Although this tolerance will expire on July 31, 1998, under FFDCA section 408(l)(5), residues of clopyralid not in excess of the amount specified in this tolerance remaining in or on cranberries after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether clopyralid meets the requirements for registration under FIFRA section 3 for use on cranberries or whether a permanent tolerance for clopyralid for cranberries would be appropriate. This action by EPA does not serve as a basis for registration of clopyralid by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than Massachusetts, Oregon, and Washington to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for clopyralid, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Clopyralid is already registered by EPA for outdoor Christmas tree plantations, grasses grown for seed, fallow cropland, non-cropland and other non-food uses, as well as several food use registrations. EPA believes it has sufficient data to assess the hazards of clopyralid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of clopyralid in or on cranberries at 2 ppm. EPA's assessment of the dietary exposures and risks associated with establishing this tolerance follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, the EPA's Office of Pesticide Programs (OPP) has established the RfD for clopyralid at 0.5 milligrams/kilogram/day (mg/kg/day). The RfD was established based on an NOEL of 50 mg/kg/day from a 2–year rat feeding study. Effects observed at the lowest effect level (LEL) were decreased mean body weights in females. An uncertainty factor of 100 was used.

2. *Acute toxicity.* No toxicology studies were identified by OPP which demonstrated the need for an acute dietary risk assessment.

3. *Short-term non-dietary inhalation and dermal toxicity.* Based on available data indicating that there was no evidence of toxicity by the dermal or inhalation routes, worker exposure risks were not calculated.

4. *Carcinogenicity.* No evidence of carcinogenicity was seen in mice or in rats fed clopyralid for 24 months.

B. Aggregate Exposure

Tolerances are established for residues of clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on several raw agricultural commodities (40 CFR 180.431(a) and (b)).

For the purpose of assessing chronic dietary exposure from clopyralid, EPA assumed tolerance level residues and 100% of crop treated for the proposed and existing food uses of clopyralid.

These conservative assumptions result in overestimation of human dietary exposures.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. There is no entry for clopyralid in the ''Pesticides in Groundwater Data Base'' (EPA 734–12–92–001, September 1992). There is no established Maximum Concentration Level (MCL) for residues of clopyralid in drinking water. No drinking water health advisory levels have been established for clopyralid.

The Agency does not have available data to perform a quantitative drinking water risk assessment for clopyralid at this time. Previous experience with persistent and mobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Based on this experience and the OPP's best scientific judgement, EPA concludes that it is not likely that the potential exposure from residues of clopyralid in drinking water added to the current dietary exposure will result in an exposure which exceeds the RfD.

Clopyralid is registered for uses, such as lawns, that could result in non-occupational exposure and EPA acknowledges that there may be short-, intermediate-, and long-term non-occupational, non-dietary exposure scenarios. At this time, the Agency has insufficient information to assess the potential risks from such exposure. However, available data for clopyralid indicate no evidence of toxicity by the dermal or inhalation routes. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment.

At this time, the Agency has not made a determination that clopyralid and other substances that may have a common mode of toxicity would have cumulative effects. Clopyralid is a member of the pyridinoxy class of herbicides. Other members of this class include fluroxypyr, tricolpyr, and picloram. Given the time limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity EPA will make its safety determination for these tolerances based on those factors which can reasonably integrate into a risk assessment. For purposes of this tolerance only, the Agency is considering only the potential risks of clopyralid in its aggregate exposure.

C. Safety Determinations For U.S. Population

Taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to clopyralid from published tolerances will utilize 1.65 percent of the RfD for the U.S. population. EPA does not anticipate that the potential exposure from residues of clopyralid in drinking water added to the current dietary exposure will result in a chronic exposure which would exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to clopyralid residues.

D. Determination of Safety for Infants and Children

Based on current toxicological data requirements, the data base for clopyralid relative to pre- and post-natal toxicity is complete. EPA notes that the developmental toxicity NOELs of >250 mg/kg/day, the highest dose tested (HDT) in both rats and rabbits demonstrate that there is no developmental (prenatal) toxicity present for clopyralid. EPA further notes that the developmental NOELs are 5–fold higher in both rats and rabbits, respectively, than the NOEL of 50 mg/kg/day from the 2–year feeding study in rats, which is the basis for the RfD.

In the two-generation reproductive toxicity study in rats, the pup toxicity NOEL of 1,500 mg/kg/day, the HDT, was greater than the parental (systemic) toxicity NOEL of 500 mg/kg/day. This finding suggests that post-natal development in pups is not more sensitive and that infants and children may not be more sensitive to clopyralid than adult animals. The pup NOEL is 30–fold higher than the RfD NOEL of 50 mg/kg/day. This information, together with the uncertainty factor of 100 utilized to calculate the RfD for clopyralid, is considered adequate protection for infants and children with respect to prenatal and postnatal development against dietary exposure to clopyralid residues. EPA believes that the data base of clopyralid is sufficiently complete regarding infants and children and that effects seen in that data are not such to suggest a 100–fold uncertainty factor will be inadequate. Therefore, EPA has determined that an additional 10–fold safety factor is not appropriate and that the 100–fold uncertainty factor will be safe for infants and children.

EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of clopyralid ranges from 1.07% for nursing infants (<1 year old) up to 3.72% for children 1 to 6 years old. However, this calculation assumes tolerance level residues for all commodities and is therefore an over-estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. The addition of potential exposure from clopyralid residues in drinking water is not expected to result in an exposure which would exceed the RfD.

V. Other Considerations

The metabolism of clopyralid in plants and animals is adequately understood for the purposes of this tolerance. There are no Codex maximum residue levels established for residues of clopyralid on cranberries. The residue of concern is clopyralid (3,6-dichloro-2-pyridinecarboxylic acid). Adequate methods for purposes of data collection and enforcement of tolerances for clopyralid are available. A method for determining clopyralid residues is described in PAM, Vol. II.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of clopyralid in cranberries at 2 ppm. This tolerance will expire on July 31, 1998.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 12, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also

request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300458]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 27, 1997.

Peter Caulkins,
Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:
Authority: 21 U.S.C. 346a and 371.

2. In § 180.431, by adding a new paragraph (c) to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

* * * * *

(c) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table. The tolerance expires on the date specified in the table.

Commodity	Parts per million	Expiration Date
Cranberries	2	July 31, 1998

[FR Doc. 97–5875 Filed 3–11–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–60; FCC 97–27]

Cable Television Leased Commercial Access

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Second Report and Order and Second Order on Reconsideration of the First Report and Order (''Order'') regarding implementation of the leased commercial access provisions of the 1992 Cable Act. The Order addressed comments and petitions for reconsideration filed in response to the Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking in CS Docket 96–60, FCC 96–122 (released March 29, 1996) (subparts referred to separately as ''Reconsideration Order'' and ''Further NPRM''). The Order: revised the maximum rate formulas for use of full-

time leased access channels; declined to impose a transition period for the implementation of the revised rate formulas; maintained the current rules for maximum part-time rates and adopted a rule that cable operators are not required to open additional leased access channels for part-time use until all existing part-time leased access channels are substantially filled or until a programmer requests a year-long eight-hour daily time slot that cannot otherwise be accommodated; allowed the resale of leased access time; granted leased access programmers the right to demand access to a tier with a subscriber penetration of more than 50%; stipulated that minority and educational programming does not qualify as a substitute for leased access programming unless it is carried on a tier with a subscriber penetration of more than 50%; declined to mandate preferential treatment for certain types of leased access programmers; required operators to accept leased access programmers on a non-discriminatory basis so long as available leased access capacity exceeds demand; required that an independent accountant review an operator's rate calculations prior to the filing of a rate complaint with the Commission; established a standard of reasonableness for certain contractual requirements; specified when leased access programmers must pay for technical support; and defined the term ''affiliate'' for purposes of leased access. The Order also addressed several issues on reconsideration, including the exclusion of programming revenues from the maximum rate calculation, the maximum rate calculation for a la carte channels, cable operators' obligations to provide certain information to potential leased access programmers and the need for operators to comply with those obligations, time increments, the calculation of the leased access set-aside requirement, and billing and collection services. The Order is intended to address issues and concerns raised in the comments and petitions for reconsideration that were filed with the Commission in response to the Reconsideration Order and Further NPRM.

DATES: This rule is effective April 11, 1997, except the amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), and 76.975 (b) and (c), which impose new or modified information collection requirements, shall become effective upon approval by the Office of Management and Budget (OMB), but no sooner than April 11, 1997. The Commission will publish a document at a later date establishing the effective date for the sections containing information collection requirements. Written comments by the public on the modified information collection requirements are due on or before April 11, 1997, and written comments by OMB on the modified information collection requirements are due on or before May 12, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. A copy of any comments on the information collections contained in the Order should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503, or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained in the Order, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reductions Act

The Order contains modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in the Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 30 days from the date of publication of the Order in the Federal Register; OMB notification of action is due 60 days from date of publication of the Order in the Federal Register. Comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0568.

Title: Commercial leased access rates, terms and conditions.

Type of Review: Revision of existing collection.

Respondents: Business and other for profit entities; not-for-profit institutions.

Number of Respondents: 6,330 (6,270 cable systems + 30 selected accountant reviewers + an estimated 30 leased access programmers involved in the leased access rate dispute process).

Estimated Time Per Response: 1–10 hours.

Total Annual Burden: 94,171 hours, estimated as follows: § 76.970 describes the manner in which cable operators are to calculate maximum leased access rates. Currently, there are approximately 11,400 cable systems, of which approximately 45% have channel capacities of less than 36 channels, and are therefore exempt from the Commission's leased access provisions. The number of cable system respondents is therefore 6,270 (55% of 11,400). The average annual burden of calculating maximum rates is estimated to be 4 hours per cable system. 6,270×4 hours=25,080 hours.

Section 76.970(h) requires cable operators to provide the following information within 15 calendar days of a request regarding leased access (for systems subject to small system relief, cable operators are required to provide the following information within 30 days of a request regarding leased access): (a) A complete schedule of the operator's full-time and part-time leased access rates; (b) how much of the cable operator's leased access set-aside capacity is available; (c) rates associated with technical and studio costs; and (d) if specifically requested, a sample leased access contract. We estimate that each cable system operator will undergo an average burden of 10 hours per year to gather and maintain this information and disclose it to requesting potential leased access programmers. Of the 10 hours, we estimate an average burden of 4 hours for each operator to gather and maintain the information and an average burden of 6 hours for each operator to furnish materials to an estimated 20 requesters per year. 6,270×10 hours=62,700 hours.

Section 76.971 requires cable operators to provide billing and collection services to leased access programmers unless they can demonstrate the existence of third party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers. The Commission estimates that identification of a third party billing and collection service rarely needs to occur because the vast majority of leased access programming

is placed on a programming services tier and is billed as part of that tier. Nonetheless, the Commission estimates an average burden of no more than 1 hour per cable system operator to identify a third party billing and collection service and then to make the necessary information available.

6,270×1 hour=6,270 hours.

Section 76.975(b) requires that persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a rate complaint with the Commission. We estimate that operators will undergo an average burden of 4 hours to arrange for an independent accountant review and coordinate rate information with the selected accountant. This average burden accounts for those instances where parties that cannot agree on a mutually acceptable accountant must each select an independent accountant who in turn select a third independent accountant. Nationwide, we estimate a need for 30 accountant rate reviews per year.

30 × 4 hours = 120 hours.

76.975(c) requires that petitioners attach a copy of the final accountant's report to their petition where the petition is based on allegations that a cable operator's leased access rates are unreasonable. We estimate that petitioners will undergo an average burden of 2 minutes to attach such reports. Nationwide, we estimate that petitioners will need to attach a total of no more than 30 accountant's reports when filing petitions for relief.

30 × 2 minutes = 1 hour. 25,080 + 62,700 + 6,270 + 120 + 1 = 94,171 hours.

Estimated costs to respondents: $74,000, estimated as follows: We estimate the annual telephone, postage and stationery costs incurred by cable operators for leased access recordkeeping, sending out leased access information to prospective programmers, identifying third party billing collection services, and selecting accountants to be $50,000, equating to approximately $7.97 per operator. ($7.97 × 6,270 respondents = $50,000). We estimate that accountants will undergo an average burden of 8 hours to review an operator's maximum rate calculations and to prepare the required report. Accountants are estimated to be paid $100 per hour for their services. (30 accountant reviews) × (8 hours per review) × ($100 per hour) = $24,000.

Total costs to respondents = $50,000 + $24,000 = $74,000.

Needs and Uses: The information collected is used by prospective leased access programmers and the Commission to verify rate calculations for leased access channels and to eliminate uncertainty in negotiations for leased commercial access. The Commission's leased access requirements are designed to promote diversity of programming and competition in programming delivery as required by section 612 of the Communications Act.

Synopsis

The following is a synopsis of the Commission's Second Report and Order and Second Order on Reconsideration of the First Report and Order in CS Docket 96–60, FCC 97–27, adopted January 31, 1997 and released February 4, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 1919 M Street, NW., Washington, DC 20554.

I. Introduction

1. The statutory framework for commercial leased access, provided in Section 612 of the Communications Act of 1934, as amended, 47 U.S.C. 521 *et seq.* (''Communications Act''), was first established by the Cable Communications Policy Act of 1984, Public Law 98–549, 98 Stat. 2779 (1984), 47 U.S.C. 521 *et seq.* (''1984 Cable Act'') and was amended by the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, 106 Stat. 1460 (1992), 47 U.S.C. 521 *et seq.* (''1992 Cable Act''). Commercial leased access was created to provide access to the channel capacity of cable systems by parties unaffiliated with the cable operator that wish to distribute video programming free of the editorial control of the cable operator. Channel set-aside requirements were established in proportion to a system's total activated channel capacity. The statutory objectives of leased access are to ''promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.'' Each system operator subject to the leased access requirement must establish, consistent with the rules prescribed by the Commission, ''the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.''

2. In the Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC 93–177, 58 FR 29736 (May 21, 1993) (''Rate Order''), the Commission established initial regulations to implement the leased access provisions of the 1992 Cable Act. The Commission adopted the ''highest implicit fee'' formula as the method for setting maximum reasonable rates, and adopted various standards governing access terms and conditions, tier placement, technical standards for use, technical support, security deposits, conditions based on program content, requirements for billing and collection services, and procedures for the expedited resolution of disputes. In the Reconsideration Order, the Commission addressed certain issues pertaining to the highest implicit fee formula, the provision of certain leased access rate and channel availability information to prospective leased access programmers, acceptable time increments and pricing for part-time leased access use, operator provision of billing and collection services for leased access programmers, security deposits, calculation of the leased access set-aside requirement and reporting requirements. In the Further NPRM, the Commission re-examined the highest implicit fee formula from an economic perspective and tentatively concluded that the highest implicit fee formula is likely to overcompensate cable operators and does not sufficiently promote the goals underlying the leased access provisions. The Commission proposed a cost/market rate approach to setting maximum reasonable rates and requested comment on the approach and its implementation. In addition, the Commission sought comment on: (a) Part-time rates and an operator's obligation to open additional leased access channels for part-time use, (b) the resale of leased access time, (c) tier and channel placement for leased access programming, (d) the placement of minority or educational programming when it is used as a substitute for leased access programming, (e) preferential treatment for certain types of leased access programmers, including not-for-profit programmers, (f) the selection of leased access programmers, and (g) streamlined leased access dispute resolution procedures.

3. In the Order, the Commission amended its rules pertaining to cable television commercial leased access, after considering the comments and

reply comments filed in response to the Further NPRM, and addressed petitions for reconsideration of the leased access rules adopted in the Reconsideration Order.

II. Report and Order

A. Maximum Rate Formula for Leasing a Full Channel

4. Background: Section 612 directs the Commission to determine the maximum reasonable rates that cable operators may charge for commercial leased access. In the Rate Order, the Commission adopted rules that established maximum rates based on the highest implicit fee paid by non-leased access programming services distributed on a system. In the non-leased access context, cable operators generally pay programmers (e.g., a contractual license fee or a copyright fee) for their programming services. Nevertheless, there is an implicit fee for carriage to the extent that the amount of subscriber revenue that the operator receives for the programming is greater than the fee that the operator pays to the programmer. In other words, the amount of subscriber revenue that the programmer forgoes to the operator represents an implicit payment for carriage. The Commission determined that the implicit fee paid by a programmer is the average price per channel that a subscriber pays the operator minus the amount per subscriber that the operator pays the programmer. The highest of the implicit fees charged any unaffiliated non-leased access programmer was the maximum rate per subscriber that a cable operator could charge a leased access programmer.

5. In the Reconsideration Order and Further NPRM, we identified certain problems with the highest implicit fee formula and sought comment on a ''cost/market rate formula,'' an alternative approach that we believed might better promote the goals of leased access. Under this proposed approach, the maximum rate for leased access would depend on whether the cable operator is leasing its full statutory set-aside requirement. When the full set-aside capacity is not leased to unaffiliated programmers, the maximum rate would be based on the operator's reasonable and quantifiable costs (i.e., the costs of operating the cable system plus the additional costs related to leased access), including a reasonable profit. The operator would be allowed to use the subscriber revenue received from a leased access channel to offset the operating costs associated with the channel. In addition, the operator would be allowed to charge the leased access programmer the reasonable costs of bumping a programming service in order to accommodate the leased access programmer. We tentatively concluded that once the operator met its set-aside requirement, the cost-based maximum rate could be replaced by a market rate.

6. Discussion: Our role with regard to leased access rates is to establish maximum reasonable rates, not a mandatory rate that must be charged to all leased access programmers. Operators have the discretion to negotiate rates below the maximum rates established by the Commission. For clarification purposes, we adopted a rule that specifically states that cable operators are permitted under our rules to negotiate rates below the maximum permissible rates.

i. Cost/Market Rate Formula

7. After reviewing the record in this proceeding and after considering and analyzing all of the options presented, we concluded that the proposed cost/market rate formula does not adequately account for certain factors which, if excluded, would make the maximum leased access rates resulting from the formula unworkable in today's programming marketplace. Although the proposed cost/market rate formula accounts for lost advertising revenue and lost commissions that would result from bumping existing programming, it does not account for negative effects that leased access programming might have on subscriber revenue (i.e., lost subscriber revenue caused by subscribers dropping the tier or by requiring a lower price due to a devaluation of the tier). In the Further NPRM, we recognized this cost but tentatively concluded that the inability to quantify the specific effect on subscriber revenue caused by the replacement of current programming with leased access programming in the tiered programming services context made it too speculative to include as an opportunity cost category in the cost/market rate formula. We nevertheless sought comment on how our cost/market rate formula might measure changes in subscriber penetration due to the addition of leased access programming.

8. Neither the Commission nor the commenters in this proceeding have been able to accurately quantify the effect that leased access programming carried on a programming services tier may have on subscribership or subscriber revenues to a degree specific enough to assign it a definite value in a formula. Nevertheless, we no longer believe that this effect is a factor that reasonably can be ignored. Under the cost/market rate formula, the value of a channel is measured by subtracting the programming or license fee the operator pays for the channel from the advertising revenues and commissions the operator receives for the channel. The formula does not include the subscriber revenue received for the channel because, as explained above, we assumed that leased access programming would have no measurable impact on subscriber revenue. By ignoring the effect of leased access programming on subscriber revenue, the cost/market rate formula assigns a negative value to a channel where the license fee is higher than the revenue collected from advertising and commissions. For example, a programming service such as The Disney Channel, which carries no commercial advertising, could have a negative value under the cost/market rate formula and thus would yield a negative leased access rate. The proposed cost/market rate formula therefore must not accurately represent at least some important factor in assessing the value of a channel because a well-established channel like The Disney Channel is unlikely to have a negative value to the operator. The missing factor, we believe, is the subscriber revenue that an operator receives because it carries a particular channel. In the case of a channel newly added to a tier, this subscriber revenue includes both the additional amount an operator can charge its existing subscribers when it adds a channel and also the full tier price paid by subscribers the channel attracts to the tier.

9. Because the cost/market rate formula does not adequately account for a significant benefit that cable operators receive from programming, we believe it may result in an unduly low rate that does not adequately capture the value of a channel. Such a rate would not adequately compensate the cable operator and would force cable operators to subsidize leased access programmers, thereby impermissibly affecting the cable system's operation, financial condition or market development. We therefore concluded that the proposed cost/market rate formula would not accurately establish reasonable maximum rates because, in its attempt to measure the opportunity costs of using a channel for leased access, it ignores a significant opportunity cost—the effect on subscriber revenue. Because neither the Commission nor the commenters in this proceeding have been able to

specifically quantify this effect, we were unable to revise our proposed formula in a way that would allow us to adopt it as an appropriate method for determining maximum leased access rates.

ii. Maximum Rate for Full-Time Leased Access Programming Carried on a Programming Services Tier

10. Based on our review of the comments, we no longer believe that the proposed cost/market rate formula is a reasonable formula for determining maximum leased access rates. Instead, we decided to retain an implicit fee formula. We did, however, modify our current formula to address the concerns set forth in the Further NPRM and in the comments. Specifically, as described below, we concluded that the maximum reasonable rate for leased access programming that is carried on a programming services tier should be the ''average implicit fee.'' We will, however, continue to monitor the availability of leased access channels and may revisit this issue if it appears that the average implicit fee formula no longer reflects a reasonable rate.

11. To determine the average implicit fee for a full-time channel on a particular tier with a subscriber penetration over 50%, an operator must first calculate the total amount it receives in subscriber revenue per month for the programming on all such tier(s), and then subtract the total amount it pays in programming costs per month for such tier(s) (the ''total implicit fee calculation''). A weighting scheme that accounts for differences in the number of subscribers and channels on all such tier(s) must be used to determine how much of the total implicit fee calculation will be recovered from any particular tier. The weighting scheme is determined in two steps. First, the number of subscribers is multiplied by the number of channels (the result is the number of ''subscriber-channels'') on each tier with subscriber penetration over 50%. For instance, a tier with 10 channels and 1,000 subscribers would have 10,000 subscriber-channels. Second, the number of subscriber-channels on each of these tiers is divided by the total number of subscriber-channels on all such tiers. Given the percent of subscriber-channels for the particular tier, the implicit fee for the tier is computed by multiplying the subscriber-channel percentage for the tier by the total implicit fee calculation. Finally, to calculate the average implicit fee per channel, the implicit fee for the tier must be divided by the corresponding number of channels on the tier. The final result is the maximum rate per month that the operator may charge the leased access programmer for a full-time channel on that particular tier. In the event of an agreement to lease capacity on a tier with less than 50% penetration, the average implicit fee should be determined on the basis of subscriber revenues and programming costs for that tier alone.

12. In essence, the average implicit fee measures the average amount that full-time programmers implicitly ''pay'' the cable operator for carriage. In other words, the average implicit fee represents the average amount of subscriber revenue that full-time programmers cede to the operator to permit the operator to cover its costs and earn a profit. For instance, if subscribers pay an average of $0.50 per channel for a particular tier, and the average programming or license fee on the tier is $0.10, then, on average, programmers on the tier are implicitly ''paying'' the operator $0.40 for carriage. Since full-time lessees resemble, and will be competing with, full-time cable networks, it is appropriate that the maximum full-time leased access rate reflect the average marketplace terms and conditions under which cable networks are able to gain access to the cable system. From the operator's standpoint, the average implicit fee represents the average value of a channel after programming acquisition costs are paid. A formula based on the average value of a channel may reflect the value of channel capacity more accurately than a formula based on the value of the programming bumped for leased access, such as the proposed cost/market rate formula, because programming that is bumped for leased access may not have had sufficient opportunity to reach its full revenue-generating potential.

13. In addition, we adopted an average implicit fee formula because it is possible to determine the average value of a channel accurately, even when channels are sold as part of a package (i.e., a tier). A precise calculation of the average channel value is possible because the necessary components are known: in particular, what a subscriber pays for the tier and what the operator pays in total programming costs for all channels on the tier. By contrast, the proposed cost/market rate formula and the highest implicit fee formula cannot provide such accuracy because they attempt to measure the value of an individual channel on a tier. However, the value of an individual channel on a tier cannot be ascertained accurately because it is not possible to determine the subscriber revenue attributable to a particular channel that is sold collectively with other channels as a single package. The same problem would be presented by an attempt to determine the lowest implicit fee.

14. We also believe that developments in the multichannel video programming marketplace are relevant to our decision to adopt the average implicit fee formula. The number of non-vertically integrated national programming services has grown in each of the past three years. We believe that a shift from a highest implicit fee formula to an average implicit fee formula may provide additional opportunities for diverse, unaffiliated programmers to enter the marketplace, without creating a maximum rate that is artificially low and putting the cable operator's operation, financial development or market development at risk.

15. Moreover, we believe that the average implicit fee formula addresses the concerns with the highest implicit fee formula that we expressed in the Reconsideration Order. Most importantly, we do not believe that the average implicit fee formula permits the operator a ''double recovery.'' In the Reconsideration Order, we noted that the highest implicit fee formula overcompensates the operator because it appears to allow the value of the channel to be recovered twice—once from the leased access programmer (the highest implicit fee), and once from subscribers (the average per channel subscriber charge). For example, if the subscriber revenue for a tier is an average of $0.50 per channel and the lowest license fee for unaffiliated programming on that tier is $0.05, the highest implicit fee for that tier would be $0.45. Because we assumed that the leased access programmer would pay up to $0.45 (the highest implicit fee) and the subscriber would still pay $0.50 (the average per channel subscriber charge), we believed that the operator was permitted to recover the value of the channel twice.

16. Our ''double recovery'' hypothesis was based on the assumption that operators would be able to charge subscribers the same amount for leased access programming that they charge on average for other programming on the same tier. Although a number of commenters in this proceeding supported this assumption, other commenters asserted that subscribers will not be willing to pay the same amount for leased access programming because subscribers value it less than programming selected by the operator. These commenters claimed that the amount of subscriber revenue that

operators will be able to collect for most leased access channels will be close to or equal to zero, and leased access programming may in fact diminish the value of a tier because subscribers will find it so unappealing that viewership of the other programming on the tier will be adversely impacted.

17. Based on the record before us, we could not conclude that operators, in general, will be able to charge the same amount for a tier once leased access programming is added, especially since most leased access programming will be new and will not have an established audience. We could not, however, predict with any certainty what the relative value of the leased access programming will be. It is possible that some leased access programming will be as profitable, if not more so, than some of the operator's selected programming and that the effect on the tier charge will be neutral or positive. On the other hand, it is also possible that some leased access programming will be less valuable than the operator's current programming, leading either to a loss of subscribers or to a loss of subscriber revenue if the operator lowers the tier price.

18. We therefore found that the assumption underlying our ''double recovery'' hypothesis—that leased access programming will always be equally valuable to the operator as its non-leased access programming—was not supported by the record. Neither the Commission nor the commenters, however, have been able to develop a reliable method for predicting what value, if any, subscribers will place on leased access programming. Since the current record did not permit us to accurately assess the impact of leased access programming on the value of the tier, we could not find that leased access programming will necessarily result in an excess recovery (let alone a ''double'' recovery) for the operator.

19. Moreover, we believe that any potential excess recovery generally will be minimal. Based on what cable operators in a competitive environment are able to charge subscribers for the addition of a new channel, our ''going forward'' order allows operators to charge a subscriber $0.20 a month for an additional channel. We expect, however, that operators will recover less than $0.20 for a new leased access channel because we believe that, on average, subscribers will not be willing to pay as much for new leased access programming as they do for new programming selected by the cable operator. In selecting its own programming, a cable operator is able to take into account the particular mix of programming already on its system and the particular interests and demands of its subscribership. Thus, unlike with leased access, the operator can select programming that will maximize net subscriber revenue.

20. Additional factors are likely to further reduce any potential excess recovery. For one, the ''going forward'' rate is based on what operators can charge subscribers when new channels are added without displacing existing programming. Therefore, if leased access programming displaces existing programming, any amount of subscriber revenue that an operator gains from a leased access channel may be offset by subscriber revenue lost from the displaced channel. In addition, we believe that subscriber revenue from a leased access channel will be further offset by lost advertising revenues since leased access programmers, unlike other programmers, generally will not provide advertising slots to the cable operator. Subscriber revenue will also be offset by additional administrative costs imposed by leasing, which are not recovered through the average implicit fee formula. For all of the above reasons, we believe that any excess recovery for a leased access channel will be significantly less than the $0.20 that an operator is allowed to charge subscribers for a new channel.

21. Although we no longer believe that our ''double recovery'' concern was a valid reason for rejecting the highest implicit fee formula, we nonetheless believe that the average implicit fee formula is a more appropriate method for determining the maximum leased access rate. First, as discussed above, the average implicit fee is based on a more logical calculation than the highest implicit fee, because it is derived from values that can be measured—subscriber revenue for the tier(s) and programming costs for the tier(s)—to arrive at an average amount of subscriber revenue that programmers cede to the operator in exchange for carriage. The highest implicit fee formula, by contrast, attempts to measure the implicit fee of a particular channel by using one verifiable figure (the actual programming cost) and one proxy (the average per channel subscriber revenue), since the actual amount that subscribers pay for any particular channel on a tier cannot be determined. Second, the average implicit fee mitigates our previous concern that the highest implicit fee may overcompensate operators by permitting them to charge the highest mark-up over programming costs (i.e., the highest of the implicit fees). While the average implicit fee formula does not allow the operator to recover its highest mark-up over programming costs, it also does not restrict the operator to charging the lowest mark-up over programming costs. Although we stated in the Rate Order that using the highest market value of channel capacity is fair, we believe that basing the maximum rate on the average mark-up over programming costs more appropriately balances the interests of cable operators and leased access programmers.

22. Third, we also expressed concern in the Reconsideration Order that an implicit fee formula is not based on the operator's reasonable costs. We now believe, however, that an implicit fee formula may better reflect the value of the channel capacity, since a formula based strictly on quantifiable costs cannot account for lost subscriber revenue and therefore may not adequately compensate the operator. Given that the maximum rate should not adversely affect the operation, financial condition or market development of the cable system, it is entirely appropriate to consider these non-quantifiable costs, such as any negative effects leased access programming may have on the value of the tier, in establishing the market value of a channel.

23. We also made a few other changes to the manner in which the maximum leased access rate is calculated for tiered channels. First, we departed from the current rule requiring rate calculations to be made on a tier-by-tier basis. As described below, we have determined that leased access programmers have the right to demand access to a tier with more than 50% subscriber penetration. We believe that subscribers generally perceive these highly penetrated tiers as a single programming package, not as separate products. Consistent with this view, we believe that operators should calculate the average implicit fee using all channels carried on any tier with more than 50% subscriber penetration. In addition, our rate regulation rules generally are based on the principle of tier neutrality, which requires cable operators to charge the same per channel rate regardless of the programming costs incurred on a particular tier. Prior to rate regulation, we believe that tier prices did not necessarily follow this tier neutrality principle. Similarly, because the Communications Act requires cable operators to transmit must-carry and public, educational, and governmental (''PEG'') access channels on the basic service tier, the average programming cost on that tier will tend to be lower than it would be absent such a carriage requirement. Since, as a result of

regulation, individual tier prices may not be directly correlated with their underlying programming costs, we believe that it is appropriate to permit cable operators to assess these costs more accurately by averaging across highly penetrated tiers.

24. Second, we believe that the maximum rate calculation should no longer exclude channels devoted to must-carry broadcast signals or PEG access programming. In the Reconsideration Order, we stated that must-carry and PEG access channels should be excluded from consideration because the lack of program license fees for those channels does not represent a marketplace decision, but is the result of statutory mandates. Under the highest implicit fee approach, the inclusion of channels with zero license fees, such as must-carry and PEG access channels, would virtually ensure that every cable system had a commensurately high leased access rate. Now, with the average implicit fee formula, because all of the programming costs are averaged together, it is appropriate to include must-carry and PEG access channels in calculating the maximum leased access rate. Although the lack of programming costs for these channels makes it inappropriate to use them as the sole determinant of maximum rates, these channels are relevant to a calculation that is based on the value of the relevant tier(s). Since the average implicit fee is derived from the total value of the tier(s) being considered, it is appropriate to account for the effect of all of the channels on the tier(s). Moreover, as with all individual channels on a tier, it would not be possible to ascertain how much the total subscriber revenue for the tier should be reduced if must-carry and PEG access channels were excluded.

25. For the same reason we also concluded that the maximum rate calculation should no longer exclude channels devoted to affiliated programming. In the Rate Order, we determined that affiliated programming should not be considered in determining the highest implicit fee because to do so could affect the operator's right to charge affiliated and unaffiliated programmers different rates. However, in addition to the necessity of including all channels on the relevant tier(s) in an average implicit fee calculation, we believe that requiring cable operators to base an implicit fee calculation only on unaffiliated programming may inappropriately result in different maximum leased access rates for systems that are identical but for their affiliation with certain programmers. We believe that adopting a standard similar to that adopted with regard to our affiliate transaction rules will resolve this disparity without interfering with the operator's right to establish different rates for affiliated and unaffiliated programmers. We therefore modified our rules to require that, in calculating the average implicit fee, operators must use programming costs for affiliated programming that reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company price does not exist, the programming should be priced at the lower of the programmer's cost or the fair market value. Because these objective measurements are based on factors outside affiliated transactions, the requirement to use them as proxies for the actual programming costs does not conflict with our conclusion in the Rate Order that the Commission is precluded from establishing rates based on transactions with affiliates.

26. Finally, we eliminated our current programmer categories for determining maximum rates for leased access programming that is carried on a tier. In the Rate Order, the Commission stated that the programmer categories were intended to reflect the different economies faced by the different types of programmers. We now believe, however, that basing maximum rates on the average value of the channel capacity is a more appropriate approach to implementing section 612 than making distinctions based on the different economies among leased access programmers. For this reason, and also because an average implicit fee calculation must include all channels on the relevant tier(s), we abolished the mandatory distinction between the rate charged to direct sales programmers and ''all others.'' Therefore, all leased access programmers carried on a cable system's tier will be subject to the same maximum rate, which will be derived using all channels on the relevant tier(s), including channels devoted to direct sales programming (e.g., home shopping networks and infomercials). As described below, cable operators will still be required to calculate different rates for programming services sold on a per-channel, or a la carte, basis. We will maintain the distinction between leased access programming carried on a tier and leased access programming offered as an a la carte service, not because of their ''different economies,'' but because of the practical differences involved in implementing a maximum leased access rate for a la carte services.

iii. Maximum Rate for Full-Time Leased Access Programming Carried as an A La Carte Service

27. Despite our conclusion that the average implicit fee formula is the appropriate method for setting maximum reasonable rates for leased access programming carried on a tier, we concluded that the highest implicit fee formula remains the best approach for setting maximum reasonable rates for leased access programming offered to subscribers as an a la carte service. Because the subscriber revenue for an a la carte service is known, an a la carte programmer can readily determine how much it is implicitly paying the operator for carriage. If an unaffiliated a la carte programmer is implicitly paying more than the maximum leased access rate for carriage, the a la carte programmer could obtain a larger share of the subscriber revenue simply by demanding a lease. This potential disruption to operators' negotiated relationships with unaffiliated a la carte programmers could adversely impact the operation, financial condition, and market development of cable systems. The highest implicit fee for a la carte services protects operators from this potential adverse effect because, unlike the average implicit fee, it represents the maximum amount that any a la carte programmer is implicitly paying for carriage. The average implicit fee does not pose such a risk for tiered services because the actual subscriber revenue for individual channels is not known. Even if the actual subscriber revenue for a particular tiered service could be determined, a non-leased access programmer implicitly paying more than the average implicit fee would have little reason to switch to leased access because subscriber revenue is not passed through to leased access programmers that are carried on a tier. Non-leased access programmers that are carried on a tier are unlikely to switch from an arrangement where they receive a license fee to an arrangement where they pay the cable operator but receive no subscriber revenue.

28. In addition, because in the a la carte context we are able to determine the actual subscriber revenue derived from particular programming services, we do not need to use the average implicit fee formula. Moreover, there can be no ''double recovery'' in the a la carte context because any subscriber revenues for a leased access channel carried as an a la carte service are readily ascertainable and can be passed through to the leased access programmer. In order to protect against any over recovery, we modified our

rules to clarify that any subscriber revenue from an a la carte leased access service must be passed through to the leased access programmer. As with the average implicit fee, we require operators to include affiliated a la carte services in their highest implicit fee calculation using the rules described above for determining programming costs for affiliated programming. As discussed below, we also made one modification regarding the calculation of the highest implicit fee for a la carte programming services.

iv. Transition Period

29. We did not establish a transition period for implementing our revised rate formulas. In the Rate Order, the Commission clearly stated that ''the rules we adopt should be understood as a starting point that will need refinement both through the rulemaking process and as we address issues on a case-by-case basis.'' Thus, cable operators and non-leased access programmers have had ample notice that the rate formula was subject to change. Both operators and programmers alike understand that a reduction in the maximum rate could increase the demand for leased access, thereby increasing the possibility that bumping might occur. We believe that operators and programmers that negotiate to place non-leased access programming on a channel designated for leased access assume the risk that the programming might have to be bumped for a leased access programmer. Section 612 explicitly provides that operators may no longer use unused leased access capacity once a written agreement is obtained by a leased access programmer.

B. Part-Time Leased Access Programming and Maximum Part-Time Rates

30. Under the Commission's rules, cable operators are required to accommodate part-time leased access requests, but need not accommodate requests of less than one half hour. With respect to rates for part-time leased access programming, the Commission's rules permit cable operators to charge different time-of-day rates, provided that: (a) The total of the rates for a day's schedule (i.e., a 24-hour block) does not exceed the maximum rate for one day of a full-time leased access channel prorated evenly from the monthly rate; (b) the overall pattern of time-of-day rates is otherwise reasonable; and (c) the time-of-day rates are not intended to unreasonably limit leased access use. The Further NPRM sought comment on a cable operator's obligation to accommodate a part-time leased access programmer by opening a new channel for leased access use, and on the calculation of maximum rates for part-time use.

i. Accommodation of Requests for Part-Time Leased Access

31. As an initial matter, we affirmed our current rule requiring cable operators to lease time in half-hour increments. We recognize that part-time leasing is not expressly required by the statute, that it may impose additional administrative and other costs on cable operators, and that it may pose the risk of capacity being under-used. As noted above, if cable operators are not adequately compensated for their capacity, it may constitute a violation of Section 612. We also recognize, however, that the statute does not restrict leased access to full-time programming and that part-time programming currently represents a significant share of the leased access marketplace, thereby providing much of the competition and diversity of programming sources that Section 612 was intended to promote. Therefore, rather than permit cable operators to exclude part-time leased access programming, we permit cable operators to set reasonable limits on when and how part-time programming must be accommodated, as set forth below.

32. First, we affirmed the holding in *TV–24 Sarasota, Inc.* v. *Comcast*, 10 FCC Rcd 3512, 3518 (Cable Serv. Bur., Dec. 27, 1994) that a cable operator is not required to open an additional leased access channel if a programmer's request can be accommodated in a comparable time slot on an existing leased access channel. We believe that the comparability of time slots can be determined by a number of objective factors, such as day of the week, time of day, and audience share. We also adopted our tentative conclusion in the Further NPRM that a cable operator should not be required to make even a dark channel available for leased access, so long as the programmer's request can be accommodated in a comparable time slot on a programmed channel. In addition, we extended TV–24 Sarasota to permit a cable operator to accommodate a part-time leased access request by offering the programmer a comparable time slot on a channel otherwise carrying non-leased access programming.

33. Furthermore, we concluded that cable operators should not be required to open an additional channel for use by part-time leased access programmers until existing part-time leased access channels are substantially filled with leased access programming. For these purposes, we will consider a channel to be ''substantially filled'' with leased access programming if leased access programming occupies 75% or more of its programming day. In other words, cable operators do not have to open a second channel for part-time use until the first part-time channel has at least 18 hours of programming every day. Likewise, a third channel for part-time use does not have to be made available until the second channel has at least 18 hours of programming every day, and so on.

34. Consistent with our tentative conclusion in the Further NPRM, we provide an exception to this rule and require operators to open an additional channel for part-time leased access use if a programmer (or collective) agrees to provide programming for a minimum of eight contiguous hours every day for at least one year. The programmer may select any eight-hour time period during the day, but the same eight hours must be used every day. Therefore, even if an operator has an existing part-time leased access channel that is not substantially filled with leased access programming, the operator must open an additional part-time leased access channel if it cannot otherwise accommodate a programmer's request for a year-long eight-hour daily time slot. Once an operator has opened a vacant channel to accommodate such a request, our other leased access rules apply. If, however, the operator has accommodated such a request on a channel already carrying an existing full-time non-leased access programmer, the operator does not have to accommodate other part-time requests of less than eight hours on that channel until all other existing part-time leased access channels are substantially filled with leased access programming.

35. Part-time programmers are permitted to seek access on a collective basis. If part-time programmers request an entire channel on a collective basis, the operator must provide the channel regardless of any unused capacity on part-time leased access channels because we would not consider that a request for part-time programming. Similarly, part-time programmers that individually cannot meet the year-long eight-hour daily time commitment may demand access as a group in order to satisfy the requirement. Allowing collective requests will not impose any further burden on cable operators since the same request could have been made by an individual programmer.

36. To summarize, we modified our rules regarding part-time leased access programming as follows. Cable operators may accommodate part-time

leased access requests by providing comparable time slots on non-leased access channels or on channels already being used for leased access on a part-time basis. Cable operators will not be required to make an additional channel available for part-time leased access use until all other part-time leased access channels have at least 18 hours of leased access programming every day. So long as an operator has at least one channel designated for part-time leased access use that is not substantially filled by part-time programmers, the operator will not be required to open another part-time channel even if comparable time slots are no longer available on the part-time channel that is only partially programmed. However, if a leased access programmer (or collective) agrees, at a minimum, to provide programming during the same eight-hour time slot every day for at least one year, an operator will be required to accommodate the request even if an existing part-time leased access channel is not substantially filled with leased access programming. We believe that this approach achieves the statutory objectives of competition and diversity of programming sources, while doing so in a manner consistent with the growth and development of cable systems.

ii. Maximum Part-Time Rates

37. Because we did not adopt the proposed cost/market rate formula, and because the formulas for tiered and a la carte full-time services that we adopted are similar in kind to the existing approach for setting the maximum full-time leased access rate, we affirmed our decision to require that cable operators prorate their maximum full-time rate when determining their maximum permitted part-time rate, and to allow operators to adjust part-time rates according to time-of-day pricing. As we stated in the Reconsideration Order, we believe that this approach accounts for marketplace realities by recognizing that different time slots have different values, furthers the statutory goal of promoting a diversity of programming sources, and promotes the full use of leased access channels by making non-prime time slots less expensive than prime-time slots, and therefore more attractive, to programmers. Cable operators are permitted to recover any additional technical costs that are attributable to part-time leased access programming in accordance with the rules described below.

C. Resale of Leased Access Time

38. In the Further NPRM, we asked whether persons unaffiliated with the operator should be allowed to lease programming time from the operator and then sell it for a profit to other unaffiliated persons. In the Order, we concluded that resale of leased access capacity to persons unaffiliated with the operator should be permitted, subject to certain contractual conditions described below that a cable operator may reasonably impose, because we believe that resale can provide substantial benefits to leased access programmers without an adverse impact on cable operators. In particular, we believe that small and part-time programmers could benefit from resale. For instance, a reseller could bring together various part-time programmers to form a programming package for an entire channel. This service would not only relieve operators of much of the cost and burden of dealing with a large number of small programmers, but would be more efficient, since a reseller's business would be devoted to this goal while cable operators typically devote little or no staff to promoting leased access. We believe that resale may prove to be a crucial mechanism by which part-time programmers are able to obtain carriage.

39. To avoid discouraging cable operators from providing carriage to not-for-profit entities and others at reduced rates, we found that it would be a reasonable term or condition of carriage for a cable operator to provide that if the lessee resells its capacity, the lessee must start paying the operator at a rate which may be up to and including the maximum permissible rate. In addition, cable operators may provide in their leased access contracts that any sublessees are subject to the non-price terms and conditions that apply to the initial lessee. Finally, we noted that the cable operator's right to refuse to transmit programming containing obscenity or indecency applies to any leased access program or portion of a leased access program, regardless of whether the programmer purchased leased access capacity directly from the cable operator or through a reseller.

D. Tier and Channel Placement

40. Background: According to the legislative history of the 1992 amendments to Section 612, the purpose of leased access would be defeated if leased access programmers were placed on tiers that few subscribers access. The 1992 Senate Report states that ''[t]he FCC should ensure that [leased access] programmers are carried on channel locations that most subscribers actually use.'' It further states that ''it is vital that the FCC use its authority to ensure that these channels are a genuine outlet for programmers.'' In the Further NPRM, the Commission tentatively concluded that leased access programmers are entitled to placement either on the basic service tier (''BST'') or on the cable programming services tier (''CPST'') with the highest subscriber penetration, unless technical or other compelling reasons weigh against such placement. We reasoned that the BST and the CPST with the highest subscriber penetration qualify as ''genuine outlets'' because ''most subscribers actually use'' them. We sought comment on whether the term ''most subscribers'' should be interpreted to mean that any CPST that has a subscriber penetration of more than 50% should also qualify as a ''genuine outlet.''

41. Discussion: As stated in the Further NPRM, we believe that we must ensure a ''genuine outlet'' for leased access programming in order to further the statutory goals of competition in the delivery of video programming sources and diversity of programming sources. To that end, we affirmed our tentative conclusion that, absent a technical or other compelling reason, leased access programmers have the right to demand access to a tier that most subscribers actually use. Leased access programmers would not be assured access to most subscribers if cable operators were permitted to require leased access channels to be sold on an individual, or a la carte, basis.

42. Although we continue to believe that the BST and the CPST with the highest subscriber penetration qualify as genuine outlets, we do not think it is necessary to restrict the placement of leased access programming to only those tiers. We believe that any tier with a subscriber penetration over 50% should also qualify as a genuine outlet because it consists of channel locations that ''most subscribers actually use.'' Therefore, if a leased access programmer requests placement on a tier, we will allow the cable operator the flexibility to place the programming on any tier that has a subscriber penetration of more than 50%. We believe that this approach takes into account the ''legitimate need of the cable operator to market its product'' because it allows the operator to consider the marketing mix of different tiers. The record reflected that some commenters would favor placing leased access channels on a separate tier comprised primarily, if not exclusively, of leased access programming. We concluded that so long as such a tier has a subscriber penetration of more than 50%, the cable operator is not precluded from developing a tier that predominantly features leased access programming.

43. With regard to specific channel placement, we believe that the cable operator should have the discretion to select the channel location of a leased access channel, so long as the operator's choice is reasonable. Because a determination of reasonable channel placement will depend on the particular circumstances of a situation, we will evaluate these types of disputes on a case-by-case basis. We will take into consideration evidence that the operator deliberately interfered with potential viewership of the leased access programming in an effort to discourage continued carriage (e.g., by intentionally surrounding a leased access channel with dark channels or by frequently shifting its channel location without sufficient justification). Once a cable operator has provided leased access programmers with a genuine outlet, we do not believe it is necessary to interfere with that operator's ability to structure channel line-ups. Therefore, although a leased access programmer may demand access to a tier that has a subscribership of more than 50%, the cable operator is entitled to place the leased access programming on any reasonable channel location on any qualifying tier.

E. Minority and Educational Programmers

44. Background: Pursuant to section 612(i), a cable operator may substitute programming from a qualified minority or educational programming source for up to 33% of its designated leased access channels. In the Further NPRM, the Commission sought comment on whether leased access requirements regarding tier and channel placement should also apply to minority or educational programming that is used as a substitute for leased access programming. The Commission tentatively concluded that minority or educational programming should not qualify as a substitute for leased access programming unless it is carried on the BST or on a CPST that qualifies as a genuine outlet.

45. Discussion: Applying the same tier placement standard we adopted for leased access, we concluded that minority or educational programming will not qualify as a substitute for leased access programming unless it is carried on a tier that has a subscriber penetration of more than 50%. The cable operator may select which qualifying tier to use for the substituted programming. As we noted in the Further NPRM, neither the statute nor the legislative history specifically requires that most subscribers receive the substituted minority or educational programming. However, as we previously stated, the language of Section 612(i)(1) strongly suggests that Congress envisioned that any substituted minority or educational programming would be placed on the same channels that would have been used for leased access. Specifically, section 612(i)(1) states that ''a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity'' to provide minority or educational programming. Furthermore, to allow a more lenient standard for minority or educational programming could potentially diminish its value as a substitute for leased access programming. We therefore imposed the same tier and channel placement requirements on substitute minority or educational programming as we did on leased access programming.

F. Preferential Access

46. Background: In the Further NPRM, we asked whether preferential treatment for not-for-profit leased access programmers should be required to promote a diversity of programming sources. We sought comment on how to calculate preferential rates, if found to be necessary, and we asked whether cable operators should be required to give preferential access to not-for-profit programmers by setting aside a certain percentage of their leased access capacity for such use (e.g., 25%). Commenters were also invited to demonstrate with specific evidence why preferential treatment might be appropriate for certain types of for-profit programmers, such as low power television (''LPTV'') stations and minority and educational programmers.

47. Discussion: We do not believe that mandating preferential access or preferential rates for not-for-profit programmers, or any other class of programmers, is necessary or appropriate under Section 612. First, leased access is intended for ''commercial use,'' which the Communications Act defines as ''the provision of video programming, whether or not for profit.'' The fact that not-for-profit leased access programmers are defined as commercial users for purposes of leased access indicates that they should compete on equal terms with for-profit leased access programmers.

48. Second, we do not believe that requiring cable operators to offer preferential treatment to not-for-profit programmers is necessary to serve the statutory purposes of Section 612. Mandatory preferential treatment would not necessarily promote diversity since unaffiliated not-for-profit programming sources are not inherently more diverse than unaffiliated for-profit programming sources. In fact, mandatory preferential treatment could potentially conflict with the statutory directive that leased access rates not ''adversely affect the operation, financial condition, or market development of the cable system'' because a mandatory preferential rate below what the Commission has determined to be the maximum reasonable rate may be insufficient to compensate operators for leased access use. Third, not-for-profit status does not necessarily indicate a lack of financial resources. While we noted that Congress gave cable operators the flexibility to negotiate lower rates, we do not believe that operators' right to negotiate lower rates should be transformed into an obligation to provide affordable rates to not-for-profit leased access programmers.

49. We also declined to mandate preferential treatment for not-for-profit programmers that qualify as minority or educational programmers under Section 612(i)(2) or (3). Congress chose to encourage minority and educational programming by allowing it to be used as a substitute for leased access, regardless of its profit status. There is no evidence that Congress intended the Commission to create an additional mechanism to promote not-for-profit minority or educational programming through preferential rates and set-asides. Furthermore, we did not require cable operators to provide preferential treatment for LPTV stations or for educational and community programming services that public television stations may wish to offer in addition to their primary over-the-air signals. Congress provided public television stations and LPTV stations the preferences it deemed necessary.

G. Selection of Leased Access Programmers

50. In the Further NPRM, the Commission proposed rules to govern a cable operator's selection of leased access programmers. In the Order, we concluded that, so long as an operator's available leased access capacity is sufficient to satisfy the current demand for leased access, all leased access requests must be accommodated as expeditiously as possible, unless the operator refuses to transmit the programming because it contains obscenity or indecency. We believe that such an approach is the most appropriate method of assuring that cable operators comply with section 612(c)(2), which explicitly restricts operators' exercise of editorial control

over leased access programming. Section 612(c)(2) provides that ''a cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming,'' except in the case of programming containing obscenity or indecency, or to the minimum extent necessary to set a reasonable price. We believe that requiring operators to accommodate all leased access requests when the programming does not contain obscenity or indecency, so long as there is available capacity, will most effectively restrict operators' exercise of editorial control, without impinging upon their discretion with regard to price and sexually-oriented programming. We also believe that such an approach will further the statutory objective to promote competition because it will reduce an operator's ability to select leased access programming based on anti-competitive motives.

51. We believe, however, that an operator should be allowed to make objective, content-neutral selections from among leased access programmers when the operator's available leased access channel capacity is insufficient to accommodate all pending leased access requests. In the full-time channel context, this situation would arise if two or more leased access programmers requested the remaining available leased access space; in the part-time context, this situation could arise, for example, if two or more programmers requested the 8:00 p.m. to 9:00 p.m. time slot on the system's part-time leased access channel. In such situations, we believe that the cable operator should be allowed to make an objective, content-neutral selection among the competing programmers. For example, the operator could hold a lottery. Or, the operator could base its decision on other objective, content-neutral criteria such as a programmer's non-profit status, the amount of time a programmer is willing to lease, or a programmer's willingness to pay the highest reasonable price for the capacity at issue. Allowing flexibility within this limited context will better enable operators to assure the growth and development of their cable systems.

H. Procedures for Resolution of Disputes

52. We affirmed our proposal in the Further NPRM to streamline the complaint process by requiring that an independent accountant make a determination of the cable operator's maximum permitted rate prior to the filing of any complaint alleging that the operator's rate is unreasonable. We believe that such a requirement will preserve Commission resources by reducing the likelihood that unsubstantiated claims will be filed with the Commission. In the event that a complaint is filed with the Commission because the dispute remains unresolved despite the accountant's final report, there will be a rebuttable presumption that the accountant's findings are correct.

53. We did not adopt our proposal in the Further NPRM to allow the cable operator to select an independent accountant in the event that the operator and leased access programmer fail to agree on a mutually acceptable accountant. Such an approach may be unfair to the leased access programmer because it does not encourage the operator to find a mutually acceptable accountant. Instead, we required that if the parties cannot agree on a mutually acceptable accountant within five business days of the programmer's request for a review, they must each select an independent accountant on the sixth business day. These two accountants will then have five business days to select a third independent accountant to perform the review. To account for their more limited resources, operators of systems entitled to small system relief will have 14 business days to select an independent accountant when no agreement can be reached. A cable system is entitled to small system relief if it either: (a) serves 15,000 or fewer subscribers and is owned by a small cable company serving a total of 400,000 or fewer subscribers over all of its systems, or (b) has been granted special relief as provided for in the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, 60 FR 35854 (July 12, 1995) (''Small System Order''). The final accountant report must be completed within 60 days of when the final accountant is selected to perform the review. The Order amended the Commission's current rule requiring complaints to be filed within 60 days of the alleged violation to provide instead that complaints must be filed within 60 days of the completion of the final accountant report.

54. The operator must pay the full cost of the review if the final accountant report shows that the operator's rate exceeds the maximum permitted rate by more than a *de minimis* amount. Otherwise, each party will pay their own expenses incurred in making the review and will split the cost of the final accountant's review. We believe that this approach is appropriate because, unlike the leased access programmer, the cable operator possesses all the information necessary to calculate its rates accurately and knows, or should know, whether its rates are excessive.

55. The final accountant report should be filed in the cable system's local public file. In order for the information to serve as adequate notice to other potential leased access programmers, the final accountant report must, at a minimum, state the maximum permitted rate and explain, as fully as possible without revealing proprietary information, how it was determined. The report must be signed, dated, and certified by the accountant.

56. We strongly encourage parties to use ADR to settle disputes that are not resolved by the final accountant report. If parties attempt, but fail, to settle their dispute through ADR, we will make an exception to our requirement that complaints must be filed within 60 days of the completion of the final accountant report, provided that the leased access programmer certifies that its complaint was filed within 60 days of the termination of the ADR proceedings. The cable operator may rebut such a certification.

I. Contractual Issues

i. Minimum Contract Length

57. In response to the request of a few commenters that we address certain contractual issues that arise in the negotiation of leased access contracts, we found that the record before us was insufficient to determine what a reasonable minimum contract length would be. We recognize that the lack of long-term security could create difficulties for leased access programmers that need to obtain financing or to make long-term investments in leases and equipment. However, our rule that operators must accommodate all leased access requests so long as capacity exceeds demand guarantees that a leased access programmer will be assured of continued access at least until the operator's set-aside requirement is met. Operators are not allowed to terminate leased access contracts for simply any reason asserted by the cable operator. Termination provisions of leased access contracts must be commercially reasonable. Because we believe that this requirement affords leased access programmers adequate security, we declined to establish a minimum contract length.

58. Operators may not, however, unreasonably limit the length of a contract with a leased access programmer. In assessing reasonableness in this context, we will

weigh heavily the contract lengths that the operator enters into with the non-leased access programming services on its system.

ii. Insurance Requirements

59. At the outset, we noted that operators have the right to require reasonable liability insurance coverage for leased access programming. We declined to adopt specific conditions or limits regarding the amount of coverage or the type of insurance policy that operators may require because we believe that a specific restriction might not be appropriate for all situations. Instead, we adopted a standard comparable to the standard that applies in the context of security deposits for leased access programming. That is, insurance requirements must be reasonable in relation to the objective of the requirement. Cable operators will bear the burden of proof in establishing reasonableness. Similar to the rule for security deposits, insurance requirements may be sufficient to insure adequate coverage. Determinations of what is a ''reasonable'' insurance requirement will be based on the operator's practices with respect to insurance requirements imposed on non-leased access programmers, the likelihood that the nature of the leased access programming will pose a liability risk for the operator, previous instances of litigation arising from the leased access programming, and any other relevant factors.

J. Technical Equipment Costs

60. The Commission's rules provide that cable operators must provide ''the minimal level of technical support necessary for [leased access] users to present their material on the air * * * provided however, that leased access providers must reimburse operators for the reasonable cost of any technical support that operators actually provide.'' We clarified that this provision entitles cable operators to charge an additional fee only for the reasonable cost of providing technical support to a leased access programmer that is not also provided to non-leased access programmers on the system. Cable operators may not impose a separate charge for the same kind of technical support that they already provide to non-leased access programmers because the maximum leased access rate represents what non-leased access programmers implicitly pay for carriage, including their technical costs. In other words, the maximum leased access rate already includes technical costs common to all programmers. Similarly, the operator cannot impose an additional charge on the leased access programmer to purchase additional equipment (e.g., when the current equipment is fully utilized) if the same type of equipment is used to serve non-leased access programmers. For example, the operator cannot add a charge for the costs of providing a satellite dish if it provides that type of technical support to non-leased access programmers at no additional charge. In contrast, the operator is entitled to add a charge to recover the costs of providing, for instance, a tape recorder or a camera if such technical equipment would be provided to non-leased access programmers for the same additional charge. The operator may also charge the leased access programmer for the use of technical equipment that is provided at no charge for PEG access programming, provided that the franchise agreement requires the operator to provide the equipment, the equipment is not being used for any other non-leased access programming, and the operator's franchise agreement does not preclude such use.

61. If, in order to accommodate a leased access programmer, a cable operator must purchase technical equipment that is not of a type used by non-leased access programmers on the system, we believe that the operator should have the option of requiring the leased access programmer to pay the full purchase price of the equipment. Should the cable operator exercise this option, the leased access programmer will have all rights of ownership associated with the equipment under applicable state and local law. If, on the other hand, the operator prefers to own the technical equipment, it may purchase the equipment for itself and lease it to leased access programmers at a reasonable rate. We believe that this approach will protect leased access programmers, while assuring that the cable system's operation, financial condition or market development are not adversely affected.

K. Definition of Affiliate

62. For purposes of section 612, we adopted the definition of affiliate that applies in the context of our program access rules under section 628 and our open video system rules under section 653. As we do in those contexts, we apply the definitions contained in the notes to 47 CFR 76.501 (which reflect the broadcast attribution rules contained in the notes to 47 CFR 73.3555), with certain modifications. Specifically, in contrast to the broadcast attribution rules reflected in § 76.501: (a) An entity is considered a cable operator's affiliate if the cable operator holds 5% or more of the entity's stock, whether voting or non-voting; (b) there is no single majority shareholder exception; and (c) all limited partnership interests of 5% or greater qualify, regardless of insulation. In addition, actual working control, in whatever manner exercised, is also deemed a cognizable interest.

63. Section 612 is designed to promote diversity of programming sources and to reduce the ability of cable operators to discriminate against unaffiliated programming services for anti-competitive reasons. Because these dual objectives are analogous to the objectives of the program access and open video system rules, adoption of a similar affiliation standard is warranted. Moreover, by adopting a definition of affiliate for leased access that is consistent with the program access standard, we avoided the possibility that a programmer will be considered a cable operator's affiliate for one purpose but not for another.

64. We also clarified that leased access programmers are required to be unaffiliated only with the operator of the cable system on which they seek carriage. Section 612(b)(1) provides that leased access channel capacity shall be designated for use by programmers ''unaffiliated with the cable operator.'' We believe that use of the term ''the'' to modify ''cable operator'' clearly indicates that Congress was referring only to the cable operator of the particular system in question. We believe that if Congress feared that affiliated programmers have an advantage in acquiring carriage from even rival cable operators, it would have disqualified all affiliated programmers by using ''a'' or ''any'' to modify ''cable operator.'' Furthermore, allowing a broader category of programmers to use leased access will advance the statutory purposes of promoting competition and diversity.

III. Order on Reconsideration

A. Maximum Rate Formula

i. Exclusion of Programming Revenues

65. We declined to modify our current rule that programming revenues received by the operator from non-leased access programmers, such as sales commissions from home shopping networks, should be excluded from the maximum rate calculation. We found that the effect of excluding sales commissions on future maximum leased access rates will be minimal given that the Order: (a) Adopted the average implicit fee for tiered services which, unlike the highest implicit fee, is derived using all channels on the

relevant tier(s), and (b) eliminated direct sales programming as a separate category for setting rates. We therefore do not believe that excluding sales commissions will result in the migration of home shopping networks to leased access.

ii. Averaging Subscriber Penetration for A La Carte Channels

66. The Reconsideration Order clarified that in order to calculate the maximum rate when leased access programming is offered as an a la carte service, the highest per-subscriber implicit fee should be multiplied by the average number of subscribers that subscribe to the operator's a la carte services. As discussed above, we continue to permit cable operators to use the highest implicit fee formula to set maximum reasonable rates for leased access programming that is carried as an a la carte service. We believe, however, that it is most appropriate to require operators to determine on an aggregate basis for a single channel which of their a la carte services has the highest implicit fee. For example, if Channel A on a given cable system has a per-subscriber implicit fee of $1.00 and has 2000 subscribers, its aggregate implicit fee is $2000. If Channel B has a per-subscriber implicit fee of $1.50 and 1000 subscribers, its aggregate implicit fee is $1500. Of these channels, Channel A has the highest aggregate implicit fee even though it has a lower per-subscriber implicit fee than Channel B. Therefore, assuming these two channels are the only channels offered on an a la carte basis, the amount that is implicitly paid for Channel A would be the maximum rate that the operator may charge a leased access programmer that wishes to be carried as an a la carte service.

67. We believe that this formulation accurately represents the highest amount that a non-leased access programmer has agreed to implicitly pay the operator for carriage as an a la carte service. Thus, it will discourage existing a la carte services from migrating to leased access. Accordingly, on reconsideration, we concluded that operators should not be required to multiply the highest per-subscriber implicit fee by the average number of subscribers that subscribe to the operator's a la carte services. Instead, operators must determine which a la carte service has the highest implicit fee by comparing their implicit fees on an aggregate basis.

B. Provision of Initial Leased Access Information

i. Response Period

68. In the Reconsideration Order, we stated that our leased access complaint process had revealed that cable operators often did not provide rate information in a timely manner, despite our rule requiring a schedule of rates to be provided to prospective leased access programmers upon request. In order to facilitate the provision of such information to potential leased access programmers, we required an operator to provide the following information within seven business days of a request regarding leased access: (a) A complete schedule of the operator's full-time and part-time leased access rates; (b) how much of the cable operator's leased access set-aside capacity is available; (c) rates associated with technical and studio costs; and (d) if specifically requested, a sample leased access contract.

69. In the Order, we stressed our expectation that cable operators will respond to all leased access requests in a complete and timely manner. While we recognized the importance of prompt disclosure of the required information by cable operators, we nevertheless modified our rule to require operators to respond to a leased access request within 15 calendar days of the date the leased access programmer makes the request. Such an extension should insure that operators have a reasonable length of time to process leased access requests even when those requests are received through the mail. In order to provide more certainty regarding the date of a request, we also modified our rule to require that all requests for leased access be made in writing and specify the date they are sent to the operator. In addition, we allowed operators of systems subject to small system relief 30 calendar days from the date of a leased access request to provide the required information, rather than the 15 calendar days in which other operators must respond.

ii. Preconditions To Providing Initial Leased Access Information

70. Because we remain concerned that requests for programmer information will be used by operators to discourage leased access use, operators may not ask for any information before responding to a leased access request unless the information is necessary to prepare the required response. For instance, if a leased access request does not specify for which cable system access is sought, the cable operator may ask the programmer for this information because maximum rates are calculated on a per-system basis. On the other hand, information from the programmer regarding its tier preference is not necessary for the operator to provide the required information, since the operator may place a programmer demanding access to a tier on any tier with more than 50% subscriber penetration. In addition, operators are not entitled to inquire about the content of the programming before responding to a request because such information is not relevant to the required rate and capacity information.

71. We did, however, make an exception for systems subject to small system relief because their initial costs of providing this information may be higher than other systems. Therefore, we found that operators of systems subject to small system relief do not have to provide the required information until the leased access programmer supplies the following information: (a) Desired length of contract term, (b) time slot desired, (c) anticipated commencement date for carriage, and (d) the nature of the programming.

iii. Obligation To Provide Information Regarding the Amount of Available Leased Access Capacity

72. We declined to reconsider our requirement that cable operators provide potential leased access users with information about how much set-aside capacity is available on their systems. We believe that information concerning overall available channel capacity may be of use to a potential leased access programmer in deciding which cable system best meets its needs, particularly if the programmer wishes to lease more than one channel. Moreover, we do not believe that calculating a system's available leased access capacity is difficult, particularly with the clarifications of our rules regarding the methodology for calculating set-aside requirements. Finally, the additional time we granted cable operators to supply the information should make supplying the information less burdensome.

C. Time Increments

73. We declined to alter our current rule that operators are not required to accept leases that are for less than half-hour intervals. As noted above, part-time leased access programming provides much of the competition and diversity of programming sources that Section 612 was intended to promote. As we stated in the Reconsideration Order, the most common programming time increment is typically one-half to

one hour. We therefore continue to believe that permitting operators to exclude leased access programming seeking half-hour increments would unfairly deny access to a substantial number of potential programmers. Moreover, we believe that the rules we adopted regarding part-time use address any concerns that a half-hour minimum will cause excessive migration of current infomercial programming to leased access channels and will lead to excessive displacement of existing non-leased access programmers. We clarified that the leased access rate for a half-hour program must be prorated to reflect the length of the program (i.e., hourly rates cannot be charged for half-hour programs).

D. Calculation of Statutory Set-Aside Requirement

74. Section 612 requires a cable system to set aside up to 15% of its activated channels for leased access. For operators with 100 or fewer activated channels, the statutory set-aside requirements for leased access channels are expressed as a percentage of ''channels not otherwise required for use by federal law or regulation.'' We continue to believe that, when calculating its set-aside requirement, an operator must include channels carrying retransmission consent stations because such channels are not ''required by federal law or regulation.'' We clarified that channels which cannot be used due to technical and safety regulations of the federal government, such as aeronautical channels, should be excluded when calculating the set-aside requirement for cable systems that have 100 channels or less.

E. Billing and Collection Services

75. Section 612(c)(4)(A)(ii) grants the Commission the authority to establish reasonable terms and conditions for the billing of rates to subscribers and for the collection of revenue from subscribers for leased access channels. In the Rate Order, we required cable operators to provide billing and collection services to leased access programmers unless operators could demonstrate the existence of third-party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers. In both the Rate Order and the Reconsideration Order, we did not adopt specific rules regarding rates for such services. In the Order, we declined to modify our current rule or to establish specific rules relating to the rates that cable operators can charge for billing and collection services.

IV. Market Entry Analysis

76. We noted that section 257 of the Communications Act requires the Commission to complete a proceeding to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the telecommunications industry. The Commission is directed to promote a diversity of media voices and vigorous economic competition, among other things. We believe that the Order is consistent with the objectives of section 257 in that it establishes rates, terms, and conditions for leased access that are intended to promote diversity and competition. We also believe that our provisions for part-time leased access are especially suited to allow small or entrepreneurial leased access programmers to enter the telecommunications programming marketplace.

V. Final Regulatory Flexibility Analysis

77. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Further NPRM. The Commission sought written public comments on the proposals in the Further NPRM, including comments on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA, as amended.

A. Need for Action and Objectives of the Rule

78. Section 612 of the Communications Act requires the Commission to establish reasonable terms and conditions, including maximum reasonable rates, for leased access on cable systems. The purpose of the Order is to amend the Commission's rules regarding leased access, including the rules for calculating maximum reasonable rates. The statutory objectives of the leased access provisions are to promote competition in the delivery of diverse programming sources and to assure the widest possible diversity of programming sources in a manner that is consistent with the growth and development of cable systems.

B. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

79. In response to the IRFA, the Small Cable Business Association (''SCBA'') filed comments criticizing the Commission for failing to estimate the number of small cable systems and small cable operators that would be affected by the regulations proposed in the Further NPRM. SCBA argued that, as reflected in the Small System Order, the Commission has extensive data regarding the existence of small cable entities. SCBA also claimed the Commission neither sought specific comment regarding the impact of its proposals on small cable entities nor asked for alternatives. SCBA urged the Commission to adopt the alternatives for small cable systems that it has proposed in this proceeding. In its filings, SCBA raised the following issues and alternatives.

80. Information Collection Issues. SCBA argued that the Commission's seven business-day response time for providing leased access information imposes significant burdens on small cable systems. SCBA recommended that the Commission allow small system operators 30 days to provide a written response stating whether unused leased access capacity is available and 60 days to provide the remaining required information. SCBA also requested that the Commission allow small system operators to respond only to ''bona fide'' leased access requests.

81. Rate Issues. SCBA argued that the Commission's proposed cost/market rate formula would not adequately compensate small system operators for the following reasons:

(a) Full-Time Rates. SCBA contended that because small system operators often receive no advertising revenues, the Commission's cost/market rate formula could result in leased access rates of zero or less. Among other things, SCBA suggested that the Commission revise the proposed formula to allow small system operators to recover all operating costs reflected on FCC Form 1230, instead of using subscriber revenue as a surrogate for such costs. Alternatively, SCBA proposed allowing operators of small systems to charge market rates for all leased access programmers regardless of demand, particularly if the party requesting access is affiliated with the provider of a competing multi-channel video programming service.

(b) Part-Time Rates. SCBA argued that if the full-time rate under the proposed cost/market rate formula is prorated, the per hour or half-hour rates for small systems would be lower than advertising rates, which would create a flood of requests for part-time leased access.

(c) Transaction Costs. SCBA contended that leased access contracts create higher transaction costs than other programming contracts because leased access agreements are negotiated

more frequently and must be negotiated on a system-by-system basis. SCBA proposed that the Commission remedy this problem for small system operators by allowing them to include an additional amount of at least $1,000 in their leased access rate calculations.

(d) Technical Costs. SCBA argued that additional headend equipment used to add leased access channels will result in high per-subscriber costs for small systems. SCBA proposed that the Commission allow small system operators to charge leased access programmers for all technology costs related to leased access.

(e) Transition Period. SCBA argued that the Commission should phase in leased access obligations for small cable systems to avoid the disruption to current programming line-ups that the proposed cost/market rate formula would create.

(f) Advance Channel Designations. The Further NPRM proposed that a cable operator must place in its public file a list of the specific channels it intends to use for leased access programming. SCBA argued that small system operators should only be required to provide the required leased access information following receipt of a ''bona fide'' request.

82. In reviewing the record before us, we identified issues that may impact small leased access programmers, such as maximum rate calculations, part-time use of leased access, resale, tier and channel placement, preferential access, dispute resolution procedures, certain contractual issues, technical equipment costs, and the definition of affiliate. The Order addressed comments from leased access programmers regarding these issues.

C. Description and Estimate of the Number of Small Entities Impacted

83. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one which: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (''SBA''). The rules we adopted in the Order will affect cable systems and cable programmers.

84. Cable Systems: The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. While this definition includes small cable entities, it also includes closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. Thus, the definition includes many small entities that will not be directly impacted by our leased access rules. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. We noted that not only does this estimate include small entities other than small cable entities, but the majority of the small cable systems included within this estimate have less than 36 channels and therefore are not subject to the Commission's leased access regulations. We therefore estimated that, based on the SBA definition, the number of small cable entities likely to be impacted by our rules will be significantly less than 1,423 entities.

85. The Commission has developed its own definition of a small cable system for purposes of rate regulation. Under the Commission's rules, cable systems serving fewer than 15,000 subscribers are considered small systems, and small systems owned by small cable companies serving fewer than 400,000 subscribers nationwide are entitled to small system relief. This definition is both broader and narrower than that of the SBA. The definition is broader in that it includes larger cable systems than the SBA definition. It is narrower in that, unlike the SBA definition, it does not include closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, or subscription television services. Our most recent information indicates that, under the Commission's definition, there were 1,439 systems entitled to small system relief at the end of 1995. Of these systems, we estimated that approximately 614 systems offer more than 36 channels, and thus are subject to our leased access rules.

86. Section 623(m)(2) of the Communications Act defines a small cable system operator as ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we found that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we were unable to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

87. Cable Programmers: We anticipate that both small leased access programmers and small non-leased access programmers may be impacted by our leased access rules. The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, we utilized the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the cable television programming industry is an entity with $21.5 million or less in annual receipts for SIC 7812, and $5 million or less in annual receipts for SIC 7922. Census Bureau data indicate the following: (a) There were 7,265 firms in the United States classified as Motion Picture and Video Production (SIC 7812), and that 6,987 of these firms had $16.999 million or less in annual receipts and 7,002 of these firms had $24.999 million or less in annual receipts; and (b) there were 5,671 firms in the United States classified as Theatrical Producers and Services (SIC 7922), and that 5,627 of these firms had $4.999 million or less in annual receipts.

88. Each of these SIC categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimated that our rules may affect approximately 6,987 small entities that produce and distribute taped cable

television programs and 5,627 small producers of live programs. In addition, as of May 31, 1996, there were 1,880 LPTV stations that may also be affected by our rules.

D. Reporting, Recordkeeping, and Other Compliance Requirements

This section specifies the reporting, recordkeeping and other related requirements of the regulations adopted, amended, modified, or clarified in the Order.

89. Maximum Rate Calculations: Operators of cable systems subject to leased access requirements must calculate their maximum leased access rates in accordance with the rate formulas we have established. We do not believe that operators will need additional professional skills to perform these calculations.

90. Accountant Reports: A final accountant report that is completed as a result of a dispute concerning an operator's rate calculations must be filed in the operator's local public file.

91. Provision of Initial Leased Access Information: Within 15 calendar days of a leased access request, cable operators are required to provide the following types of information: (a) A complete schedule of the operator's full-time and part-time leased access rates, (b) how much of the cable operator's leased access set-aside capacity is available, (c) rates associated with technical and studio costs, and (d) if specifically requested, a sample leased access contract. An exception is provided for operators of systems entitled to small system relief, which are allowed 30 calendar days to provide the required information. In addition, these operators are not required to respond to a leased access request if the programmer does not provide the following information: (a) Desired length of contract term, (b) time slot desired, (c) anticipated commencement date for carriage, and (d) the nature of the programming.

92. Requirements for Leased Access Requests: Leased access requests must be made in writing and must specify the date the request was sent to the operator.

E. Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With the Stated Objectives

This section analyzes the impact on small entities of the regulations adopted, amended, modified, or clarified in the Order.

93. Information Collection Issues. We allow operators of systems entitled to small system relief to respond to leased access requests within 30 calendar days, instead of the 15 calendar days required of other operators. In addition, we do not require these operators to respond to leased access requests unless the programmer provides the following information: (a) Desired length of contract term, (b) time slot desired, (c) anticipated commencement date for carriage, and (d) the nature of the programming. These modifications to the Commission's rules should mitigate any disproportionate burdens that responding to a leased access request may create for small system operators.

94. Rate Issues. We do not believe that either full-time or part-time rates under our maximum rate formula will impose disproportionate burdens on small system operators. When calculated for a particular cable system, both the average implicit fee (for tiered services) and the highest implicit fee (for a la carte services) represent what current non-leased access programmers are implicitly paying for carriage on that system. Because the maximum rates under an implicit fee formula are tailored to each individual system, we disagreed with SCBA that small system operators should be allowed to charge market prices. For the following reasons, we also disagreed with SCBA's various other proposals to modify the maximum rate formula for small systems.

(a) Transaction Costs. We did not agree with SCBA that small system operators should be allowed to include in their rates an additional sum of at least $1,000 as compensation for transaction costs imposed by leased access because, as discussed above, we believe that the recovery that operators may gain from subscriber revenue for leased access programming will sufficiently offset any additional transaction costs.

(b) Technical Costs. We declined to adopt modified rules for small system operators regarding the recovery of technical costs associated with leased access. We do not believe that there will be a disproportionate impact on small system operators because our rules enable them to recover technical costs that are specific to leasing.

(c) Transition Period. SCBA argued that the Commission should phase in leased access obligations for small cable systems in order to minimize the displacement of existing programming services. In light of our adoption of the average implicit fee methodology and our accommodations of the special needs of small systems, we concluded that a transition period was unnecessary.

(d) Advance Channel Designations. SCBA argued that the Commission should not require small system operators to publicly file a list of their designated leased access channels. The Commission did not adopt such a requirement for any cable systems.

95. Dispute Resolution Procedures. To account for their more limited resources, we allow operators of systems entitled to small system relief 14 business days to select an independent accountant when an operator and a leased access programmer fail to agree on a mutually acceptable accountant to review the operator's rate calculations in the case of a dispute. The general rule is that the parties must each select an independent accountant on the sixth business day if they cannot agree on a mutually acceptable accountant within five business days of the programmer's request for a review.

96. Impact on Cable Programmers. Leased access may impact existing programmers to the extent that operators displace them in order to accommodate leased access requests. However, we believe that displacement of existing programmers is inherent in section 612(b)(4), which provides that a cable operator may no longer use unused leased access capacity once a written agreement is obtained by a leased access programmer. In addition, since it is within an operator's discretion to select which non-leased access programmers to carry (aside from must-carry and PEG access channels), our rules do not create a disproportionate impact on small non-leased access programmers. With respect to small leased access programmers, we believe that the impact of our revised rules generally will be positive, particularly since our rules will result in lower maximum rates for tiered services, permit resale, grant access to highly penetrated tiers, and require part-time rates to be prorated without a surcharge. Although permissible costs for insurance policies, technical equipment, and accountant reviews of rate calculations may impose a burden on small leased access programmers, we believe that such impacts are the normal costs of being a leased access programmer, and that no modifications are warranted.

F. Report to Congress

97. The Commission will send a copy of this Final Regulatory Flexibility Analysis, along with the Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

VI. Ordering Clauses

98. Accordingly, *it is ordered* that, pursuant to the authority granted in sections 4(i), 4(j), and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 532, the Petitions for Reconsideration in CS Docket No. 96–60 are *Granted in part* and *denied in part,* as provided herein.

99. *It is further ordered* that, pursuant to the authority granted in Sections 4(i), 4(j), and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 532, Part 76 of the Commission's rules *is hereby amended* as indicated below. The amendments to 47 CFR 76.970 (a), (b), (i), 76.971 (a), (c), (d), (g), (h), and 76.977(a) shall become effective April 11, 1997. The amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), and 76.975 (b) and (c), which impose information collection requirements, shall become effective upon approval by the Office of Management and Budget (OMB), but no sooner than April 11, 1997. The Commission will publish a document at a later date establishing the effective date for the sections containing information collection requirements.

100. *It is further ordered* that the Secretary shall send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.970 is amended by adding a last sentence to paragraph (a), revising paragraphs (b), (c), (d), (e) and (f), and adding new paragraphs (g), (h) and (i) to read as follows:

§ 76.970 Commercial leased access rates.

(a) * * * For cable systems with 100 or fewer channels, channels that cannot be used due to technical and safety regulations of the Federal Government (e.g., aeronautical channels) shall be excluded when calculating the set-aside requirement.

(b) In determining whether a party is an ''affiliate'' for purposes of commercial leased access, the definitions contained in the notes to § 76.501 shall be used, provided, however, that the single majority shareholder provision of Note 2(b) to § 76.501 and the limited partner insulation provisions of Note 2(g) to § 76.501 shall not apply, and the provisions of Note 2(a) to § 76.501 regarding five (5) percent interest shall include all voting or nonvoting stock or limited partnership equity interest of five (5) percent or more. Actual working control, in whatever manner exercised, shall also be deemed a cognizable interest.

(c) The maximum commercial leased access rate that a cable operator may charge for full-time channel placement on a tier exceeding a subscriber penetration of 50 percent is the average implicit fee for full-time channel placement on all such tier(s).

(d) The average implicit fee identified in paragraph (c) of this section for a full-time channel on a tier with a subscriber penetration over 50 percent shall be calculated by first calculating the total amount the operator receives in subscriber revenue per month for the programming on all such tier(s), and then subtracting the total amount it pays in programming costs per month for such tier(s) (the ''total implicit fee calculation''). A weighting scheme that accounts for differences in the number of subscribers and channels on all such tier(s) must be used to determine how much of the total implicit fee calculation will be recovered from any particular tier. The weighting scheme is determined in two steps. First, the number of subscribers is multiplied by the number of channels (the result is the number of ''subscriber-channels'') on each tier with subscriber penetration over 50 percent. For instance, a tier with 10 channels and 1,000 subscribers would have a total of 10,000 subscriber-channels. Second, the subscriber-channels on each of these tiers is divided by the total subscriber-channels on all such tiers. Given the percent of subscriber-channels for the particular tier, the implicit fee for the tier is computed by multiplying the subscriber-channel percentage for the tier by the total implicit fee calculation. Finally, to calculate the average implicit fee per channel, the implicit fee for the tier must be divided by the corresponding number of channels on the tier. The final result is the maximum rate per month that the operator may charge the leased access programmer for a full-time channel on that particular tier. The average implicit fee shall be calculated by using all channels carried on any tier exceeding 50 percent subscriber penetration (including channels devoted to affiliated programming, must-carry and public, educational and government access channels). In the event of an agreement to lease capacity on a tier with less than 50 percent penetration, the average implicit fee should be determined on the basis of subscriber revenues and programming costs for that tier alone. The license fees for affiliated channels used in determining the average implicit fee shall reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company price does not exist, the license fee for that programming shall be priced at the programmer's cost or the fair market value, whichever is lower. The average implicit fee shall be based on contracts in effect in the previous calendar year. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services).

(e) The maximum commercial leased access rate that a cable operator may charge for full-time channel placement as an a la carte service is the highest implicit fee on an aggregate basis for full-time channel placement as an a la carte service.

(f) The highest implicit fee on an aggregate basis for full-time channel placement as an a la carte service shall be calculated by first determining the total amount received by the operator in subscriber revenue per month for each non-leased access a la carte channel on its system (including affiliated a la carte channels) and deducting the total amount paid by the operator in programming costs (including license and copyright fees) per month for programming on such individual channels. This calculation will result in implicit fees determined on an aggregate basis, and the highest of these implicit fees shall be the maximum rate per month that the operator may charge the leased access programmer for placement as a full-time a la carte channel. The license fees for affiliated channels used in determining the highest implicit fee shall reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company

price does not exist, the license fee for that programming shall be priced at the programmer's cost or the fair market value, whichever is lower. The highest implicit fee shall be based on contracts in effect in the previous calendar year. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services). Any subscriber revenue received by a cable operator for an a la carte leased access service shall be passed through to the leased access programmer.

(g) The maximum commercial leased access rate that a cable operator may charge for part-time channel placement shall be determined by either prorating the maximum full-time rate uniformly, or by developing a schedule of and applying different rates for different times of the day, provided that the total of the rates for a 24-hour period does not exceed the maximum daily leased access rate.

(h)(1) Cable system operators shall provide prospective leased access programmers with the following information within 15 calendar days of the date on which a request for leased access information is made:

(i) How much of the operator's leased access set-aside capacity is available;

(ii) A complete schedule of the operator's full-time and part-time leased access rates;

(iii) Rates associated with technical and studio costs; and

(iv) If specifically requested, a sample leased access contract.

(2) Operators of systems subject to small system relief shall provide the information required in paragraph (h)(1) of this section within 30 calendar days of a bona fide request from a prospective leased access programmer. For these purposes, systems subject to small system relief are systems that either:

(i) Qualify as small systems under § 76.901(c) and are owned by a small cable company as defined under § 76.901(e); or

(ii) Have been granted special relief.

(3) Bona fide requests, as used in this section, are defined as requests from potential leased access programmers that have provided the following information:

(i) The desired length of a contract term;

(ii) The time slot desired;

(iii) The anticipated commencement date for carriage; and

(iv) The nature of the programming.

(4) All requests for leased access must be made in writing and must specify the date on which the request was sent to the operator.

(5) Operators shall maintain, for Commission inspection, sufficient supporting documentation to justify the scheduled rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

(i) Cable operators are permitted to negotiate rates below the maximum rates permitted in paragraphs (c) through (g) of this section.

3. Section 76.971 is amended by revising paragraphs (a), (c), (f)(1) and (g), adding two sentences to the end of paragraph (d), and adding new paragraph (h) to read as follows:

§ 76.971 Commercial leased access terms and conditions.

(a) (1) Cable operators shall place leased access programmers that request access to a tier actually used by most subscribers on any tier that has a subscriber penetration of more than 50 percent, unless there are technical or other compelling reasons for denying access to such tiers.

(2) Cable operators shall be permitted to make reasonable selections when placing leased access channels at specific channel locations. The Commission will evaluate disputes involving channel placement on a case-by-case basis and will consider any evidence that an operator has acted unreasonably in this regard.

(3) On systems with available leased access capacity sufficient to satisfy current leased access demand, cable operators shall be required to accommodate as expeditiously as possible all leased access requests for programming that is not obscene or indecent. On systems with insufficient available leased access capacity to satisfy current leased access demand, cable operators shall be permitted to select from among leased access programmers using objective, content-neutral criteria.

(4) Cable operators that have not satisfied their statutory leased access requirements shall accommodate part-time leased access requests as set forth in this paragraph. Cable operators shall not be required to accept leases for less than one half-hour of programming. Cable operators may accommodate part-time leased access requests by opening additional channels for part-time use or providing comparable time slots on channels currently carrying leased or non-leased access programming. The comparability of time slots shall be determined by objective factors such as day of the week, time of day, and audience share. A cable operator that is unable to provide a comparable time slot to accommodate a part-time programming request shall be required to open an additional channel for part-time use unless such operator has at least one channel designated for part-time leased access use that is programmed with less than 18 hours of part-time leased access programming every day. However, regardless of the availability of partially programmed part-time leased access channels, a cable operator shall be required to open an additional channel to accommodate any request for part-time leased access for at least eight contiguous hours, for the same time period every day, for at least a year. Once an operator has opened a vacant channel to accommodate such a request, our other leased access rules apply. If, however, the operator has accommodated such a request on a channel already carrying an existing full-time non-leased access programmer, the operator does not have to accommodate other part-time requests of less than eight hours on that channel until all other existing part-time leased access channels are substantially filled with leased access programming.

* * * * *

(c) Cable operators are required to provide unaffiliated leased access users the minimal level of technical support necessary for users to present their material on the air, and may not unreasonably refuse to cooperate with a leased access user in order to prevent that user from obtaining channel capacity. Leased access users must reimburse operators for the reasonable cost of any technical support actually provided by the operator that is beyond that provided for non-leased access programmers on the system. A cable operator may charge leased access programmers for the use of technical equipment that is provided at no charge for public, educational and governmental access programming, provided that the operator's franchise agreement requires it to provide the equipment and does not preclude such use, and the equipment is not being used for any other non-leased access programming. Cable operators that are required to purchase technical equipment in order to accommodate a leased access programmer shall have the option of either requiring the leased access programmer to pay the full purchase price of the equipment, or purchasing the equipment and leasing it to the leased access programmer at a reasonable rate. Leased access programmers that are required to pay the full purchase price of additional equipment shall have all rights of

ownership associated with the equipment under applicable state and local law.

(d) * * * Cable operators may impose reasonable insurance requirements on leased access programmers. Cable operators shall bear the burden of proof in establishing reasonableness.

* * * * *

(f) (1) A cable operator shall provide billing and collection services for commercial leased access cable programmers, unless the operator demonstrates the existence of third party billing and collection services which in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers.

* * * * *

(g) Cable operators shall not unreasonably limit the length of leased access contracts. The termination provisions of leased access contracts shall be commercially reasonable and may not allow operators to terminate leased access contracts without a reasonable basis.

(h) Cable operators may not prohibit the resale of leased access capacity to persons unaffiliated with the operator, but may provide in their leased access contracts that any sublessees will be subject to the non-price terms and conditions that apply to the initial lessee, and that, if the capacity is resold, the rate for the capacity shall be the maximum permissible rate.

4. Section 76.975 is amended by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 76.975 Commercial leased access dispute resolution.

* * * * *

(b) (1) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of Title VI of the Communications Act, or our implementing regulations, §§ 76.970 and 76.971, may file a petition for relief with the Commission. Persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition for relief with the Commission.

(2) Parties to a dispute over leased access rates shall have five business days to agree on a mutually acceptable accountant from the date on which the programmer provides the cable operator with a written request for a review of its leased access rates. Parties that fail to agree on a mutually acceptable accountant within five business days of the programmer's request for a review shall each be required to select an independent accountant on the sixth business day. The two accountants selected shall have five business days to select a third independent accountant to perform the review. Operators of systems subject to small system relief shall have 14 business days to select an independent accountant when an agreement cannot be reached. For these purposes, systems subject to small system relief are systems that either:

(i) Qualify as small systems under § 76.901(c) and are owned by a small cable company as defined under § 76.901(e); or

(ii) Have been granted special relief.

(3) The final accountant's report must be completed within 60 days of the date on which the final accountant is selected to perform the review. The final accountant's report must, at a minimum, state the maximum permitted rate, and explain how it was determined without revealing proprietary information. The report must be signed, dated and certified by the accountant. The report shall be filed in the cable system's local public file.

(4) If the accountant's report indicates that the cable operator's leased access rate exceeds the maximum permitted rate by more than a *de minimis* amount, the cable operator shall be required to pay the full cost of the review. If the final accountant's report does not indicate that the cable operator's leased access rate exceeds the maximum permitted rate by more than a *de minimis* amount, each party shall be required to split the cost of the final accountant's review, and to pay its own expenses incurred in making the review.

(5) Parties may use alternative dispute resolution (ADR) processes to settle disputes that are not resolved by the final accountant's report.

(c) A petition must contain a concise statement of the facts constituting a violation of the statute or the Commission's Rules, the specific statute(s) or rule(s) violated, and certify that the petition was served on the cable operator. Where a petition is based on allegations that a cable operator's leased access rates are unreasonable, the petitioner must attach a copy of the final accountant's report. In proceedings before the Commission, there will be a rebuttable presumption that the final accountant's report is correct.

(d) Where a petition is not based on allegations that a cable operator's leased access rates are unreasonable, the petition must be filed within 60 days of the alleged violation. Where a petition is based on allegations that the cable operator's leased access rates are unreasonable, the petition must be filed within 60 days of the final accountant's report, or within 60 days of the termination of ADR proceedings. Aggrieved parties must certify that their petition was filed within 60 days of the termination of ADR proceedings in order to file a petition later than 60 days after completion of the final accountant's report. Cable operators may rebut such certifications.

(e) The cable operator or other respondent will have 30 days from the filing of the petition to file a response. If a leased access rate is disputed, the response must show that the rate charged is not higher than the maximum permitted rate for such leased access, and must be supported by the affidavit of a responsible company official. If, after a response is submitted, the staff finds a prima facie violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding.

* * * * *

5. Section 76.977 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 76.977 Minority and educational programming used in lieu of designated commercial leased access capacity.

(a) * * * The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this section may not exceed 33 percent of the channel capacity designated pursuant to 47 U.S.C. 532 and must be located on a tier with more than 50 percent subscriber penetration.

* * * * *

[FR Doc. 97–5897 Filed 3–11–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[(OST) Docket No. 1; Amdt. 1–284]

Organizations and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard and Administrator, Maritime Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule revises in part the delegations of Secretarial authority

under the Deepwater Port Act of 1974, as amended. The Secretary reserves the authority to issue, amend, or transfer a deepwater port license. The rule delegates certain functions under the Act to the Administrator of the Maritime Administration and provides for coordination between the Maritime Administration and the United States Coast Guard in processing applications for licenses for construction and operation of deepwater ports. The rule also delegates to the Commandant of the Coast Guard additional Secretarial authority under the Oil Pollution Act of 1990. The rule does not change the previous delegation of Deepwater Port Act authority to the Administrator of the Research and Special Programs Administration.

EFFECTIVE DATE: This rule is effective March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law at (202) 366–9161 Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUMMARY INFORMATION: This rule revises the Secretary's delegations of authority under the Deepwater Port Act, as amended. The Secretary reserves the authority to issue, amend, or transfer a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)). The rule provides for effective service to the public through coordination between the Administrator of the Maritime Administration (MARAD) and the Commandant of the United States Coast Guard for the processing of applications for the issuance, transfer, or amendment of a license for the construction and operation of a deepwater port. The Secretary delegates to the Administrator of MARAD several authorities under the Deepwater Port Act which the Secretary had previously reserved in 46 CFR 1.44(o).

The rule also delegates to the Commandant of the Coast Guard the Secretary's authority under the Oil Pollution Act of 1990 to prescribe regulations to lower the liability limits of deepwater ports (33 U.S.C. 2704(d)(2)(C)).

The rule does not change the Secretary's previous delegation of Deepwater Port Act authority to the Administrator of the Research and Special Programs Administration in 49 CFR 1.53(a)(3) for establishment, enforcement, and review of regulations concerning the safe construction, operation or maintenance of pipelines on Federal lands and the Outer Continental Shelf (33 U.S.C. 1520).

Since this amendment is ministerial and relates only to departmental management, organization, procedure, and practice, it is exempt from prior notice and comment requirements under 5 USC 553 (b)(3)(A). The Department has determined that notice and comment on it are unnecessary and impractical. The changes will not have substantive impact and the Department does not expect meaningful comments on them. Therefore there is good cause under 5 USC 553(d)(3) to make this rule effective in fewer than 30 days after publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.44(o) is revised to read as follows:

§ 1.44 Reservation of authority.

* * * * *

(o) *Deepwater ports.* The authority to issue, transfer, or amend a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)).

* * * * *

3. Section 1.46(s) is revised to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(s) Carry out the following powers and duties vested in the Secretary by the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501–1524):

(1) The authority to process applications for the issuance, transfer or amendment of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)) *in coordination* with the Administrator of the Maritime Administration.

(2) Carry out other functions and responsibilities vested in the Secretary by the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501–1524), except as reserved by § 1.44(o) and delegated by §§ 1.53(a)(3) and 1.66(aa).

* * * * *

4. Section 1.46(ll) is amended by inserting after the word ''sections'', the phrase ''1004(d)(2)(C).''

5. Section 1.66(aa) is added to read as follows:

§ 1.66 Delegation to Maritime Administrator.

* * * * *

(aa) Carry out the following powers and duties vested in the Secretary by the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501–1524):

(1) The authority to process applications for the issuance, transfer, or amendment of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(bb)) in coordination with the Commandant of the Coast Guard.

(2) Approval of fees charged by adjacent coastal States for use of a deepwater port and directly related land-based facilities (33 U.S.C. 1504(h)(2)).

(3) In collaboration with the Assistant Secretary for Aviation and International Affairs and the Assistant Secretary for Transportation Policy, consultation with the Secretary of State relating to international actions and cooperation in the economic, trade and general transportation policy aspects of the ownership and operation of deepwater ports (33 U.S.C. 1510).

(4) Submission of notice of the commencement of a civil suit (33 U.S.C. 1515(b)(2)).

(5) Intervention in any civil action to which the Secretary is not a party (33 U.S.C. 15150).

(6) Authority to request the Attorney General to seek the suspension or termination of a deepwater port license and to initiate a proceeding before the Surface Transportation Board (33 U.S.C. 1507, 1511(a)).

Issued in Washington, DC on March 3, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–6175 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 62, No. 48
Wednesday, March 12, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–66–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Models EMB–110P1 and EMB–110P2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 87–03–10, which currently requires repetitively inspecting the fillet area of both the left and right main landing gear (MLG) wheel axle/piston tube support junction area for cracks on Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB–110P1 and EMB–110P2 airplanes and replacing any MLG wheel axle/piston tube assembly where a crack is found. AD 87–03–10 also provided the option of reworking this area when no cracks were found as terminating action for the repetitive inspections. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require the following on EMBRAER Models EMB 110–P1 and EMB 110–P2 airplanes that do not have an ''R'' stamped on both the left and right MLG wheel axle/piston tube assembly end-piece: inspecting (one-time) the fillet area of each MLG wheel axle/piston tube support junction area to ensure the area is free of cracks, replacing any MLG wheel axle/piston tube assembly if a crack is found, and reworking this area on both the left and right MLG's, as terminating action for the repetitive inspections that are currently required by AD 87–03–10. The actions specified in the proposed AD are intended to prevent failure of the MLG wheel axle/piston tube assembly caused by fatigue cracking, which could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before May 30, 1997.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–66–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from EMBRAER, Av. Brig Faira Lima 2170, 12227–901, Sao Jose dos Campos-SP, Brazil. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Jackson, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7358; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–66–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE–66-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to EMBRAER Models EMB–110P1 and EMB–110P2 airplanes. Assisting the FAA in this review were (1) EMBRAER; (2) the Regional Airlines Association (RAA); (3) the Centro Tecnico Aeroespacial (CTA), which is the aviation authority for Brazil; and (4) several operators of the affected airplanes.

From this review, the FAA has identified AD 87–03-10, Amendment 39–5524, as one which falls under the FAA's aging aircraft policy. AD 87–03–10 currently requires repetitively inspecting the fillet area in both the left and right main landing gear(MLG)

wheel axle/piston tube support junction area for cracks on EMBRAER Models EMB–110P1 and EMB–110P2 airplanes, and replacing any MLG wheel axle/piston tube assembly if a crack is found. AD 87–03–10 also provides the option of reworking this area of both the left and right MLG's when no cracks are found, as terminating action for the repetitive inspections. Accomplishment of the inspections required by AD 87–03–10 is in accordance with EMBRAER Service Bulletin (SB) No. 110–032–0068, dated December 20, 1985. Accomplishment of the optional rework is in accordance with EMBRAER SB No. 110–032–0071, dated July 29, 1986.

Relevant Service Information

Since the issuance of AD 87–03–10, EMBRAER has revised SB No. 110–032–0071 to incorporate minor editorial changes. This revision, EMBRAER SB No. 110–032–0071, Change No. 01, dated June 21, 1988, incorporates revisions of ERAM SB No. 32–25, dated July 1987. ERAM SB No. 32–25 contains the procedures for reworking the fillet area of both the left and right MLG wheel axle/piston tube support junction area on EMBRAER EMB–110 series airplanes.

The FAA's Determination

Based on its aging commuter-class aircraft policy and after reviewing all available information, including the referenced service information, the FAA has determined that AD action should be taken to (1) require reworking both the left and right MLG wheel/axle piston tube support junction area on the affected airplanes, as terminating action for the repetitive short-interval inspections required by AD 87-03–10; and (2) prevent structural failure of the MLG wheel axle/piston tube assembly caused by fatigue cracking, which could result in loss of control of the airplane during landing operations.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other EMBRAER Models EMB–110P1 and EMB–110P2 airplanes of the same type design that do not have an ''R'' stamped on both the left and right MLG wheel axle/piston tube assembly end-piece, the FAA is proposing an AD to supersede AD 87–03–10. The proposed AD would require inspecting (one-time) the fillet area of both the left and right MLG wheel axle/piston tube support junction area to ensure the area is free of cracks, replacing any MLG wheel axle/piston tube assembly if a crack is found, and reworking this area on both the left and right MLG's, as terminating action for the repetitive inspections that are currently required by AD 87–03–10. Airplanes that have an ''R'' stamped on both the left and right MLG wheel axle/piston tube assembly end-piece either (1) have a design configuration that does not meet the requirements of the unsafe condition specified in this document; or (2) the airplanes already have both the left and right the MLG wheel axle/piston tube assembly reworked. Accomplishment of the proposed inspection would be in accordance with EMBRAER SB No. 110–032–0068, dated December 20, 1985. Accomplishment of the proposed rework would be required in accordance with EMBRAER SB No. 110–032–0071, Change No. 01, dated June 21, 1988.

Cost Impact

The FAA estimates that 50 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 22 workhours (inspection: 8 workhours; rework: 14 workhours) per airplane to accomplish the proposed AD, and that the average labor rate is approximately $60 an hour. There is no cost for parts to accomplish the proposed AD. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $66,000.

The initial inspection cost of the proposed AD is the same as that required by AD 87–03–10. The difference in the inspection costs of the proposed AD and AD 87–03–10 is that the proposed AD would not require the repetitive inspections and AD 87–03–10 currently requires repetitively inspecting every 1,000 landings. The proposed rework eliminates the repetitive inspection requirement, and was optional in AD 87–03–10.

The FAA does not have any way of determining how many airplanes have an ''R'' stamped on both the left and right MLG wheel axle/piston tube support junction area end-piece and have these areas reworked, and, therefore already have the proposed AD action accomplished. The affected airplanes are no longer in production with few airplanes being operated in the United States. Since AD 87–03–10 provided the option of reworking the area on both the left and right MLG's as terminating action for the repetitive inspections, the FAA believes that most of the operators will have accomplished the rework and would not be affected by the proposed AD.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 87–03–10, Amendment 39–5524, and adding a new AD to read as follows:

Empresa Brasileira De Aeronautica S.A: Docket No. 96–CE–66–AD. Supersedes AD 87–03–10, Amendment 39–5524.

Applicability: Models EMB–110P1 and EMB–110P2 airplanes, all serial numbers, certificated in any category, that do not have an ''R'' stamped on both the left and right main landing gear (MLG) wheel axle/piston tube assembly end-piece.

Note 1: Airplanes that have an ''R'' stamped on both the left and right MLG wheel axle/piston tube assembly end-piece either (1) have a design configuration that

does not meet the requirements of the unsafe condition specified in this document; or (2) already have both the left and right MLG wheel axle/piston tube support junction area reworked. EMBRAER Service Bulletin (SB) No.110–032–0071, Change No. 01, dated June 21, 1988, includes procedures for this rework, including stamping an ''R'' on both the left and right MLG wheel axle/piston tube assembly end-piece.

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

Compliance: Required within the next 100 landings after the effective date of this AD, unless already accomplished.

Note 3: If the number of landings is unknown, hours time-in-service (TIS) may be used by multiplying the number of hours TIS by 0.50. If hours TIS are utilized to calculate the number of landings, this would make the AD effective ''within the next 200 hours TIS after the effective date of this AD.''

To prevent failure of a MLG wheel axle/piston tube assembly caused by fatigue cracking, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Inspect, using either eddy current, dye penetrant, or magnetic particle methods, the fillet area in both the left and right MLG wheel axle/piston support junction area for cracks in accordance with the instructions contained in EMBRAER SB No. 110–032–0068, dated December 20, 1985. Included in this SB is ERAM SB No. 32–22, which includes procedures for accomplishing this inspection. If any cracks are found, prior to further flight, replace the MLG wheel axle/piston tube assembly with an uncracked assembly.

(b) Visually inspect the fillet radius in both the left and right MLG wheel axle/piston tube support junction area to determine whether the profile requires rework. Accomplish the inspection in accordance with the instructions in ERAM SB No. 32–25, which is part of EMBRAER SB No. 110–032–0071, Change No. 01, dated June 21, 1988.

(1) If the profile of the area of each MLG is like the one presented in image (A) Figure 1 of ERAM SB No. 32–25, which is part of EMBRAER SB No. 110–032–0071, Change No. 01, dated June 21, 1988, prior to further flight, polish the junction area using a fine grit abrasive cloth and stamp the letter ''R'' on the MLG wheel axle/piston tube assembly end-pipe.

(2) If the profile of the area of each MLG is like the one presented in image (B) Figure 1 of ERAM SB No. 32–25, which is part of EMBRAER SB No. 110–032–0071, Change No. 01, dated June 21, 1988, prior to further flight, accomplish the following in accordance with EMBRAER SB No. 110–032–0071, Change No. 01, dated June 21, 1988:

(i) Rework each MLG wheel axle/piston tube support junction area;

(ii) Polish each junction area using a fine grit abrasive cloth; and

(iii) Stamp the letter ''R'' on each MLG wheel axle/piston tube assembly end-pipe.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO. Alternative methods of compliance approved in accordance with AD 87–03–10 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to EMBRAER, Av. Brig Faira Lima 2170, 12227–901, Sao Jose dos Campos-SP, Brazil; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 87–03–10, Amendment 39–5524.

Issued in Kansas City, Missouri, on March 5, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–6088 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 96–NM–115–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require modification of the cable tension regulator on both the left and right elevators by installing certain parts on the lever arm of the regulator. This proposal is prompted by a report indicating that design testing and analysis have shown applied loads could cause the regulator's lever arm to break. The actions specified by the proposed AD are intended to prevent failure of the regulator, and consequent reduced controllability of the airplane.

DATES: Comments must be received by April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–115–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2796; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–115–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–115–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received a report from the manufacturer indicating that the cable tension regulators on both the left and right elevators are susceptible to failure. Design testing and analysis have shown that, due to the presence of lightening holes in the tension regulator, the lever arm of the tension regulator can break when design loads are applied to it. Failure of the cable tension regulator, if not corrected, could lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–27–116, dated September 26, 1995, which describes procedures for modification of the cable tension regulator on both the left and right elevators. This modification entails the installation of two lateral plates on the lever arm to improve its load-carrying capability. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 95–434, dated November 14, 1995, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the cable tension regulator on both the left and right elevators. This modification would entail the installation of two lateral plates on the lever arm of the regulator, and is intended to improve the load-carrying capability of the arm. The action would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 27 Dornier Model 328–100 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed actions, and the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,240, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

39.13 [Amended]

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

Dornier: Docket 96–NM–115–AD.

Applicability: Model 328–100 series airplanes having serial number 3005 to 3045 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the cable tension regulator on both the left and right elevators, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the cable tension regulator on both the left and right elevators by installing two lateral plates on the lever arm, in accordance with Dornier Service Bulletin SB–328–27–116, dated September 26, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager,

Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

Issued in Renton, Washington, on March 5, 1997.

Darrell M. Pederson,

Acting Manager,

Transport Airplane Directorate,

Aircraft Certification Service.

[FR Doc. 97–6087 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 95–NM–216–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), which would have superseded an existing AD that is applicable to certain Airbus Model A320 series airplanes. The existing AD currently requires inspections to detect cracking of certain floor beams and side box-beams, and repair of cracks. It also requires modification of the pressure floor. The previously proposed action would have added a requirement to install a new, improved modification for the pressure floor. This action revises the previously proposed rule by adding a one-time inspection to verify proper clearance between the fasteners of the reinforcement bracket and the bellcrank of the free-fall extension system of the main landing gear (MLG) and its associated tie rod attachment nut. It also would require that a different new, improved modification be installed. The actions specified by this proposed AD are intended to prevent reduced structural integrity of the fuselage, restricted operation of the MLG free-fall system and, consequently, reduced ability to use the MLG during an emergency.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95-NM–216-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95-NM–216-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95-NM–216-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on April 15, 1996 (61 FR 16414). That NPRM would have superseded AD 93–14–04, amendment 39–8628 (58 FR 39440, July 23, 1993), to continue to require a one-time eddy current and detailed visual inspections to detect cracks of various areas around the fastener/bolt holes of the pressure floor. That NPRM also would have added a requirement to install a new, improved modification requirement for the pressure floor at section 15 of the fuselage. That NPRM was prompted by the results of a full-scale fatigue test, which indicated that fatigue cracking can occur in those areas. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage.

Actions Since Issuance of Originally Proposed NPRM

Since the issuance of that NPRM, the Direction G•n•rale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an additional unsafe condition may exist on Airbus Model A320 series airplanes that were modified in accordance with Airbus Service Bulletin A320–53–1023, Revision 3, dated March 18, 1994. That modification was considered to be terminating action for the repetitive inspection requirements of AD 93–14–04. The DGAC advises that, following accomplishment of the subject modification, it received reports indicating that interference could occur between the fasteners of the reinforcement bracket and the bellcrank of the free-fall extension system of the main landing gear (MLG) and its associated tie rod attachment nut. This condition, if not corrected, could restrict operation of the free-fall system of the MLG and, consequently, result in reduced ability to use the MLG during an emergency.

Description of Revised Service Information

Airbus has issued Revision 7 of Service Bulletin A320–53–1023, dated November 3, 1995, which describes procedures for installation of a new, improved modification of the pressure floor at section 15 of the fuselage. This revision differs from Revision 3 of the service bulletin in the following two aspects:

1. It includes updated installation procedures for the fasteners located adjacent to the bell crank lever of the free-fall extension system of the MLG; and

2. It includes additional procedures for reworking the attachment bracket located above the pressure diaphragm.

Accomplishment of this modification would eliminate the need for the one-time eddy current and detailed visual inspections. Installation of the new, improved modification will positively address the unsafe condition identified as reduced structural integrity of the fuselage, and restricted operation of the MLG free fall system.

Airbus also has issued All Operators Telex (AOT) 53–08, Revision 01, dated January 15, 1996, which concerns only certain airplanes. The service bulletin describes procedures for performing a one-time inspection to verify proper clearance between the fasteners of the reinforcement bracket and the bellcrank of the free-fall extension system of the MLG and its associated tie rod attachment nut. The AOT also describes procedures for reinstalling the reinforcement bracket fasteners, or, under certain conditions, reworking the bellcrank lever and fasteners, if necessary.

The DGAC classified the Airbus service bulletin and AOT as mandatory and issued French airworthiness directive 96–053–077(B), dated March 13, 1996, in order to assure the continued airworthiness of these airplanes in France.

Explanation of Changes Made to Proposal

Based on this new information, the FAA has determined that the previously issued proposal must be revised in order to adequately address the unsafe condition presented by interference problems associated with accomplishment of the procedures contained in Airbus Service Bulletin A320–53–1023, up to and including Revision 6, dated September 4, 1995.

Accordingly, the FAA has added a new paragraph (c) to this supplemental NPRM, which would require the accomplishment of the procedures specified in Airbus AOT 53–08, Revision 01, dated January 15, 1996, described previously. In addition, paragraph (c) of the supplemental NPRM also would include a requirement to accomplish the modification specified in Revision 7 of Airbus Service Bulletin A320–53–1023, described previously.

The FAA also has revised paragraph (c) of the originally-proposed NPRM [designated as paragraph (d) in this supplemental NPRM] to reference Revision 7 of Airbus Service Bulletin A320–53–1023 as the appropriate source of service information for modification of the pressure floor.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 24 Airbus Model A320 series airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are currently required by AD 93–14–04 take approximately 37 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $53,280, or $2,220 per airplane.

The new inspection that is proposed by this AD action would take approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection on U.S. operators is estimated to be $15,840, or $660 per airplane.

The new modification that is proposed by this AD action would take approximately 142 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $204,480, or $8,520 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8628 (58 FR 39440, July 23, 1993), and by adding a new airworthiness directive (AD) to read as follows:

Airbus Industrie: Docket 95-NM–216-AD. Supersedes AD 93–14–04, amendment 39–8628.

Applicability: Model A320 series airplanes, manufacturer's serial numbers 002 through 008 inclusive, 010 through 078 inclusive, and 080 through 107 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, restricted operation of the main landing gear (MLG) free-fall system, and, consequently, reduced ability to use the MLG during an emergency, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings, or within 6 months after August 23, 1993 (the effective date of AD 93–14–04, amendment 39–8628), whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Airbus Industrie Service Bulletin A320–53–1024, dated September 23, 1992, or Revision 1, dated March 31, 1994. As of the effective date of this new AD, only Revision 1 of this service bulletin shall be used.

(1) Conduct an eddy current inspection to detect cracking around the fastener/bolt holes at the top horizontal flange of the floor beams and side box-beams, at the two sides of the pressure floor, and at the vertical integral stiffener of the side box-beams; and

(2) Conduct a detailed visual inspection to detect cracking around the fastener/bolt holes at the fillet radius and riveted area of the top outboard flange of the side box-beam, and at the flange-corner radius of the slanted inboard flange of the side box-beam and fittings.

(b) If any crack is detected during the inspections required by paragraph (a) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) For airplanes on which the modification specified in Airbus Service Bulletin A320–53–1023, dated September 23, 1992, as amended by Service Bulletin Change Notice 0A, dated January 20, 1993; Revision 1, dated March 23, 1993; Revision 2, dated October 22, 1993; Revision 3, dated March 18, 1994; Revision 4, dated September 30, 1994; Revision 5, dated February 28, 1995; or Revision 6, dated September 4, 1995; has been accomplished: Accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to the accumulation of 1,000 landings after the effective date of this AD, perform a one-time inspection to verify proper clearance between the fasteners of the reinforcement bracket and the bellcrank of the free-fall extension system of the MLG and its associated tie rod attachment nut, in accordance with Airbus All Operators Telex (AOT) 53–08, Revision 01, dated January 15, 1996.

(i) If the minimum clearance is greater than 3 mm (0.118 inch) and no evidence of interference is detected, within 60 months following accomplishment of the inspection required by paragraph (c)(1) of this AD, reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995.

(ii) If the minimum clearance is 3 mm (0.118 inch) or less, and no evidence of interference is detected, within 18 months following accomplishment of the inspection required by paragraph (c)(1) of this AD, reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995.

(iii) If any interference is detected, prior to further flight, accomplish either paragraph (c)(1)(iii)(A) or (c)(1)(iii)(B) of this AD.

(A) Reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995; or

(B) Rework the bellcrank lever and fasteners in accordance with Airbus AOT 53–08, Revision 01, dated January 15, 1996. Within 60 months following accomplishment of the rework, reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995.

(2) Prior to the accumulation of 24,000 total landings, or 6 months after the effective date of this AD, whichever occurs later, modify the pressure floor at section 15 of the fuselage in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995. Accomplishment of the modification terminates the requirements of this AD.

(d) For airplanes on which the modification specified in Airbus Service Bulletin A320–53–1023, dated September 23, 1992, as amended by Service Bulletin Change Notice 0A, dated January 20, 1993; Revision 1, dated March 23, 1993; Revision 2, dated October 22, 1993; Revision 3, dated March 18, 1994; Revision 4, dated September 30, 1994; Revision 5, dated February 28, 1995; or Revision 6, dated September 4, 1995; has not been accomplished: Prior to the accumulation of 18,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the pressure floor at section 15 of the fuselage in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995. Accomplishment of the modification terminates the requirements of this AD.

(e) Accomplishment of the modification of the pressure floor at section 15 of the fuselage in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995, constitutes terminating action for the requirements of this AD.

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

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

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

Issued in Renton, Washington, on March 5, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–6085 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 96–NM–219–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require modifying the main landing gear (MLG) bay areas by installing additional slush protection covers in those areas. This proposal is prompted by the identification of a problem during flight test analysis, which indicated that slush can accumulate in the MLG bay areas. The actions specified by the proposed AD are intended to prevent the accumulation of slush in the MLG bay areas, which could freeze and interfere with the landing gear or render it inoperative.

DATES: Comments must be received by April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–219-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer,

Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2796; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–219–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that flight test analysis has revealed that slush can accumulate in the main landing gear (MLG) bay areas when the airplane operates on taxiways and runways with more than 5 mm (0.2 inches) of slush. If this occurs, the slush could freeze and interfere with the extension or retraction of the landing gear and cause it to become inoperative.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–30–132, dated October 11, 1995, which describes procedures for modifying the left and right MLG bay areas by installing additional slush protection covers in the MLG bay areas. This modification to the MLG bay areas will preclude the accumulation of slush in those areas, and will allow the airplane to operate in slush conditions up to 15 mm (0.6 inch).

The LBA classified this service bulletin as mandatory and issued German airworthiness directive 95–412, dated November 2, 1995, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modifying the left and right MLG bay areas by installing additional slush protection covers in those areas. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 40 Dornier Model 328–100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of required parts would be negligible. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $19,200, or $480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

39.13 [Amended]

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

Dornier: Docket 96-NM–219-AD.

Applicability: Dornier Model 328–100 series airplanes, serial numbers 3005 through 3063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in

the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of slush in the main landing gear (MLG) bay areas that could freeze and interfere with the landing gear and result in it becoming inoperative, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the MLG bay areas by installing additional slush protection covers in those areas in accordance with Dornier Service Bulletin SB–328–30–132, dated October 11, 1995.

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

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

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

Issued in Renton, Washington, on March 5, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–6084 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 96–NM–177–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B and Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B and Model SAAB 2000 series airplanes. This proposal would require a one-time inspection to determine if certain switches are installed on the fire handle panel of the fire handle assembly; and replacement of the fire handle panel with a new fire handle panel, if necessary. This proposal is prompted by a report indicating that, during manufacture, a batch of defective switches were installed on certain fire handle panels on these airplanes. The actions specified by the proposed AD are intended to ensure the proper switches are installed in the fire handle assembly. A defective switch in the fire handle assembly could prematurely fail and, consequently, prevent the proper operation of the engine fire protection system in the event of a fire.

DATES: Comments must be received by April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–177–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 340B and Model SAAB 2000 series airplanes. The LFV advises it has received a report indicating that, during manufacture, a batch of defective switches was installed in the fire handle assemblies on Model SAAB 340 series airplanes and Model SAAB 2000 series airplanes. A defective switch in the fire handle assembly could prematurely fail and, consequently, prevent the proper operation of the engine fire protection system in the event of a fire.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–26–016, dated November 9, 1995 (for Model SAAB 340 series airplanes), and Service Bulletin SAAB 2000–26–006, dated November 9, 1995 (for Model SAAB 2000 series airplanes). These service bulletins describe procedures for performing a one-time inspection to determine the color of the switches installed on the fire handle panel of the fire handle assembly. For cases where a blue switch is installed, the service bulletin also describes procedures for performing a one-time inspection to determine the serial number of the fire handle assembly; and replacement of the fire handle panel with a new fire handle panel, if necessary. The LFV classified these service bulletins as

mandatory and issued Swedish airworthiness directive (SAD) No. 1–080, dated November 10, 1995, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to determine the color of the switches installed on the fire handle panel of the fire handle assembly. If a blue switch is installed, the proposed AD would require a one-time inspection to verify the serial number of the fire handle assembly, and replacement of the fire handle panel with a new fire handle panel, if necessary. The actions would be required to be accomplished in accordance with the applicable service bulletin described previously.

Cost Impact

The FAA estimates that 21 Saab Model SAAB 340B series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,260, or $60 per airplane.

The FAA also estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $540, or $180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 96–NM–177–AD.

Applicability: Model SAAB 340B series airplanes, having serial numbers 354 through 374 inclusive; and Model SAAB 2000 series airplanes, having serial numbers 004 through 025 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the proper switches are installed on the fire handle panel of the fire handle assembly, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time inspection to determine the color of the switches installed on the fire handle panel of the fire handle assembly, in accordance with SAAB Service Bulletin 340–26–016, dated November 9, 1995 (for Model SAAB 340 series airplanes), or SAAB Service Bulletin 2000–26–006, dated November 9, 1995 (for Model SAAB 2000 series airplanes); as applicable.

(1) If all of the switches are green on the fire handle assembly, no further action is required by this AD.

(2) If any blue switch is installed, prior to further flight, perform a one-time inspection to determine the serial number of the fire handle assembly, in accordance with the applicable service bulletin.

(i) If no fire handle assembly has a serial number listed in the service bulletin, no further action is required by this AD.

(ii) If any fire handle assembly has a serial number listed in the service bulletin, prior to further flight, replace the fire handle panel with a new fire handle panel, in accordance with the applicable service bulletin.

(b) As of the effective date of this AD, no person shall install a fire handle assembly, having any serial number identified in paragraph B.(3)(g) of the Accomplishment Instructions of SAAB Service Bulletin 340–26–016, dated November 9, 1995; on any airplane.

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

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

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 5, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–6083 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209824–96]

RIN 1545–AU24

Definition of Limited Partner for Self-Employment Tax Purposes; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rule; change of location of public hearing.

SUMMARY: This document changes the location of the public hearing on proposed regulations relating to the self-employment income tax imposed under section 1402 of the Internal Revenue Code of 1986.

DATES: The public hearing is being held on Wednesday, May 21, 1997, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by April 30, 1997.

ADDRESSES: The public hearing originally scheduled in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC is changed to room 5716, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the Federal Register on Monday, January 13, 1997 (62 FR 1702) announced that a public hearing on proposed regulations relating to the self-employment income tax imposed under section 1402 of the Internal Revenue Code of 1986 would be held on Wednesday, May 21, 1997, beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC and that requests to speak and outlines of oral comments should be received by Wednesday, April 30, 1997.

The location of the pubic hearing has changed. The hearing is scheduled for Wednesday, May 21, 1997, beginning at 10:00 a.m. in room 5716, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. We must receive the requests to speak and outlines of oral comments by Wednesday, April 30, 1997. Because of controlled access restrictions, attenders are not admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

The Service will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–6069 Filed 3–11–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL138–1b; FRL–5660–1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Illinois' May 5, 1995, May 26, 1995, and May 31, 1995, submittal of miscellaneous amendments to Illinois'' Volatile Organic Material (VOM) Reasonably Available Control Technology (RACT) rules as requested revisions to Illinois' State Implementation Plan (SIP) for ozone. VOM, as defined by the State of Illinois, is identical to ''volatile organic compounds'' (VOC), as defined by EPA. These amendments make certain clarifications to the State's VOM RACT rules, and includes an exemption of certain polyethylene foam packaging operations from these rules. In the final rules section of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action 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 the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before April 11, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: November 27, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–6075 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[DE027–1004b, DE020–1004b; FRL–5679–5]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware: Open Burning and Non-CTG RACT Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve State Implementation Plan (SIP) revisions submitted by the State of Delaware. These revisions consist of two control measures to reduce volatile organic compound (VOC) emissions. In the final rules section of this Federal Register, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial

SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If 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. 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.

DATES: Comments must be received in writing by April 11, 1997.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the Rules and Regulations section of this Federal Register.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: January 10, 1997.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 97–6074 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[VA059–5016b and VA060–5016b; FRL–5698–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Standards for Volatile Organic Compound (VOC) Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia for the purpose of establishing amendments to Virginia's controls on sources of volatile organic compound (VOC) emissions in the Northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area and the Richmond moderate ozone nonattainment area. These revisions were submitted to impose additional control measures on sources of VOCs to provide emissions reductions creditable toward the 15% Rate of Progress (ROP) Plan in the Northern Virginia portion of the Metropolitan Washington D.C. nonattainment area; and to impose additional control measures in the Richmond nonattainment area to reduce VOC emissions. In the Final Rules section of this Federal Register, EPA is approving the Commonwealth's SIP revisions via direct final rule without prior proposal because the Agency views these as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this 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. 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.

DATES: Comments must be received in writing by April 11, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 566–2092.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 25, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 97–6081 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[VA 045–5018; FRL–5698–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; 15 Percent Rate of Progress Plan for the Metropolitan Washington, DC Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing conditional interim approval of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the Northern Virginia portion of the Metropolitan Washington, DC serious ozone nonattainment area to meet the 15 percent rate-of-progress (ROP) requirements (also known as the 15% plan) of the Clean Air Act. EPA is proposing a conditional interim approval, because the 15% plan, submitted by the Commonwealth of Virginia, will result in significant emission reductions from the 1990 baseline emissions of volatile organic compounds (VOCs) which contribute to the formation of ground level ozone and, thus, will improve air quality. However, the plan as submitted requires additional documentation to demonstrate affirmatively that the 15% emission reduction target has been achieved. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments on this proposed action must be postmarked by April 11, 1997.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before

the visiting day. Copies of the documents relevant to this action are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215)566–2092. Questions may also be addressed via e-mail, at the following address: Gaffney.Kristeen@epamail.epa.gov (Please note that only written comments can be accepted for inclusion in the docket.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Clean Air Act, as amended in 1990 (the Act), requires ozone nonattainment areas classified as moderate or above to develop plans to reduce VOC emissions by 15% from 1990 baseline levels in the area while accounting for growth from 1990 to 1996. VOCs emitted during the summertime months contribute to the formation of ground level ozone.

The Metropolitan Washington, DC area is classified as a serious ozone nonattainment area and is subject to the 15% plan requirement. The Metropolitan Washington, DC ozone nonattainment area consists of the entire District of Columbia (''the District''), five counties in the Northern Virginia area and five counties in Maryland. The Northern Virginia portion of the nonattainment area consists of the counties of Arlington, Fairfax, Loudoun, Prince William and Stafford, and the cities of Alexandria, Falls Church, Manassas, Manassas Park and Fairfax. These areas are subject to Virginia's 15% plan.

The Act sets limitations on the creditability of certain control measures towards reasonable further progress. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g. new car emissions standards) promulgated prior to 1990; or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure (RVP)) of gasoline. Furthermore, the Act does not allow credit towards ROP for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in-place prior to 1990. In addition to these restrictions, a creditable measure must be either in the approved SIP, result from a national rule promulgated by EPA or be contained in a permit issued under Title V of the Act. Any measure must result in real, permanent, quantifiable and enforceable emission reductions to be creditable toward the 15% goal.

Virginia, Maryland and the District all must demonstrate reasonable further progress for the Metropolitan Washington DC nonattainment area. The Commonwealth of Virginia, State of Maryland and the District of Columbia in conjunction with municipal planning organizations collaborated on a coordinated, 15% plan for the Metropolitan Washington, DC nonattainment area (regional 15% plan). This was done with the assistance of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOG), to ensure coordination of air quality and transportation planning. The Act provides for interstate coordination for multi-state nonattainment areas. Because the interstate municipal planning organization involved, MWCOG, meets the requirements of section 174(c) of the Act, EPA has determined that the relevant interstate coordination requirements have been fulfilled. In the absence of an agreement to prepare a nonattainment area-wide plan, each state could have developed and submitted a SIP revision to obtain the 15% ROP requirement independent of the others.

Although the plan was developed by a regional approach, each jurisdiction is required to submit its portion of the 15% plan to EPA as a revision to its SIP. The 15% plan for the Virginia portion of the nonattainment area was submitted as a SIP revision by the Virginia Department of Environmental Quality (VADEQ) on May 15, 1995. Because the ROP requirements such as the 15% plan affect transportation improvement plans, municipal planning organizations have historically been involved in air quality planning in the Metropolitan Washington, DC area. As explained in further detail below, the regional 15% plan determined the regional target level, regional projections of growth and the total amount of creditable reductions required under the 15% requirement in the entire Metropolitan Washington, DC ozone nonattainment area. The three jurisdictions, Maryland, Virginia and the District all agreed to apportion this total amount of required creditable reductions among themselves. EPA is taking action today only on Virginia's 15% plan submittal, which addresses only Virginia's responsibility for the 15% ROP plan in the Metropolitan Washington, DC area.

On January 30, 1997 Virginia submitted a draft revised regional 15% plan for its portion of the Metropolitan Washington, DC area. Virginia scheduled a public hearing on the proposed revisions to its 15% plan on February 27, 1997. EPA is taking action today on Virginia's May 15, 1995 submittal of its 15% plan with the knowledge that Virginia will be making a formal SIP revision revising that 15% plan.

EPA has reviewed Virginia's May 15, 1995 15% plan submittal and has identified several deficiencies, which prohibit its full approval. A detailed discussion of these deficiencies is included below in the ''ANALYSIS'' portion of this rulemaking action, and also in the Technical Support Document (TSD) prepared by EPA for this action. Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice. Due to these deficiencies, it cannot be affirmatively determined that the Commonwealth's plan achieves the 15% ROP target for reduction in VOCs. Therefore, EPA is proposing conditional interim approval of this plan.

II. Analysis of the SIP Revision

A. Base Year Emissions Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 base year emissions inventory. The relevant portion of the inventory is broken down into several emission source categories: Stationary, area, on-road mobile, and off-road mobile. Virginia submitted a formal SIP revision containing their 1990 base year emissions inventory on November 20, 1992 and submitted revisions to that submittal on November 1, 1993 and April 3, 1995. EPA approved Virginia's 1990 base year inventory submittals on September 16, 1996 (61 FR 48632). This full approval establishes the 1990 base year inventory for the purposes of calculating the 15% ROP requirement.

B. Growth in Emissions Between 1990 and 1996

EPA has interpreted the Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% plan

requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in VOC emissions, in addition to achieving a 15% reduction of VOC emissions from baseline levels. Thus, an estimate of emissions growth from 1990 to 1996 is necessary for determining whether the 15% reduction target has been achieved. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each source, or by source category, since sources typically grow at different rates. EPA's inventory preparation guidance recommends the following indicators, as applied to emission units in the case of stationary sources or to a source category in the case of area sources, in order of preference: Product output, value added, earnings, and employment. Population can also serve as an acceptable surrogate indicator.

Virginia's 15% plan contains growth projections for point, area, on-road motor vehicle, and non-road vehicle source categories. For a detailed description of the growth methodologies used by the Commonwealth, please refer to the TSD for this action.

To estimate growth for area sources and non-road mobile sources, Virginia used acceptable growth factor surrogates such as population, employment and vehicle miles traveled (VMT). The travel demand computer model, Mobile5.0a was used to project growth for on-road sources. The Commonwealth's methodology for selecting growth factors and applying them to the 1990 base year emissions inventory to estimate growth in emissions in area, on-road mobile, and off-road mobile sources from 1990 to 1996 is approvable.

EPA, however, disagrees with the growth projections for the point source category. Virginia's 15% plan projected that point source emissions would remain constant for the period 1990 to 1996 because Virginia assumes that new source review (NSR) offsets and special rules for modifications of sections 182(c)(6), (7), (8), and (10) of the Act would prevent an increase in point source emissions. EPA does not agree with this assumption for the following reasons:

1. The revised NSR rules for source modifications were not effective until November 15, 1992. Therefore, there may have been modifications of sources of less than the significance level of 40 tons per year (TPY) from 1990 to 1992. A potential 40 TPY increase could represent a 0.1 to 0.15 tons per season day (TPD) potential increase which is significant compared to the 1990 area-wide rate-of-progress (i.e. 1990 base year) inventory point source emissions of 18 TPD.

2. The revised NSR rules do not apply to cumulative modifications at a source of less than 25 TPY (de minimis modifications) nor to construction of new sources of less than 25 TPY potential emissions. For inventory purposes, point sources are defined as stationary sources with the potential to emit 10 TPY or more.

3. The NSR offset-related assumption does not address increases in emissions from sources that operated at less than 100% capacity during 1990 that can legally increase their typical ozone season day emissions by increasing the average daily production without triggering NSR offset requirements.

EPA cannot fully approve Virginia's point source growth projection based upon the assumption that the NSR program would hold point source emissions constant. As a condition of final approval, Virginia will have to remedy this deficiency and revise the 15% plan to:

1. Project growth in point source emissions between 1990 and 1996 using growth factors based upon an adequate surrogate in accordance with the applicable EPA guidance documents. Such a projection may be based upon more recent emissions data than 1990, e.g. from current emission statements where available; and

2. Adopt and implement, if necessary, additional creditable measures to ensure that growth in point source emissions from 1990 to 1996 is offset.

It is relevant to note that Virginia has included growth in point sources, based on actual growth between 1990 and 1996, in the January 30, 1997 revised draft regional 15% plan subject to public hearing on February 27, 1997.

C. Calculation of Target Level Emissions

The regional 15% plan calculates a target level of emissions to meet the 15% ROP requirement over the entire nonattainment area. The regional 15% plan projects emissions growth from 1990 to 1996 and apportions among the three jurisdictions the amount of creditable emission reductions that each jurisdiction must achieve in order for the entire nonattainment area to achieve a 15% reduction in VOCs net of growth. Each jurisdiction then adopted the regional plan, which identified the amount of creditable emission reductions which that jurisdiction must achieve for the regional plan to get 15% accounting for any growth. The regional plan calculated the ''target level'' of 1996 VOC emissions, in accordance with EPA guidance.

EPA has interpreted section 182(b) of the Act to require that the base year VOC emission inventory be adjusted to account for reductions that would occur from the pre-1990 FMVCP and RVP programs. First, the regional plan calculated the non-creditable reductions from the pre-1990 FMVCP and RVP programs and subtracted those emissions from the 1990 ROP inventory. This yields the 1990 ''adjusted base year inventory''. The target level is the 1990 rate-of-progress inventory less the sum of the following:

1. 15% of the adjusted base year inventory,

2. The sum of the non-creditable reductions from the pre-1990 FMVCP and RVP programs,

3. Any reductions resulting from post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to RACT rules.

There were no post 1990 emission reductions attributed to RACT corrections or I/M corrections in the Metropolitan Washington, DC nonattainment area, and the regional plan correctly claimed zero reductions in the target level calculation.

The table below summarizes the calculations for the 1996 VOC target level for the entire Metropolitan Washington, DC ozone nonattainment area.

CALCULATION OF REQUIRED REDUCTIONS FOR THE WASHINGTON, DC NONATTAINMENT AREA'S 15% PLAN

[Washington, DC Area Target Level Calculation]

	District of Columbia	Maryland	Virginia	Washington, DC Area Totals
1. 1990 ROP Inventory	65.9	249.9	222.8	538.6
2. 1990 Adjusted Base Year Inventory	56.3	216.9	190.7	463.9
3. FMVCP/RVP Adjustment (Line 1 less Line 2)	9.60	33.00	32.10	74.70

CALCULATION OF REQUIRED REDUCTIONS FOR THE WASHINGTON, DC NONATTAINMENT AREA'S 15% PLAN—Continued

[Washington, DC Area Target Level Calculation]

	District of Columbia	Maryland	Virginia	Washington, DC Area Totals
4. 15% Reduction Requirement=15% of Adjusted Base Year (.15×Line 4)	8.45	32.54	28.61	69.6
5. RACT Corrections	0	0	0	0
6. I/M Corrections	0	0	0	0
7. Total 15% & Noncreditable Reductions (Sum of lines 3, 4, 5 & 6)	18.05	65.54	60.71	144.30
8. Projected Growth 1990 to 1996	5.20	29.10	29.00	63.60
9. Required Regional Emission Reductions (15% plus growth—line 4 plus line 8)				132.90
10. 1996 Regional Target Level (line 1 less line 7)				394.30
11. Apportioned State Emission Reduction	12.3	60.7	59.9	132.90
12. Total Reductions Claimed in 15% Plan	12.7	62.7	61.8	137.20

The emission reduction required to meet the 15% ROP requirement equals the sum of 15% of the adjusted base year inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996, plus reductions that resulted from corrections to the I/M or VOC RACT rules that were required to be in-place before 1990. The target level, Line 10 of the Table, is the 1990 ROP inventory less the base 15% reduction (Line 4 of the Table) and less all noncreditable emission reductions (Lines 3, 5 and 6 of the Table). The Metropolitan Washington D.C. area's regional target level is 394.3 TPD. EPA believes that the regional target level for the Metropolitan Washington D.C. nonattainment area has been properly calculated in accordance with EPA guidance.

D. Control Strategies in Virginia's 15% Plan

The specific measures adopted (either through state or federal rules) are addressed, in detail, in Virginia's 15% plan. The following is a brief description of each control measure that Virginia has claimed credit for in the submitted 15% plan, as well as the results of EPA's review of the use of that strategy towards the Act's 15% ROP requirement.

Reformulated Gasoline (RFG)

Section 211(k) of the Act requires that, beginning January 1, 1995, only RFG be sold or dispensed in ozone nonattainment areas classified as severe or above. Gasoline is reformulated to reduce combustion by-products and to produce fewer evaporative emissions. Section 211(k)(6) of the Act allows other nonattainment areas to ''opt in'' to the program. Virginia submitted a request to opt-in to the RFG program, which EPA approved on December 23, 1991. The Commonwealth claims a reduction of 9.3 tons/day from its 1996 projected uncontrolled on-road mobile source emissions using the Mobile5.0a model to determine the emission benefit. EPA has reviewed the Virginia submittal's calculation of the benefits for this measure and finds that the amount of reduction Virginia claims is creditable, but has not been documented as required by the Act.

In order to address these documentation and modeling issues, as well as the requirements of the National Highway Systems Designation Act of 1995 (NHSDA), EPA is requiring Virginia to recalculate the mobile source credits for the enhanced I/M program, RFG and FMVCP (Tier 1). The benefits from RFG and Tier 1 must not be separated out on a tons per day basis for each control measure, but rather all mobile source measures must be included in the 1999 target level calculation run. This remodeling assessment will remove any potential for ''double-counting'' the credit accorded to individual mobile source measures. While EPA will require Virginia to document and remodel the credits derived from RFG under the remodeling condition cited in the enhanced I/M section of this rule, EPA has no reason to dispute at this time that the 9.3 tons/day emission benefit claimed in Virginia's 15% plan from the RFG program is creditable.

Off-Road Use of Reformulated Gasoline

The use of RFG will also result in reduced emissions from off-road engines such as motors for recreational boats and lawn mower engines, commonly used in summer months. Virginia claims a reduction of 1.2 tons/day from its 1996 projected uncontrolled off-road mobile source emissions. Virginia used guidance provided on August 18, 1993 by EPA's Office of Mobile Sources on the VOC emission benefits for non-road equipment which are in a nonattainment area that uses Federal Phase I RFG. Virginia has correctly used the guidance to quantify the VOC emission reductions for this measure. EPA has determined that the 1.2 tons/day emission benefit claimed in Virginia's 15% plan is creditable.

Post 1990 Federal Motor Vehicle Control Program (Tier I)

EPA promulgated a national rule establishing ''new car'' standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). Since the standards were adopted after the Act was amended in 1990, the resulting emission reductions are creditable toward the 15% reduction goal. Due to the three-year phase-in period for this program and the associated benefits stemming from fleet turnover, the reductions prior to 1996 are somewhat limited. Virginia claimed a reduction of 1.1 tons/day from Tier 1 using the Mobile5.0a model to determine the emission benefits. EPA has reviewed the methodology used by Virginia in calculating of the benefits for this measure and finds that the amount of reduction Virginia claims is creditable, but has not been documented as required by the Act.

In order to address these documentation and modeling issues, as well as the requirements of the NHSDA, EPA is requiring Virginia to recalculate the mobile source credits for enhanced I/M, RFG and Tier 1. The benefits from RFG and Tier 1 must not be separated out on a tons per day basis for each control measure, but rather all mobile source measures must be included in the 1999 target level calculation run. This remodeling assessment will remove any potential for ''double-counting'' the credit accorded to individual mobile source measures. While EPA will require Virginia to remodel the credits derived from Tier 1 under the remodeling condition cited in the enhanced I/M section of this rule, EPA has no reason to dispute at this time that the 1.1 tons/day emission benefit claimed by Virginia in its 15%

plan from the Tier 1 program is creditable.

Architectural and Industrial Maintenance Coatings (AIM)

In EPA's most recent policy memorandum on AIM credits, ''Update on the Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coatings Rule'', dated March 7, 1996, EPA allowed states to claim a 20% reduction of total AIM emissions from the national rule. Virginia claimed a 20% reduction in AIM emissions under its 15% plan, which is a reduction of 4.1 tons/day from their 1996 projected uncontrolled AIM coating emissions. In the March 7, 1996 memorandum, EPA allowed states to continue to claim the 20% reduction of total AIM emissions from the national rule in their 15% plans although the emission reductions were not expected to occur until April 1997. As a result of legal challenges to the proposed national rule, EPA has negotiated a compliance date of no earlier than January 1, 1998. Even though the promulgation date for this rule is now months beyond the end of 1996, it is EPA's intention to still allow the amount of credit specified for the AIM rule in the memorandum in states'' 15% plans. EPA believes this is justified in light of the significant delays in proposing the rule. Furthermore, EPA has determined that the Commonwealth has a significantly limited ability to effectuate reductions from this measure through the state adoption process any sooner than EPA's rulemaking schedule. If this final rule does not provide the amount of credit that Virginia claims in its 15% plan, the Commonwealth is responsible for developing measures to make up the shortfall.

Use of emissions reductions from EPA's expected national AIM rule is acceptable towards the 15% plan target. Therefore, the 4.1 tons/day claimed in Virginia's 15% plan are creditable.

Consumer and Commercial Products

Section 183(e) of the Act required EPA to conduct a study of VOC emissions from consumer and commercial products and to compile a regulatory priority list. EPA is then required to regulate those categories that account for 80% of the consumer product emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule, including personal, household, and automotive products. EPA intends to issue a final rule covering these products in the near future. EPA policy allows states to claim up to a 20% reduction of total consumer product emissions towards the ROP requirement. Virginia claimed a 20% reduction or the equivalent reduction of 1.4 tons/day from their 1996 projected uncontrolled consumer and commercial products emissions in its 15% plan. For the reasons discussed above under the AIM rule regarding delayed implementation of national rules, EPA has determined that the 1.4 tons/day projected reduction in Virginia's 15% plan is creditable. If this final rule does not provide the amount of credit that Virginia claims in its 15% plan, the Commonwealth is responsible for developing measures to make up the shortfall.

Automobile Refinishing

In a November 29, 1994 memorandum, ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule'', EPA set forth policy on the creditable reductions to be assumed from the national rule for auto body refinishing. That memorandum allowed for a 37% reduction from current emissions with an assumption of 100% rule effectiveness (presuming the coating application instructions were being followed). Virginia followed EPA's guidance to determine the creditable emissions from this rule and claimed a reduction of 2.1 tons/day from their 1996 projected uncontrolled auto body emissions in its 15% plan. For the reasons discussed above under the AIM rule regarding delayed implementation of national rules, the EPA has determined that the 2.1 tons/day projected reduction in Virginia's 15% plan is creditable. If this final rule does not provide the amount of credit that Virginia claims in its 15% plan, the Commonwealth is responsible for developing measures to make up the shortfall.

Stage I Vapor Recovery

Stage I vapor recovery is a control measure which substantially reduces VOC emissions during the process of filling gasoline storage tanks at gasoline stations. This measure can be applied in newly designated nonattainment areas after the 1990 Amendments to the Act. In the Virginia portion of the Metropolitan Washington D.C. nonattainment area, Stage I is a creditable measure in Loudoun and Stafford counties because Stage I was not required in these counties before 1990. The measure requires ''balanced submerged'' filling of gasoline storage tanks at gasoline service stations.

EPA policy allows emission reduction credits achieved in areas implementing Stage I control measures post 1990 to be creditable toward 15%. Virginia estimates that this rule would result in a reduction of 0.5 TPD from Stage I in Stafford and Loudoun Counties. The 0.5 tons/day projected reduction in Virginia's 15% plan is creditable.

Stage II Vapor Recovery

Section 182(b)(3) of the Act requires all owners and operators of gasoline dispensing systems in moderate and above ozone nonattainment areas to install and operate a system for gasoline vapor recovery (known as Stage II) of emissions from the fueling of motor vehicles. Stage II vapor recovery is a control measure which substantially reduces the VOC emissions during the refueling of motor vehicles at gasoline service stations. The Stage II vapor recovery nozzles at gasoline pumps capture the gasoline-rich vapors displaced by liquid fuel during the refueling process.

On November 5, 1992, Virginia submitted a revision to its SIP to require the Stage II controls in all counties of the Virginia portion of the Metropolitan Washington DC ozone nonattainment area. The revisions to Virginia's Stage I and Stage II rule, Rule 120–04–37 ''Petroleum Liquid Storage and Transfer Operations'', were effective January 1, 1993. EPA approved rule 120–04–37 into the Virginia SIP on June 23, 1994 [59 FR 32353].

Virginia had no pre-1990 Stage II controls in its portion of the Metropolitan Washington DC nonattainment area. Stage II is a creditable measure in counties where these controls were not required before 1990. Virginia estimates that this control measure will result in a reduction of 6.8 TPD from the 1996 projected baseline of 10.1 TPD. The Virginia 15% plan states that Virginia used the Mobile5.0a model in conjunction with gasoline throughput to determine the creditable emission reduction. For this mobile source measure, the Commonwealth submitted limited documentation with regard to the Mobile5.0a runs and the calculations done to determine credit. However, EPA has no reason to dispute Virginia's methodology. Therefore, EPA is proposing to credit the claimed mobile emission reductions for Stage II. This measure and the 6.8 tons/day is creditable toward the 15% requirement of Virginia's 15% plan.

Transportation Control Measures (TCMs)

TCMs are strategies to both reduce vehicle miles traveled (VMT) and decrease the amount of emissions per VMT. TCMs are considered an essential element of control strategies for nonattainment areas. Section 108(f)(1)(A) of the Act classifies TCMs as programs for improved transit, traffic flow, fringe parking facilities for multiple occupancy transit programs, high occupancy or share-ride programs, and support for bicycle and other non-automobile transit. Virginia's measures include TCM projects programmed between fiscal years 1994–1999 in the transportation improvement plan (TIP) under the Congestion Mitigation and Air Quality (CMAQ) Improvement Program and funded for implementation by 1996 in the Metropolitan Washington D.C. region. CMAQ provides funding for transportation related projects and programs designed to contribute to the attainment of air quality standards. TCMs are considered acceptable measures for states to use to achieve 15% reductions. EPA guidance requires that TCMs meet the following conditions to be creditable for the 15% plans: (1) A description of the measure; (2) evidence that the measure was adopted by the jurisdictions with legal authority to execute the measure; (3) evidence that funding is available to implement the measure; (4) evidence that all approvals have been obtained; (5) evidence that a complete schedule to plan, implement and enforce the measure has been adopted by the implementing agencies; and (6) a description of any monitoring program to evaluate the measure's effectiveness.

Virginia provided the required evidence in the plan submittal for 5 TCM projects with a total combined emissions benefit of 0.8 tons/day. Virginia used acceptable methodology for calculating the emissions benefit for the TCMs. The TCMs were all programmed and funded in the Washington Metropolitan Region's Fiscal Year 1994–1999 TIP. EPA has determined that the 0.8 tons/day are creditable.

Seasonal Restrictions on Open Burning

This measure prohibits the open burning of clean burning construction waste, debris waste and demolition waste in the Virginia portion of the Metropolitan Washington D.C. nonattainment area during the peak ozone season months of June, July and August. Virginia submitted revisions to its open burning regulation (120–04–40) for SIP approval on April 26, 1996. The revisions to rule 120–04–40 were adopted by the Commonwealth on December 19, 1995 and effective April 1, 1996. In a separate notice in today's Federal Register, EPA is approving the revisions to Virginia's rule 120–04–40 for inclusion into the SIP.

Virginia calculated that this rule would result in a reduction of 2.6 tons/day. The calculation of emission reduction benefits considered a rule compliance factor of 80%, which is acceptable. EPA has determined that the 2.6 tons/day projected reduction in Virginia's 15% plan is creditable.

Enhanced Vehicle Inspection and Maintenance (I/M) Program

Most of the 15% SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most states experienced substantial difficulties with these enhanced I/M programs, only a few states are currently actually testing cars using their original enhanced I/M protocols.

In the case of the Virginia portion of the Metropolitan Washington DC nonattainment area, Virginia has submitted a 15% SIP that would achieve the amount of reductions needed from enhanced I/M by November 1999. On March 27, 1996, Virginia submitted an enhanced I/M SIP revision that calls for enhanced I/M program implementation in counties in the Washington DC nonattainment area and Fauquier County. The Virginia enhanced I/M program is a biennial program with implementation required to begin no later than November 15, 1997. The enhanced I/M submittal consists of its enabling legislation, a description of the enhanced I/M program, proposed regulations, and a good faith estimate that includes the Commonwealth's basis in fact for emission reductions claimed from the enhanced I/M program. On November 6, 1996, EPA proposed conditional, interim approval of Virginia's March 27, 1996 enhanced I/M SIP revision (61 FR 57343).

The proposed conditional interim approval listed numerous minor and major deficiencies and required Virginia to submit a letter to EPA within 30 days committing to correct the deficiencies. Virginia complied with this provision of the proposed notice, and submitted a letter dated December 4, 1996, committing to meet the requirements of full approval outlined in the November 6, 1996 proposed rulemaking. Full approval of Virginia's 15% plan is contingent on Virginia satisfying the conditions of the final conditional interim approval of its enhanced I/M SIP by a date certain within one year of final conditional interim approval, and receiving final full EPA approval of its enhanced I/M program. If Virginia corrects the deficiencies by that date, and submits a new enhanced I/M SIP revision, EPA will conduct rulemaking to approve that revision. If Virginia fails to fulfill a condition required for approval, and its enhanced I/M program converts to a disapproval, then the conditional interim approval of Virginia's 15% plan SIP would also convert to a disapproval.

In September 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing enhanced I/M programs appropriate for their needs (60 FR 48029). Subsequently, Congress enacted the NHSDA, which provides states with additional flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by states to re-design enhanced I/M programs in accordance with the guidance contained within the NHSDA, secure state legislative approval when necessary, and set up the infrastructure to perform the testing program has precluded states that revise their enhanced I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many states upon enhanced I/M programs to help achieve the 15% VOC emissions reduction required under section 182(b)(1) of the Act, the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA believes that it is no longer possible for many states to achieve the portion of the 15% reductions that are attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15% SIPs would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow states that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15% plans, even though the emissions reductions from the I/M program will occur after November 15, 1996. The provisions for crediting reductions for enhanced I/M programs is contained in the following two documents: ''Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,'' note from John Seitz and Margo Oge, dated August 13, 1996, and ''Modeling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance'', memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996.

Specifically, EPA is proposing approval of 15% SIPs if the emissions reductions from the revised, enhanced I/M programs, as well as from the other 15% SIP measures, will achieve the 15% level as soon after November 15, 1996 as practicable. To make this ''as soon as practicable'' determination, EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. EPA does not believe that measures meaningfully accelerate the 15% date if they provide only an insignificant amount of reductions.

EPA has examined other potentially available SIP measures to determine if they are practicable for Virginia's portion of the Metropolitan Washington, DC area and if they would meaningfully accelerate the date by which the area reaches the 15% level of reductions. The EPA proposes to determine that the SIP does contain the appropriate measures. The TSD for this action contains a discussion of other measures available for 15% plans. Virginia has taken credit for several of these measures (or essentially similar measures), such as reformulated gasoline, controls on small graphic arts facilities, and revised surface cleaning rules, municipal landfills, etc. in the 15% plan; and taken credit for measures that EPA must promulgate under section 183(e) of the Act such as AIM coatings, consumer and commercial products rule, and autobody refinishing. Provided below is a tabular summary of this analysis. Measures for which Virginia took credit in the 15% plan are identified in the table below as ''In 15% Plan'' and are not available as possible alternatives to I/M. The other programs that Virginia included in the 15% plan result in only a possible 2.32 tons/day reduction and do not deliver in aggregate, anything close to the reductions achieved by enhanced I/M.

VIRGINIA 15% PLAN—METROPOLITAN WASHINGTON D.C. AREA

Measures considered	Potential VOC Reduction (tons/day)
Area Source Measures:	
AIM Coatings—Federal Rule	In 15% Plan.
Consumer Solvents—Federal Rule	In 15% Plan.
Solvent Cleaning—Substitution/Equipment	In 15% Plan.
Graphic Arts—Web Offset Control	1.07.
Autobody Refinishing—ACT control	In 15% Plan.
Cutback Asphalt—100% Ban	0.23.
TSDFs—Federal Rule early implementation	0.01.
Other Dry Cleaning—SCAQMD 1102	1.01.
Stage I Enhancement—P/V Vents	In 15% Plan.
Stage II—Vapor Recovery	In 15% Plan.
Nonroad Gasoline—Reformulated Gasoline	In 15% Plan.
Point Source Measures:	
Gravure Printing—MACT early implementation	0.01.
Web Offset Lithography—ACT control	In 15% Plan.
Non-mandated On-Road Mobile Measures: Reformulated Gasoline	In 15% Plan.
I/M Reductions:High Enhanced in 15% Plan	In 15% Plan.

EPA has determined that the enhanced I/M program is the only measure that would significantly accelerate the date by which the 15% requirement will be achieved. The EPA proposes to determine that Virginia's 15% plan does contain all measures, including enhanced I/M, that achieves reductions as soon as practicable. EPA proposes to allow enhanced I/M reductions which occur out until November 15, 1999 to count toward the 15% emission reduction level for the 15% plan, since in doing so, the Commonwealth will reach a 15% VOC reduction as soon as practicable.

Virginia claimed a total of 24.6 tons/day credit for this measure. In its May 15, 1995 15% plan submittal, the Commonwealth evaluated the enhanced I/M program using EPA's Mobile5.0a model with assumptions that called for implementation of a centralized, IM240 test with pressure and purge testing, and a program start date of January 1, 1995. Since the time of the May 15, 1995 submittal, Virginia has revised its enhanced I/M program and on March 27, 1996 submitted the redesigned program to EPA pursuant to the NHSDA. Virginia's revised enhanced I/M program is a biennial, decentralized, test-and repair program network using Accelerated Simulation Mode (ASM) 50/15 testing equipment scheduled to begin testing by November 1997. Virginia has designed its decentralized network of testing stations to accommodate biennial testing.

EPA has determined that Virginia cannot accelerate the reductions by initially requiring annual testing because:

1. Without additional testing stations, other requirements of the enhanced I/M rule relating to motorist convenience would suffer. Motorist convenience is one important aspect that affects public acceptance and effectiveness of the enhanced I/M program.

2. Additional infrastructure changes (e.g. more testing equipment, enlarging or building new testing stations, and the hiring and training of additional inspectors) to the enhanced I/M program would not come on-line in time to afford a substantial increase in the amount of reductions realized before November 15, 1999.

3. The cost effectiveness of the program would be adversely affected because the additional costs would not result in a corresponding amount of reductions.

EPA proposes to determine that the enhanced I/M program for Virginia's portion of the Metropolitan Washington, DC nonattainment area achieves reductions from enhanced I/M as soon as practicable.

Because Virginia's revised enhanced I/M program is designed to meet EPA's high-enhanced performance standard and will achieve essentially the same number of testing cycles between start-up and November 1999 as that modeled in the regional 15% plan, EPA believes that Virginia's program will achieve 24.6 tons/day of reductions by 1997. However, EPA has determined that Virginia (with MWCOG) is best able to

perform the definitive determination because Virginia will use the same highway network model that was used to determine the 1990 base year inventory and the 1996 on-road VOC emissions budget used for transportation conformity purposes. (The same highway network model is also used for conformity determinations.) EPA has determined that it would be appropriate to condition approval of the Virginia 15% plan upon Virginia remodeling the I/M benefits to reflect all relevant parameters (start date, network type, test types for exhaust and purge/pressure testing, waiver rates, cut points, etc.) of the revised, enhanced I/M program and show the I/M reductions needed to make the 15% reduction are achieved by no later than November 15, 1999. In performing this remodeling demonstration, the Commonwealth should ensure that Tier 1 and RFG benefits are considered. Benefits must not be separated out on a tons per day basis for each control measure, but rather all mobile source measures should be evaluated in the 1999 ''target level'', as defined in the December 23, 1996 memorandum, calculation run. EPA requires that such modeling be done in accordance with EPA guidance. EPA's guidance for remodeling I/M for 15% Plans includes: 1) A Note to the Regional Division Directors from John Seitz and Margo Oge dated August 13, 1996 entitled ''Date by which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M and Guidance for Recalculation'', and 2) a joint memorandum from Gay McGregor and Sally Shaver dated December 23, 1996 entitled ''Modeling 15% VOC Reduction(s) from I/M in 1999—Supplemental Guidance''.

As it relates to Virginia's enhanced I/M program, EPA proposes a conditional interim approval of the 24.6 tons/day reduction from enhanced I/M in the nonattainment area and Facquier County provided Virginia meets the conditions of the November 6, 1996 conditional interim approval of the enhanced I/M program; receives full EPA approval of its enhanced I/M program; and remodels it's enhanced I/M program using the appropriate, updated parameters (e.g. appropriate start-date, etc).

E. Measures Not Evaluated

EPA is not taking action at this time on the following control measures contained in the Virginia 15% plan submitted May 15, 1995:

Rule Effectiveness (RE) Improvements

Rule effectiveness is a means of enhancing rule compliance or implementation by industrial sources, and is expressed as a percentage of total available reductions from a control measure. The default assumption level for RE is 80%. Virginia estimated in this control measure that RE at bulk terminals will be improved from the current level of 80% to 90% and RE at tank truck unloading sources improved from 70% to 91%. The resulting estimated emission benefits are 1.7 tons/day for bulk terminals and 1.3 tons/day for tank truck unloading for a total of 3.0 tons/day. EPA is not taking action on this control strategy in the May 15, 1995 Virginia 15% plan submittal, nor deeming the 3.0 tons/day reduction creditable toward the 15% ROP requirement in this rulemaking.

Graphic Arts

This measure regulates emissions from formerly uncontrolled small lithographic printing operations, such as heatset web, non-heatset web, non-heatset sheet-fed, and newspaper non-heatset web operations. VOCs are emitted from the inks, fountain solutions and solvents used to clean the printing presses. This measure is modeled on EPA's draft documents ''Offset Lithographic Printing Control Techniques Guideline'' and ''Alternative Control Techniques Document: Offset Lithographic Printing'' announced in the Federal Register, November 8, 1993. Virginia claims 1.4 tons/day in emission benefits from the 1996 projected year inventory of lithographic printing sources. EPA is not taking action on this control strategy in the May 15, 1995 Virginia 15% plan submittal, nor deeming the 1.4 tons/day reduction creditable toward the 15% ROP requirement in this rulemaking.

Municipal Landfill Emissions

This control measure is a state control program regulating VOC emissions from municipal landfills, utilizing landfill gas capture and destruction systems. The 1996 projection year inventory for this source category is 1.5 tons/day. Virginia estimated that this rule would result in a reduction of 0.4 tons/day. EPA is not taking action on this control strategy in the May 15, 1995 Virginia 15% plan submittal, nor deeming the 0.4 tons/day reduction creditable toward the 15% ROP requirement in this rulemaking.

Surface Cleaning Operations

This measure amends the Virginia regulation for surface cleaning (also called cold cleaning and degreasing) devices and operations for area sources and requires more stringent emission control requirements and enlarges the field of applicable sources. Virginia's 1996 projection year inventory in this source category is 3.9 tons/day. Virginia estimates that this measure would result in a 10% reduction of emissions and with 80% rule compliance resulting in 1.5 tons/day reduction credits. EPA is not taking action on this control strategy in the May 15, 1995 Virginia 15% plan submittal, nor deeming the 1.5 tons/day reduction creditable toward the 15% ROP requirement in this rulemaking.

Non-CTG RACT to 50 TPY and 25 TPY

Section 182(b)(2)(B) of the Act requires that serious ozone nonattainment areas adopt rules to require RACT for all VOC sources in the nonattainment area not already subject to RACT by any other SIP regulation developed pursuant to a Control Technique Guideline (CTG) that has potential emissions of greater than or equal to 50 TPY. On April 22, 1996 Virginia submitted a SIP revision to its Non-CTG VOC RACT rule lowering the major source definition to 25 tpy in the Virginia portion of the Metropolitan Washington DC nonattainment area. EPA is approving the revisions to this rule, 120–04–0407 ''Standard for VOC Compounds'', in a separate rulemaking notice also published in today's Federal Register. The regulation currently requires that sources with the potential to emit 50 tpy or more achieve compliance with RACT by May 31, 1995; and has been revised to require sources with the potential to emit 25 tpy or greater, but less than 50 tpy to comply with RACT by May 31, 1996.

Virginia takes credit in the 15% plan for reductions at five sources subject to Non-CTG RACT to 50 tpy and three individual sources subject to Non-CTG RACT to 25 tpy (see table below).

SOURCE SPECIFIC RACT WITH REDUCTIONS CLAIMED IN THE 15% PLAN

Source name	Current control emis-sions(tons/day)	Reduction potential (%)	Reductions (tons/day)
Non-CTG RACT to 50 TPY:			
Lorton Reform	0.19	25	0.05
Tuscarora Plastics	0.31	25	0.08
Insulated Building Systems	0.20	25	0.05
Treasure Chest Ad	0.24	65	0.16
Cellofoam	0.23	25	0.06
Non-CTG RACT to 25 tpy:			
Times Journal	0.06	65	0.04
Stephanson	0.13	65	0.08
IBM	0.12	25	0.03
Total Reductions Claimed			0.55

Virginia's SIP approved generic RACT rule does not apply individual process emission limits on either source categories or individual sources. Emissions limits are an integral part of a RACT determination and necessary for enforceability. Emission limits on sources must be established in individual RACT determinations on a source by source basis. Each RACT determination must be SIP approved to be federally enforceable and creditable toward 15%. EPA is not taking action on this control strategy in the May 15, 1995 Virginia 15% plan submittal, nor deeming the combined 0.55 tons/day reduction associated with the RACT determinations creditable toward the 15% ROP requirement in this rulemaking.

Pesticide Reformulation

This measure requires the use of low-VOC content pesticides for consumer, commercial and/or agricultural use. Virginia claims that this measure results in a reduction of 0.4 tons/day by applying a 40% overall reduction to the 1996 base year projection emissions for pesticide application. EPA is not taking action on this control strategy in the May 15, 1995 Virginia 15% plan submittal, nor deeming the 0.4 tons/day reduction creditable toward the 15% ROP requirement in this rulemaking.

F. Reasonable Further Progress

The table below summarizes both the proposed creditable measures and those measures which EPA is not taking action on in this rulemaking from Virginia's 15% plan for the Metropolitan Washington DC area.

Summary of Creditable Emission Reductions in the Commonwealth of Virginia's 15% Plan for the Washington DC Serious Ozone Nonattainment Area (Tons/day)

CREDITABLE REDUCTIONS	
FMVCP Tier I	1.1
Reformulated Gasoline:	
On-Road	9.3
Off-Road	1.2
Auto Refinishing	2.1
AIM	4.1
Consumer/Commercial Products	1.4
TCMs	0.8
Seasonal Open Burning Restrictions	2.6
Stage II Vapor Recovery Nozzles	6.8
Stage I Enhancement	0.5
Enhanced Inspection & Maintenance [1]	23.7
Fauquier County	0.9
Total Creditable	54.5
MEASURES EPA IS NOT TAKING ACTION ON IN THIS RULEMAKING	
Degreasing/Surface Cleaning enhancement	1.5
Graphic Arts—Offset lithography	1.4
Rule Effectiveness Improvements	3.0
Non-CTG RACT to 50 tpy	0.4
Non-CTG RACT to 25 tpy	0.2
Municipal Landfills	0.4
Pesticide Reformulation	0.4
Total No Action	7.3

[1] To conform with EPA's proposal of conditional interim approval of Virginia's enhanced I/M plan, EPA is proposing conditional interim approval of the reduction credits from Virginia's enhanced I/M program claimed in Virginia's 15% plan.

EPA has evaluated the May 15, 1995 submittal for consistency with the Act, applicable EPA regulations, and EPA policy. On its face, Virginia's 15% plan achieves the required 15% VOC emission reduction to meet Virginia's portion of the regional multi-state plan to achieve the 15% ROP requirements of section 182(b)(1) of the Act. However, there are measures included in the Virginia 15% plan, which may be creditable towards the Act requirement, but which are insufficiently documented for EPA to take action on at this time. While the amount of creditable reductions for certain control measures has not been adequately documented to qualify for Clean Air Act approval, EPA has determined that the submittal for Virginia contains enough of the required structure to warrant conditional interim approval. Furthermore, the May 15, 1995 submittal strengthens the Virginia SIP.

Based on EPA's preliminary review of the draft revised regional 15% plan for the Metropolitan Washington DC nonattainment area, sent to EPA for comment by the Commonwealth on January 30, 1997, EPA believes that the amount of VOC reduction that Virginia needs to satisfy the 15% ROP requirement in the Metropolitan Washington D.C. area may be lower than the 54.5 tons/day accounted for with creditable measures in the May 15, 1995 submittal. The January 30, 1997 draft revised plan includes revised information for the 1990 base year inventory and actual growth between 1990 and 1996, as opposed to projected growth. The effect of these revisions may lower the amount of creditable emission reductions Virginia needs to achieve its share of the 15% ROP requirement.

III. Proposed Action

In light of the above deficiencies and to conform with EPA's action proposing conditional interim approval of Virginia's enhanced I/M program, EPA is proposing conditional interim approval of this SIP revision under section 110(k)(4) of the Act.

EPA is proposing conditional interim approval of the Virginia 15% plan for the Virginia portion of the Metropolitan

Washington D.C. nonattainment area if Virginia commits, in writing, within 30 days of EPA's proposal to correct the deficiencies identified in this rulemaking. These conditions are described below. If the Commonwealth does not make the required written commitment to EPA within 30 days, EPA is proposing in the alternative to disapprove the 15% plan SIP revision. If the Commonwealth does make a timely commitment, but the conditions are not met by the specified date within one year, EPA is proposing that the rulemaking will convert to a final disapproval. EPA would notify Virginia by letter that the conditions have not been met and that the conditional approval of the 15% plan has converted to a disapproval. Each of the conditions must be fulfilled by Virginia and submitted to EPA as an amendment to the SIP. If Virginia corrects the deficiencies within one year of conditional interim approval, and submits a revised 15% plan as a SIP revision, EPA will conduct rulemaking to fully approve the revision. In order to make this 15% plan approvable, Virginia must fulfill the following conditions by no later than 12 months after EPA's final conditional interim approval:

1. Virginia's 15% plan must be revised to account for growth in point sources.

2. Virginia must meet the conditions listed in the November 6, 1996 conditional interim I/M rulemaking notice, including its commitment to remodel the I/M reductions using the following two EPA guidance memos: ''Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,'' note from John Seitz and Margo Oge, dated August 13, 1996, and ''Modeling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance'', memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996.

3. Virginia must remodel to determine affirmatively the creditable reductions from RFG, and Tier 1 in accordance with EPA guidance.

4. Virginia must submit a SIP revision amending the 15% plan with a demonstration using appropriate documentation methodologies and credit calculations that the 54.5 tons/day reduction, supported through creditable emission reduction measures in the submittal, satisfies Virginia's 15% ROP requirement for the Metropolitan Washington DC nonattainment area.

After making all the necessary corrections to establish the creditability of chosen control measures, Virginia must demonstrate that the 15% emission reduction is obtained in the Washington DC nonattainment area as required by section 182(b)(1) of the Act and in accordance with EPA's policies and guidance.

EPA and the Virginia Department of Environmental Quality have worked closely since the May 1995 submittal to resolve all the issues necessary to fully approve the 15% plan. The Commonwealth is aware of the above deficiencies and has addressed many of the above-named deficiencies in the draft revised regional plan. The Commonwealth has stated that it intends to submit additional information to address all deficiencies within the 15% plan. Therefore, while some deficiencies currently remain in the 15% plan, EPA believes that these issues will be resolved no later than 12 months after EPA's final conditional interim approval. EPA will consider all information submitted as a supplement or amendment to the May 15, 1995 submittal prior to any final rulemaking action.

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

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.

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.

Conditional approvals of SIP submittals 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, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional interim approval is converted to a disapproval under section 110(k), based on the Commonwealth's failure to meet the commitment, it will not affect any existing Commonwealth requirements applicable to small entities. Federal disapproval of the Commonwealth submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

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 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 proposed 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 requirements. Accordingly, no additional costs to State, local, or tribal

governments, or to the private sector, result from this action.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

The Regional Administrator's decision to approve or disapprove the SIP revision pertaining to the Virginia 15% plan for the Washington, DC nonattainment area will be based on whether it meets the requirements of section 110(a)(2)(A)–((K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: February 25, 1997.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 97–6082 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[VA068–5018b, VA066–5018b; FRL–5688–9]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Virginia; Redesignation to Attainment of the Hampton Roads Ozone Nonattainment Area, Approval of the Maintenance Plan and Mobile Emissions Budget

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia for the purpose of establishing a maintenance plan and a motor vehicle emissions budget for the Hampton Roads ozone nonattainment area. EPA is also proposing to approve the request submitted by the Commonwealth of Virginia to redesignate the Hampton Roads marginal ozone nonattainment area to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. In the final rules section of this Federal Register, EPA is approving the Commonwealth's SIP revisions and redesignation request as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the Technical Support Document (TSD) that has been prepared by EPA on these rulemaking actions. The TSD is available for public inspection at the EPA Regional office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this 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. 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.

DATES: Comments must be received in writing by April 11, 1997.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2092. Questions may also be addressed via e-mail, at the following address: Gaffney.Kristeen@epamail.epa.gov [Please note that only written comments can be accepted for inclusion in the docket.]

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the Rules and Regulations section of this Federal Register.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: February 5, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–6077 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 80

[FRL–5708–9]

Regulations of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the Phoenix, Arizona Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: This document announces the time and place for a public hearing regarding EPA's proposed rule to set an implementation date for the Phoenix ozone nonattainment area to be a covered area for all purposes in the federal reformulated gasoline (RFG) program. By letter dated January 17, 1997, the Governor of the State of Arizona applied to EPA to include the Phoenix moderate ozone nonattainment area in the federal reformulated gasoline program (RFG). Pursuant to the Governor's letter and the provisions of section 211(k)(6) of the Clean Air Act, on February 18, 1997 EPA published in the Federal Register a Notice of Proposed Rulemaking (NPRM) (62 FR 7197). In the NPRM, EPA proposed to apply the prohibitions of subsection 211(k)(5) to the Phoenix, Arizona nonattainment area.

DATES: EPA will conduct a public hearing on the proposed rule from 8:00 a.m. until noon on March 18, 1997, in Phoenix, Arizona. Written comments on this proposed rule will be accepted for 30 days following the hearing, until April 17, 1997.

ADDRESSES: The public hearing will be held from 8:00 a.m. until noon at the Arizona Department of Environmental Quality Public *Hearing* Room, 3033 North Central Avenue, Phoenix, Arizona 85012. If additional time is needed to hear testimony, the hearing will continue from 1:00 until 5:00 p.m. in

the Arizona Department of Environmental Quality Public *Meeting* Room, 3033 North Central Avenue, Phoenix, Arizona 85012. Materials relevant to this document have been placed in Docket A–97–02. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material. An identical docket is also located in EPA's Region IX office in Docket A–AZ–97. The docket is located at 75 Hawthorne Street, AIR–2, 17th Floor, San Francisco, California 94105. Documents may be inspected from 9:00 a.m. to noon and from 1:00–4:00 p.m. A reasonable fee may be charged for copying docket material.

Written comments should be submitted (in duplicate, if possible) to Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A copy should also be sent to Janice Raburn at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460. A copy should also be sent to EPA Region IX, 75 Hawthorne Street, AIR–2, 17th Floor, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Janice Raburn at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9000.

SUPPLEMENTARY INFORMATION: A copy of this notice is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS) and on the Office of Mobile Sources'' World Wide Web cite, http://www.epa.gov/OMSWWW. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTOUT.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine,
<N>ew, <L>ist, or <H>elp
Selection or <CR> to exit: D
filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

Regulated entities. Entities potentially regulated by EPA's proposal are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Petroleum refiners, motor gasoline distributors and retailers.

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 business would be regulated under the proposed rule, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background and Discussion of Proposal

Under section 211(k)(6) of the Clean Air Act, as amended (Act), the Administrator of EPA shall require the sale of reformulated gasoline in an ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe upon the application of the governor of the state in which the nonattainment area is located. The application of the prohibition of section 211(k)(5) to the Phoenix ozone nonattainment area could take effect no later than January 17, 1998 under section 211(k)(6)(A), which stipulates that the effective program date must be no ''later than January 1, 1995 or 1 year after [the Governor's] application is received, whichever is later.'' For the Phoenix nonattainment area, EPA could establish an effective date for the start of the RFG program anytime up to this date. EPA considers that January 17, 1998 would be the latest possible effective date, since EPA expects there to be sufficient domestic capacity to produce RFG and therefore has no current reason to extend the effective date beyond one year after January 17, 1998. EPA stated in the proposal that it believes there is adequate domestic capability to support the current demand for RFG nationwide as well as the addition of the Phoenix area.

Although § 211(k)(6) provides the Administrator discretion to establish the effective date as she deems appropriate and allows EPA to consider whether there is sufficient domestic capacity to produce RFG in establishing the effective date, EPA does not have discretion to deny a Governor's request. Therefore, the scope of EPA's proposal is limited to setting an effective date for Phoenix's opt-in to the RFG program and not to decide whether Phoenix should in fact opt in. For this reason, EPA is only soliciting comments addressing the appropriate implementation date and whether there is sufficient capacity to produce RFG, and is not soliciting comments that support or oppose Phoenix participating in the program. EPA also notes that comments regarding Arizona's request for an RVP waiver under section 211(c)(4), EPA opt-out procedures, or federal enforcement issues would not be relevant to the limited scope of this rulemaking.

The Governor's request seeks an implementation date of June 1 for the RFG program in the Phoenix area. However, pursuant to its discretion to set an effective date under § 211(k)(6), EPA proposed two implementation dates. EPA proposed to apply the prohibitions of subsection 211(k)(5) to the Phoenix, Arizona ozone nonattainment area as of the effective date of the rule, or June 1, 1997 whichever is later, for all persons other than retailers and wholesale purchaser-consumers. This date applies to the refinery level and all other points in the distribution system other than the retail level (*i.e.*, refiners, importers, and distributors). For retailers and wholesale purchaser-consumers, EPA proposed to apply the prohibitions of subsection 211(k)(5) to the Phoenix, Arizona ozone

nonattainment area 30 days after the effective date for the rule, or July 1, 1997, whichever is later. As of the implementation date for the various parties, this area will be treated as a covered area for all purposes of the federal RFG program for the relevant parties. EPA asks for comment on whether retailers and wholesale purchaser-consumers believe they could comply with federal RFG in less than 30 days from the effective date set for persons other than retailers and wholesale purchaser-consumers.

On February 18, 1997, EPA also published a Direct Final Rule (62 FR 7164) setting an effective date for the Phoenix ozone nonattainment area to be a covered area in the federal RFG program. Subsequent to publication, EPA received several requests for a hearing from interested parties. Thus, EPA will soon publish in the Federal Register a notice to indicate the withdrawal of the Direct Final Rule.

II. Procedures for Public Participation

A. Comments and the Public Docket

The scope of EPA's proposal is limited to setting an effective date for Phoenix's opt-in to the RFG program and not to decide whether Phoenix should in fact opt in. For this reason, EPA is only soliciting comments addressing the appropriate implementation date and whether there is sufficient capacity to produce RFG, and is not soliciting comments that support or oppose Phoenix participating in the program. EPA also asks for comment on whether retailers and wholesale purchaser-consumers believe they could comply with federal RFG in less than 30 days from the effective date set for persons other than retailers and wholesale purchaser-consumers. EPA also notes that comments regarding Arizona's request for an RVP waiver under section 211(c)(4), EPA opt-out procedures, or federal enforcement issues would not be relevant to the limited scope of this rulemaking.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent and label it as ''Confidential Business Information.'' If a person making comments wants EPA to base the final rule in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed 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 person making comments.

B. Public Participation

Any person desiring to present testimony regarding this proposed rule at the public hearing (see **DATES**) should notify the contact person listed above of such intent as soon as possible. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling testimony for those who have not notified the contact person. This testimony will be scheduled on a first come, first serve basis to follow the previously scheduled testimony.

EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing in order to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed previously.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–97–02 (see **ADDRESSES**).

Ms. Lori Stewart, Fuels Implementation Group Leader, Fuels and Energy Division, Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally and technical rules of evidence will not apply. Because a public hearing is designed to give interested parties an opportunity to participate in the proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding. The Presiding Officer is authorized to strike from the record statements which she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness. EPA asks that persons who testify attempt to limit their testimony to ten minutes, if possible. The Administrator will base her decision with regard to Arizona's request on the record of the public hearing and on any other relevant written submissions and other pertinent information. This information will be available for public inspection at the EPA Air Docket, Docket No. A–97–02 (see **ADDRESSES**).

Dated: March 5, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–6216 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 101

[WT Docket No. 97–81, FCC 97–58]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rule Making* (*NPRM*) proposes to amend the Commission's rules in order to streamline licensing procedures and provide additional flexibility for Multiple Address Systems (MAS) licensees. These proposals were adopted as part of the Commission's continuing effort to establish a flexible regulatory framework for spectrum allocations. The effects of these proposals would be to maximize the use of radio frequency spectrum allocated to MAS.

DATES: Comments are due on or before April 21, 1997. Reply comments are due on or before May 6, 1997.

ADDRESSES: You must send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. You may also file informal comments by electronic mail. You should address informal comments to bjames@fcc.gov. You must put the docket number of this proceeding on the subject line (''WT Docket No. 97–81''). You must also include your full name and Postal Service mailing address in the text of the message. Comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the internet to fain __ t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Bob James of the Commission's Wireless Telecommunications Bureau at (202)

418–0680 or via email at bjames@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM*, FCC 97–58, adopted February 19, 1997, and released February 27, 1997. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Paperwork Reduction Act

This *NPRM* contains either a proposed or modified information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public, the Office of Management and Budget (OMB), and other agencies to take this opportunity to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB comments are due 60 days after the publication of this *NPRM* in the Federal Register. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Summary of Notice

1. This *NPRM* seeks to further the development and implementation of MAS. Accordingly, this *NPRM* tentatively concludes that the 932/941 MHz and 928/959 MHz MAS bands should be designated for subscriber-based services and licensed on a geographic basis, with service areas based on the U.S. Department of Commerce's Economic Areas. In this vein, licensees providing such subscriber-based services would be presumed telecommunications carriers and would be required to meet liberal construction/coverage requirements with their service areas. Further, the Commission proposes to resolve mutually exclusive applications for the 932/941 MHz and 928/959 MHz MAS licenses through competitive bidding.

2. In contrast to the subscriber-based services discussed above, this *NPRM* tentatively concludes that the 928/952/956 MHz MAS bands should be designated exclusively for private use and seeks comment on whether these bands should continue to be licensed on a site-by-site basis or should be licensed on a geographic basis. The Commission also proposes to set aside five channel pairs in the 932/941 MHz MAS bands, to be licensed on a first-come, first-served basis, for Federal Government/Public Safety communications.

3. This *NPRM* also seeks to further the development of MAS by reducing regulatory burdens and increasing flexibility for all MAS licensees. For example, the Commission proposes to simplify and streamline the MAS licensing process. The Commission also proposes to increase operational flexibility by allowing MAS licensees to provide mobile and fixed operations on a co-primary basis with point-to-point and point-to-multipoint operations. Further, the Commission seeks comment on whether 12.5 kHz or larger blocks of spectrum should be available to MAS licensees in order to broaden the range of communications services possible using MAS spectrum.

4. Finally, effective February 19, 1997, this *NPRM* suspends the acceptance and processing of MAS applications in the 932/941 MHz and 928/959 MHz bands, and subscriber-based MAS applications in the 928/952/956 MHz bands, except certain pending applications, applications for minor modifications, and applications for license assignment or transfer of control, during the pendency of this rule making. This suspension, however, does not affect MAS applications for private, internal communications in the 928/952/956 MHz bands.

5. This is a non-restricted notice and comment rule making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

6. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 21, 1997, and reply comments on or before May 6, 1997. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You must send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. You may also file informal comments by electronics mail. You should address informal comments to bjames@fcc.gov. You must put the docket number of the proceeding on the subject line (''WT Docket No. 97–81''). You must also include your full name and Postal Service mailing address in the text of the message. Formal and informal comments and reply comments will be available for public inspection during regular business hours in the F.C.C. Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, NW., Washington, DC 20554.

7. Authority for issuance of this *NPRM* is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

List of Subjects

47 CFR Part 22

Communications common carriers, Radio, Reporting and recordkeeping requirements.

47 CFR Part 101

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Note:This attachment will not be published in the Code of Federal Regulations.

Attachment

Initial Regulatory Flexibility Analysis

1. Pursuant to the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *NPRM*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Secretary shall cause a copy of this *NPRM* to be sent to the Chief counsel for Advocacy of the Small Business Administration, in accordance with 5 U.S.C. 603(a).

A. Reason for Action

2. This *NPRM* requests public comment on our proposals to maximize the use of spectrum allocated to Multiple Address Systems in the Microwave Service. These proposals include: (1) Converting licensing of MAS spectrum for which the principal use will involve, or is reasonably likely to involve, ''subscriber-based'' services, from site-by-site licensing to geographic area licensing, (2) simplifying and streamlining the MAS licensing procedures and rules, (3) increasing licensee flexibility to provide

communication services that are responsive to dynamic demands, and (4) employing competitive bidding procedures (auctions) to resolve mutually exclusive applications for MAS spectrum for which the principal use will involve, or is reasonably likely to involve, ''subscriber-based'' services, In addition, by this *NPRM* we temporarily suspend the acceptance and processing of MAS applications, with the exception of applications in a few noted categories.

B. Objectives

3. In attempting to maximize the use of MAS spectrum, we continue our efforts to establish a flexible regulatory framework for spectrum allocations that will, among other things, provide opportunities for continued development of competitive new service offerings by allowing flexible use of spectrum, expedite market entry through modified licensing procedures, and promote technological innovation by eliminating unnecessary regulatory burdens.

C. Legal Basis

4. The authority for this action is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j). *See* also Administrative Procedure Act, 5 U.S.C. § 553.

D. Description and Estimate of Small Entities Affected

5. Pursuant to the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996), the Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. The Regulatory Flexibility Act defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). To assist the Commission in this analysis, commenters are requested to provide information regarding how many MAS entities, total, would be affected by the various proposals on which the Commission seeks comment in this *NPRM*. In particular, we seek estimates of how many affected entities will be considered ''small businesses.'' In this regard, we ask commenters to note that we have requested comment regarding the establishment of a small business definition for MAS for the purpose of competitive bidding.

6. The proposals in the *NPRM* would effect MAS licensees and applicants for licenses. Such entities fall into two categories: (1) Those using MAS spectrum for which the principal use involves, will involve, or is reasonably likely to involve, ''subscriber-based'' (commercial) services, and (2) those using, or intending to use, MAS spectrum to provide for their own internal communications needs. Theoretically, it is also possible that an entity could fall into both categories. The spectrum uses in the two categories differ markedly.

7. With respect to the first category, neither the Commission nor the Small Business Administration (SBA) has developed a specific definition of small entities applicable to MAS licensees that provide commercial subscription services. The applicable definition of small entity in this instance appears to be the definition under the SBA rules applicable to establishments engaged in radiotelephone communications. This definition provides that a small entity is any entity employing fewer than 1,500 persons. *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms operated during 1992 had 1,000 or more employees. Therefore, whether or not any or all of these 12 firms are MAS commercial service providers, nearly all MAS commercial service providers are small businesses by the Small Business Administration's definition. The Commission's licensing database indicates that, as of November 8, 1996, there were a total of 8,171 MAS station authorizations. Of these, 1087 authorizations were for common carrier service.

8. Alternatively, under the SBA rules, the applicable definition of small entity for MAS licensees that provide commercial subscription services may also be applicable to establishments primarily engaged in furnishing telegraph and other message communications. This definition provides that a small entity is an entity with annual receipts of $5 million or less. *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4822. 1992 Census data, which is the most recent information available, indicates that, of the 286 firms under this category, 247 had annual receipts of $4.999 million or less. We seek comment on whether the appropriate definition for such MAS licensees is SIC Code 4812, SIC Code 4822, or both.

9. The Commission seeks comment on the number of small entities that currently provide commercial MAS subscription service, and the number of small entities that would anticipate filing applications to provide such service under the various proposals described in the *NPRM*. We seek comment on whether we should conclude, for purposes of the Final Regulatory Flexibility Analysis in this matter, that all MAS commercial communications service providers are small entities.

10. With respect to the second category, which consist of entities that use or seek to use MAS spectrum to provide for their own internal communications needs, we note that MAS serves an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in virtually all U.S. business categories. Because of the array of users, the Commission has not developed (nor would it be possible to develop) a definition of small entities specifically applicable to such MAS users. Nor is there a precise SBA definition. In this context we again seek comment on whether the appropriate definition of small entity under the SBA rules is that applicable to radiotelephone companies: any entity employing fewer than 1,500 persons. *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. Again, alternatively, we seek comment on the appropriateness of defining such MAS licensees under SIC Code 4822, concerning establishments primarily engaged in furnishing telegraph or other message communications, or perhaps under both Codes 4812 and 4822. For the purpose of determining whether a licensee is a small business as defined by the Small Business Administration, each licensee would need to be evaluated within its own business area. The Commission's licensing database indicates that, as of November 8, 1996, of the 8,171 total MAS station authorizations, 7,084 authorizations were for private radio service, and of these, 426 were for private mobile service.

11. We seek comment on the number of small entities that use MAS spectrum for their internal communications needs. Further, we seek comment on the number of small entities that are likely to apply for licenses, under the various proposals described in the *NPRM*, to obtain spectrum for their own internal communications needs. Because any entity engaged in a business or commercial activity is eligible to hold an MAS license, the proposals in the *NPRM* could prospectively affect any small business in the United States interested in using MAS for its own communications needs. In other words, the universe of prospective or possible MAS users includes all U.S. small businesses.

12. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. The definition of a small governmental entity is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that may be affected by our rules.

13. Again, we have requested comment regarding the establishment of a refined small business definition for MAS for the purpose of competitive bidding. This *NPRM* does not propose any definition, but merely seeks comment on this issue.

E. Reporting, Recordkeeping, and Other Compliance Requirements

14. If we have competitive bidding to award certain MAS licenses, as proposed, and also establish a small business definition for the purpose of competitive bidding, then all small businesses that choose to participate

in these services will be required to demonstrate that they meet the criteria set forth in quality as small businesses. *See generally* 47 CFR Part 1, Subpart Q (competitive bidding proceedings). Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures necessary to establish that the small business is in fact small.

15. If this occurs, prior to auction each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060–0600. The estimated time for filling out an FCC Form 175 is 45 minutes. In addition to filing an FCC Form 175, each applicant must submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information which demonstrates that a small business wishing to qualify for installment payments and bidding credits is a small business. Applicants that do not have audited financial statements available will be permitted to certify to the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are proposed so that a small business working with the information in a bidder information package can file an application on its own. When an applicant wins a license, it will be required to submit an FCC Form 494 (common carrier) or FCC Form 402 (private radio), which will require technical information regarding the applicant's proposals for providing service. This application will require information provided by an engineer who will have knowledge of the systems design. (Also, the Commission is currently developing a single, consolidated MAS form, FCC Form 415, which will eventually supersede both Form 494 and Form 402.)

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposals

16. None.

G. Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

17. The *NPRM* solicits comment on a variety of proposals, some of which are described below. Any significant alternatives presented in the comments will be considered. As noted, we have requested comment regarding the establishment of a small business definition for MAS. We also seek comment generally on the existence of small entities in MAS and how many total entities, existing and potential, would be affected by the proposed rules in the *NPRM*. Finally, we request that each commenter identify whether it is a ''small business'' under either of the two SBA definitions described *supra*—either employing fewer than 1,500 employees (for radiotelephone communications companies) or having annual receipts of $5 million or less (for telegraph or other message communications companies).

18. The Commission expects that licensing subscriber-based MAS bands by geographic area, as proposed, will assist small businesses. As described *supra*, such licensing makes expansion of operations easier, and this flexibility assists all licenses, including small business licensees. We also believe that the proposed EA geographic area service area is large enough to support the services contemplated while being small enough to be attractive to small business entities. The *NPRM* also proposes a purely private allocation for licenses using MAS solely for internal uses. In addition, the proposed flexible approach to the build-out of MAS systems will assist licensees, including small business licensees, in designing and implementing their particular business plans, while the partitioning and disaggregation proposals will assist those small businesses that might otherwise be unable to acquire a ''full'' license as currently configured. Finally, we believe that the proposed spectrum auction will assist small entities desiring to obtain MAS licenses. This approach gets licenses to those most likely to use them most effectively. By contrast, when awarding licenses by lotteries it is only coincidental when the license is awarded to the entity best suited to using the license. Using lotteries, therefore, creates uncertainty for all would-be licensees, including those that are small business. We seek comment on all proposals and alternatives described in the *NPRM*, and the impact that such proposals and alternatives might have on small entities.

[FR Doc. 97–6166 Filed 3–11–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 021197C]

International Code of Conduct for Responsible Fisheries; Second Draft Implementation Plan

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of a second Draft Implementation Plan (Plan) for the Code of Conduct for Responsible Fisheries (Code) and invites review and comment. The purpose and intended effect of this action is to improve the document and inform the public of its content.

DATES: Comments should be submitted on or before April 28, 1997

ADDRESSES: Send comments to Matteo Milazzo, International Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Matteo Milazzo, 301–713–2276.

SUPPLEMENTARY INFORMATION: On July 25, 1996, NMFS announced the availability of an initial Plan for the Code in the Federal Register (61 FR 38703) and requested comments by September 23, 1996. At the close of this period, it became clear that several of the public comments raised substantive issues. During the same period, two other relevant developments took place. First, the Congress passed numerous and significant amendments to the Magnuson-Stevens Fishery Conservation and Management Act in the form of the Sustainable Fisheries Act (SFA) and, second, NOAA/NMFS moved into the final and substantive phase of its long-term program planning exercise, the NMFS Fisheries Strategic Plan.

The requirements of the SFA and the Strategic Plan point in the same directions as the Code. In effect, NMFS will implement the Code domestically as it carries out its Congressionally mandated responsibilities and the objectives of the Strategic Plan. Accordingly, NMFS has redrafted the Plan, taking into account (1) the comments received on the first draft; (2) the guidance provided by Congress in the Sustainable Fisheries Act; and (3) the long-term program planning that is being developed through the NMFS Fisheries Strategic Plan.

With this notice, NMFS notifies the public of the second draft's availability for comment. It includes the Agency's definition of a sustainable fishery, i.e., one in which the rate or level of fishing mortality does not jeopardize the capacity of the fishery to produce the maximum sustainable yield on a continuing basis.

For further background and rationale for the Plan, please refer to the notice of availability published on July 25, 1996.

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

Dated: March 6, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–6193 Filed 3–11–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 630

[I.D.030597B]

Atlantic Tuna Fisheries; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: NMFS will hold four public hearings to receive comments from fishery participants and other members of the public regarding proposed amendments to regulations governing the Atlantic tuna fisheries. The proposed rule would amend regulations governing the Atlantic tuna fisheries to: Divide the large school-small medium size class quota and the large medium-giant quotas of Atlantic Bluefin Tuna (ABT) into north and south regional subquotas; establish a new tuna permit program to provide for category changes, annual renewals and the collection of fees; establish authority for self-reporting for ABT landed under the Angling category; prohibit the retention of ABT less than the large medium size class by vessels permitted in the General category; prohibit all fishing by persons aboard vessels permitted in the General category on designated restricted-fishing days; and prohibit the use of spotter aircraft except in purse seine fisheries. The proposed regulatory amendments are necessary to achieve domestic management objectives for the Atlantic tuna fisheries.

DATES: See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of the public hearings. Written comments on the proposed rule must be received on or before March 31, 1997.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the public hearing locations. Written comments should be sent to Rebecca Lent, Acting Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope ''Atlantic Tuna Comments.''

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown at 508–281–9260 for the Gloucester, MA, hearing or Christopher Rogers at 301–713–2347 for other hearings, or for general information.

SUPPLEMENTARY INFORMATION: The proposed regulatory amendments that are the subject of the hearings are necessary to improve management and monitoring of the U.S. Atlantic tuna fisheries, to implement the 1996 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations, and to enhance collection of data to improve assessment of the environmental, economic, and social impacts of the fisheries.

A complete description of the measures, and the purpose and need for the proposed action, is contained in the proposed rule published March 4, 1997 (62 FR 9726) and is not repeated here. Copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or calling one of the contact persons (see **FOR FURTHER INFORMATION CONTACT**).

The proposed rule provided a comment period of 30 days duration ending on March 31, 1997.

The public hearing schedule is as follows:

Tuesday, March 18, 1997, Gloucester, MA, 7–9 p.m. Milton Fuller School (on Blackburn Circle) 4 School House Rd.
Gloucester, MA 01930
For information call: (508) 281–9260

Thursday, March 20, 1997, Manteo, NC, 7–9 p.m. North Carolina Aquarium
Airport Road
Manteo, NC 27954
For information call: (301) 713–2347

Tuesday, March 25, 1997, Toms River, NJ, 7–9 p.m. Holiday Inn
290 State Highway 37 East
Toms River, NJ 08753
For information call: (301) 713–2347

Thursday, March 27, 1997, Silver Spring, MD, 9 a.m. - 12 noon NOAA/NMFS
1305 East-West Highway, Room 1W611
Silver Spring, MD 20910
For information call: (301) 713–2347

The purpose of this notice is to alert the interested public of hearings and provide for public participation. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rebecca Lent by March 14, 1997 (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.*

Dated: March 6, 1997.

Bruce Morehead,

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

[FR Doc. 97–6195 Filed 3–11–97; 8:45 am]

BILLING CODE 3510–22–F

---

50 CFR Part 648

[I.D. 022897B]

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Public hearings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on Amendment 10 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP).

DATES: Written comments on Amendment 10 will be accepted until April 25, 1997. The public hearings are scheduled to be held from March 25 to April 10, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Send comments to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904.

The hearings will be held in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Virginia, and North Carolina. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, 302–674–2331.

SUPPLEMENTARY INFORMATION:

Background

Amendments 2 through 9 to the FMP, as adopted by the Council and the Atlantic States Marine Fisheries Commission and approved by NMFS, established procedures for setting annual catch specifications, including recreational harvest limits and commercial quotas, for summer flounder, scup, and black sea bass, established minimum fish sizes, required that commercial vessels and party and charter boats obtain permits, established overfishing definitions for the three species, established limited entry of additional vessels into the fisheries for the three species, implemented minimum mesh net regulations in the three fisheries and developed a dealer and vessel reporting system.

The preferred management measures for Amendment 10 adopted by the Council for hearings are:

1. Modify the commercial minimum mesh regulations such that the minimum mesh provisions (currently 5.5–inch (13.10 cm) diamond mesh) apply to the entire net;

2. Continue the moratorium on entry of additional commercial vessels into the summer flounder fishery;

3. Remove the requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52-week period to retain the moratorium permit;

4. Require that states document all summer flounder commercial landings in their state that are not otherwise

included in the Federal monitoring of permit holders;

5. Implement a provision such that any state could be granted *de minimus* status if commercial summer flounder landings during the last preceding calendar year were less than 0.1 percent of the total coastwide quota;

6. Prohibit transfer of summer flounder at sea; and

7. Establish a special state permit for party/charter vessels to allow the possession of summer flounder parts smaller than the minimum size.

In addition, proposed Amendment 10 will reconsider the vessel replacement criteria and commercial quota system implemented by Amendment 2.

Public Hearings

All hearings will begin at 7 p.m., except the New York hearings, which will begin at 7:30 p.m. The dates and locations of the hearings are scheduled as follows:

1. Tuesday, March 25, 1997—Dunes Manor Hotel, 28th Street and the Ocean, Ocean City, MD.
2. Monday, April 7, 1997—North Carolina State Aquarium, Airport Road, Manteo, NC.
3. Monday, April 7, 1997—Massachusetts Maritime Academy, 101 Academy Drive, Buzzards Bay, MA.
4. Monday, April 7, 1997—Marine and Academic Center, Kingsborough Community College, Manhattan Beach, NY.
5. Tuesday, April 8, 1997—Cornell Coop Extension Office, 246 Griffing Avenue, Riverhead, NY.
6. Tuesday, April 8, 1997—Holiday Inn, Routes 1 and 138, S. Kingston, RI.
7. Tuesday, April 8, 1997—Joslyn Hall, Carteret Community College, 3505 Arendell Street, Morehead City, NC.
8. Wednesday, April 9, 1997—Cape May Extension Office, Dennisville Road, Cape May Courthouse, NJ.
9. Wednesday, April 9, 1997—Quality Inn Lake Wright, 6280 Northampton Boulevard, Norfolk, VA.
10. Wednesday, April 9, 1997—Holiday Inn, I–95 and Thames Road, New London, CT.
11. Thursday, April 10, 1997—Holiday Inn, 290 State Highway, 37 East, Toms River, NJ.

The hearings will be tape recorded with the tapes filed as the official transcript of the hearings.

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the hearing date.

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

Dated: March 5, 1997.

Bruce Morehead,

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

[FR Doc. 97–6071 Filed 3–11–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 48
Wednesday, March 12, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–086–2]

Public Meeting; Center for Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is the second notice to producers of veterinary biological products, product users, and other interested persons that we are holding a seventh annual public meeting to discuss current regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. This notice also announces the agenda for the public meeting.

PLACE, DATES, AND TIMES OF MEETING: The seventh annual public meeting will be held in the Scheman Building at the Iowa State Center, Ames, IA, on Tuesday and Wednesday, April 15 and 16, 1997, from 8 a.m. to approximately 5 p.m. each day.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Wessman, Center for Veterinary Biologics, Inspections and Compliance, Veterinary Services, APHIS, 223 South Walnut Avenue, Ames, IA, telephone (515) 232–5785; fax (515) 232–7120; or e-mail kwessmanaphis.usda.gov.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) previously announced that it was scheduling the seventh annual public meeting on veterinary biologics in Ames, IA, on April 15 and 16, 1997 (*See* 61 FR 64499, December 5, 1996, docket No. 96–086–1). In its notice for the meeting, APHIS requested interested persons to submit topics to be included in the meeting's agenda. Based on the submissions received and other considerations, the agenda for the seventh annual meeting includes, but is not limited to, the following topics:

1. The Center for Veterinary Biologics;
2. Program activity updates;
3. Postmarketing surveillance;
4. International harmonization;
5. Electronic transmissions;
6. Implementation on 9 CFR 113.8 for in vitro testing;
7. Regulatory reform;
8. Implementation of new standards for antibody products;
9. Informal meetings; and
10. Open discussion.

During the ''open discussion'' portion of the meeting, attendees will have the opportunity to present their views on any matter concerning the APHIS veterinary biologics program. Comments may be either impromptu or prepared. Persons wishing to make a prepared statement should indicate their intention to do so at the time of registration, by indicating the subject of their remarks and the appropriate time they would like to speak. APHIS welcomes and encourages the presentation of comments at the meeting.

''Registration forms, lodging information, and copies of the agenda for the seventh annual public meeting may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. Advance registration is required. The deadline for advance registration is March 24, 1997. A block of total rooms has been set aside for this meeting until this date: Early reservations is strongly encouraged.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 7th day of March 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–6202 Filed 3–11–97; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

San Juan Wildlife and Fuels Improvement Projects, Tahoe National Forest; Nevada County, California

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) for a proposal to implement a Fuels and Wildlife improvement project on the Nevada County Ranger District. This project is intended to utilize vegetative manipulation, biomass removal, and prescribed fire to lower existing fire hazards and improve wildlife habitat in the project area. There will be some timber harvest included in the project to help accomplish desired levels of crown closures and spacing of standing trees. the EIS described herein pertains only to the treatment areas as outlined within the San Juan Project proposals.

The Forest Service gives notice of the full environmental analysis and decision making process that will occur on the Proposed Action so that interested and affected people, along with local, State and other Federal agencies are aware of how they may participate and contribute to the final decision. The Tahoe National Forest invites written input concerning issues specific to the Proposed Action.

The Proposed Action is to establish a series of treatment areas over 2,500 acres along the Graniteville Road north east of Nevada City. The area lies within the Nevada City Ranger District of the Tahoe National Forest. The proposed project includes 700 acres of prescribed burning, 328 acres of oak culturing, 452 acres of shrub modification, and 1,619 acres of commercial thinning which will generate approximately 5.2 MMBF. The intent of the project is to lower levels of existing living and dead fuels that could contribute to the spread and intensity of a wildlife event in the area. The design of the project will allow the manipulation of the existing stand structure to be done in such a manner that will also enhance wildlife habitat and migration corridors. The exclusion of fire from the area over the past 100 years has affected fire potential and has degraded wildlife habitat due to overgrowth in the area. Alternatives to the proposed action will be developed by March, 1997.

Internal scoping and public comments to date have identified the following issues: Affect of project on California Spotted Owl, Goshawk and deer habitat, effects of timber harvest on soil stability, use of prescribed fire near existing residence, the level of forest products that the project may provide, visual integrity of the area, the stability of affected watersheds and any potential erosion.

DATES: Input concerning issues with the Proposed Action must be received by March 24, 1997.

ADDRESSES: Direct written input and questions about the Proposed Action and Environmental Impact Statement to the Forest Supervisor, Tahoe National Forest, P.O. Box 6003, Nevada City, CA. 95959–6003. Telephone (916)265–4531.

FOR FURTHER INFORMATION CONTACT: Howard Carlson, Project Leader, Nevada City Ranger District, Tahoe National Forest, P.O. Box 6003, Nevada City, CA. 95959–6003. Telephone (916)265–4531.

SUPPEMENTARY INFORMATION: The EIS will tier to the Tahoe National Forest Land and Resource Management Plan and Forest Plan EIS. The purpose of the Proposed Action is four-fold.

1. Address public concerns about potential destruction of private and public lands due to uncontrolled wildfires.
2. Improve the existing state of the forested areas in such a manner that wildlife within the area will have better forage, habitat, cover, and migration corridors.
3. Improve the overall health of the timber stands by removing undesirable understory and other weakened or high-risk trees.
4. Provide forest products for the forest products industry.

Public Scoping Process: A letter describing the Proposed Action was mailed to a list of interested parties on January 9, 1997. An article describing the project and soliciting information/concerns from the public was published in the ''The Union'' newspaper in Grass Valley, CA. On February 18, 1997. The Tahoe National Forest plans to issue a scoping letter to all interested publics in March, 1997. A public meeting with potentially interested parties and specialists occurred on February 22, 1997.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so the it is meaningful and alerts an agency to the reviewer's position and contentions. ''Vermont Yankee Nuclear Power Corp. v. NRDC'', 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. ''City of Angoon v. Hodel'', 803 F.2d 1016, 1022 (9th Cir. 1986) and ''Wisconsin Heritages, Inc. v. Harris'', 490 F Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period on the draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

A draft EIS is expected to be available for agency and public review by April 1997. A final EIS is expected to be completed by June 1997 and documented by a Record of Decision.

The responsible official for the EIS and decision is John H. Skinner, Forest Supervisor, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959–6003.

Dated: March 4, 1997.

John H. Skinner,

Forest Supervisor.

[FR Doc. 97–6138 Filed 3–11–97; 8:45am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration, USDA

Iron Range Livestock Exchange, Inc.; Aitkin, Minnesota; Correction

A notice of the posting of certain stockyards listing their facility number, name, and location was published in the Federal Register on February 7, 1997, (62 FR 5795). This notice is to correct the posting number assigned to Iron Range Livestock Exchange, Inc., to read MN–192.

Done at Washington, D.C., this 4th day of March 1997.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 97–6097 Filed 3–11–97; 8:45 am]

BILLING CODE 3410–EN–P

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Blackstone River Valley National Heritage Corridor; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, March 27, 1997.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. in the Auditorium of Valley Resource, Inc., 1595 Mendon Road, Cumberland, RI for the following reasons:

1. Update on Cumberland Projects
2. Welcome Workshops; The Plan
3. Commission Business

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Susan K. Moore, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762-0250.

Further information concerning this meeting may be obtained from Susan K. Moore, Executive Director of the Commission at the aforementioned address.

Susan K. Moore,

Executive Director, BRVNHCC.

[FR Doc. 97–5624 Filed 3–6–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for

clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Census 2000 Dress Rehearsal Special Place Facility Questionnaire Operation.
Form Number(s): DX–351.
Agency Approval Number: 0607–0786.
Type of Request: Reinstatement, with change, of an expired collection.
Burden: 125 hours.
Number of Respondents: 500.
Avg Hours Per Response: 15 minutes.
Needs and Uses: Planning is currently underway for the Census 2000 Dress Rehearsal which is an integral part of the overall planning process for the Year 2000 Decennial Census. The Census Bureau must provide everyone in the dress rehearsal sites the opportunity to be counted including persons living at group quarters (GQs) (student dorms, shelters, group homes, etc.) and housing units (HUs) at and/or associated with special places (SPs). One of the major requirements for enumeration of persons at SP facilities is to identify the GQs and any associated HUs at each SP.

We will maintain a file of SPs and GQs for the dress rehearsal sites that was created from the 1990 census GQ files and updated from ongoing programs and other activities that will be carried out for the Census 2000 Dress Rehearsal.

Another operation that will assist in updating our list of SPs and GQs is called the Special Place Facility Questionnaire Operation. In this operation we plan to phone each SP within the Census 2000 Dress Rehearsal sites and conduct computer assisted interviews to identify and collect updated information about the GQs and HUs at each SP using the DX–351 Special Place Facility Questionnaire.

Affected Public: Businesses or other for-profit, Individuals or households, Not-for-profit institutions.
Frequency: One-time.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 USC, Sections 141 and 193.
OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 6, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–6162 Filed 3–11–97; 8:45 am]

BILLING CODE 3510–07–P

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Monday, March 24 and Tuesday, March 25, 1997 from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on March 24 and 25, 1997, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Administration Building, Lecture Room D, Gaithersburg, Maryland 20899–0001.

AGENDA:

—Welcome and Overview
—Issues Update
—Public Key Infrastructure and Related Issues
—Computerized Privacy Issues/Standards Review
—Privacy Database Development
—Pending Business
—Public Participation
—Agenda development for June meeting
—Wrap-Up

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking area asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Information Technology Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. It would be appreciated if fifteen copies of written material were submitted for distribution to the Board by March 21, 1997. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone: (301) 975–3696.

Dated: March 5, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–6177 Filed 3–11–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Northeast Region Federal Fisheries Permits Family of Forms

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 12, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Andrew A. Rosenberg Ph.D., Regional Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA is requesting emergency OMB review of new requirements needed for the implementation of Framework Adjustment 20 (Framework 20) to the Fishery Management Plan in the

Northeast Multispecies Fishery (FMP). Action is requested by March 17, 1997. Specifically, Framework 20 would implement a gillnet vessel effort-reduction program (by including a cap on the number of nets and revising days-at-sea monitoring), and implement programs to re-direct effort off of the overexploited cod stock in the Gulf of Maine (GOM) area. These measures need to be in effect before May 1, 1997 (the start of the 1997/1998 fishing year) in order to achieve the objectives of the FMP in that fishing year. Failure to have them in effect at the start of the 1997/1998 fishing year would cause administrative problems and prove unnecessarily confusing to the industry. Implementation also cannot be delayed because of the need to make days-at-sea allocations, implement effort-reduction programs in the gillnet fishery, re-direct focus off of the overexploited cod stock in the GOM area, and reduce discards at sea to the maximum extent practicable (as required by the Magnuson-Stevens Fishery Conservation and Management Act). These measures, combined with the measures currently in place, are critical to the overall success of the FMP to rebuild the principal multispecies stocks and mitigate some of its impacts. It is anticipated that these measures will curb a recent pattern of effort displacement into the GOM inshore area that resulted from initial phases of effort-reduction programs under Amendments 5, 6, and 7 to the FMP. Emergency approval of this request is essential to the mission of the National Marine Fisheries Service (NMFS).

As emergency approvals under the PRA are for a very limited duration, this notice also requests public comments on a follow-up submission that will be made to OMB under standard review procedures.

A number of specific information requirements are contained in Framework 20. These measures require that multispecies gillnet vessels select to fish under a ''Day gillnet'' and ''Trip gillnet'' category designation; adds effort reduction requirements for Day gillnet vessels—a requirement to take 120 days out of the gillnet fishery, and the requirement to request tags for, and tag, gillnets; adds a call in requirement for vessels exceeding the cod trip limit when fishing north of 42°00′ N. latitude; and adds a cod trip limit exemption program for the cod fishery south of 42°00′ N. latitude.

II. Method of Collection

Declarations and requests for net tags are made by form. Cod hail reports and exemption requests are made by phone.

III. Data

OMB Number: 0648–0202.

Form Number: None.

Type of Review: Emergency and Regular Submission.

Affected Public: Individuals and businesses (fishermen).

Estimated Number of Respondents: 2,500.

Estimated Time Per Response: 5 minutes for category changes, 3 minutes to declare the 120 days out of the fishery, 1 minute to attach each tag, 3 minutes to report cod catch, and 2 minutes to request cod limit exemption.

Estimated Total Annual Burden Hours: 1,999.

Estimated Total Annual Cost to Public: $30,240 for tags.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 6, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–6161 Filed 3–11–97; 8:45 am]

BILLING CODE 3510–22–P

Final Certification for the Automation of 11 Weather Service Offices (WSOs)

ACTION: Notice.

SUMMARY: On March 3, 1997 the Under Secretary of Commerce for Oceans and Atmosphere approved and transmitted 11 automation certifications to Congress.

EFFECTIVE DATE: March 12, 1997.

ADDRESSES: Requests for copies of the final automation certification packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: The 11 automation certifications were proposed in the Federal Register notice published on September 30, 1996 and the 60-day public comment period closed on November 29, 1996. There were no public comments received. The Modernization Transition Committee (MTC) considered and endorsed these 11 automation certifications at its December 12, 1996 meeting, concluding that these certifications would not result in any degradation of service.

(1) Grand Island, NE
(2) Bristol, TN
(3) Columbus, GA
(4) Macon, GA
(5) Port Arthur, TX
(6) Waco, TX
(7) Bakersfield, CA
(8) Helena, MT
(9) Phoenix, AZ
(10) Reno, NV
(11) Salem, OR

After consideration that no public comments were received and the MTC endorsements, the Under Secretary of Commerce for Oceans and Atmosphere approved all 11 automation certifications and transmitted them to Congress on March 3, 1997. Certification approval authority was delegated from the Secretary to the Under Secretary in June 1996. The NWS is now completing the certification requirements by publishing the final automation certifications in the Federal Register.

Dated: March 6, 1997.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 97–6136 Filed 3–11–97; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 030697A]

Endangered Species; Permits

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

ACTION: Receipt of an application for modification 8 to scientific research permit 825 (P513).

SUMMARY: Notice is hereby given that the Columbia River Inter-Tribal Fish Commission in Portland, OR (CRITFC) has applied in due form for a modification to a permit authorizing takes of endangered and threatened species for scientific research purposes.

DATES: Written comments or requests for a public hearing on this application must be received on or before April 11, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Environmental and Technical Services Division, Portland.

SUPPLEMENTARY INFORMATION: CRITFC requests a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

CRITFC (P513) requests modification 8 to scientific research permit 825 for increases in the takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with additional sampling locations and a new study designed to measure the survival, migration rate, and growth of hatchery and wild subyearling fall chinook salmon emigrating from major mainstem tributaries of the Snake River above Lower Granite Dam. Also for modification 8, CRITFC requests a take of adult, threatened, Snake River fall chinook salmon associated with spawning ground surveys. Permit 825 currently authorizes CRITFC takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon; juvenile, threatened, Snake River fall chinook salmon; and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with six studies: Juvenile chinook salmon surveys, Imnaha River subbasin monitoring, spawning ground surveys, scale sampling, cryopreservation of chinook salmon gametes, and a gas bubble trauma study. ESA-listed adult salmon are proposed to be captured at Bonneville Dam on the Snake River, anesthetized, examined and sampled for scales, allowed to recover from the anesthetic, and released. ESA-listed adult salmon are also proposed to be observed during spawning ground surveys and carcasses collected. Post-spawned, ESA-listed, adult male salmon are also proposed to be collected, anesthetized, sampled for scales and gametes, allowed to recover from the anesthetic, and released. ESA-listed juvenile salmon are proposed to be observed by snorkeling; captured, handled, and released; or captured, anesthetized, examined or sampled for scales or tagged with passive integrated transponders or marked with dye, allowed to recover from the anesthetic, and released. An increase in juvenile, ESA-listed, Snake River spring/summer chinook salmon indirect mortalities is requested. Juvenile, ESA-listed, Snake River fall chinook salmon indirect mortalities are also requested. Modification 8 would be valid for the duration of the permit. Permit 825 expires on December 31, 1997. Those individuals requesting a hearing on the permit modification request should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: March 6, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–6194 Filed 3–11–97; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 20 March 1997 at 10:00 AM in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001 to discuss various projects affecting the appearance of Washington, D.C., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, D.C. 5 March 1997.

Charles H. Atherton,

Secretary.

[FR Doc. 97–6144 Filed 3–11–97; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities/ Government Performance and Results Act (GPRA); Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 1999, which begins October 1, 1998, and about its draft strategic plan, to be submitted to Congress September 30, 1997, pursuant to the Government Performance and Results Act (GPRA). Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 1999, and strategic plan will become part of the public record.

DATES: The hearing will begin at 10 a.m. on May 13, 1997. Written comments and requests from members of the public desiring to make oral presentations must be received by the Office of the Secretary not later than April 29, 1997. Persons desiring to make oral presentations at this hearing must submit a written text of their presentations not later than May 6, 1997.

ADDRESSES: The hearing will be in room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned ''Agenda, Priorities and Strategic Plan'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the hearing, a copy of the strategic plan (available April 1, 1997), or to request an opportunity to make an oral presentation, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it

administers, and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments. In addition, section 306(d) of the Government Performance and Results Act (GPRA) (5 U.S.C. 306(d)) requires the Commission to seek comments from interested parties on the agency's proposed strategic plan. The strategic plan is a GPRA requirement. The plan will provide an overall guide to the formulation of future agency actions and budget requests. A final strategic plan is required to be submitted to the Office of Management and Budget and Congress not later than September 30, 1997. (5 U.S.C. 306(a)).

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The Commission is formulating its budget request for fiscal year 1999, which begins on October 1, 1998. This budget request must reflect the contents of the agency's strategic plan developed under GPRA.

The Commission is charged by Congress with protecting the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

Purpose of the Public Hearing

The Commission will conduct a public hearing on May 13, 1997 to receive comments from the public concerning its draft GPRA strategic plan, and agenda and priorities for fiscal year 1999. The Commissioners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments.

While the Commission has broad jurisdiction over products used by consumers, its staff and budget are limited. Section 4(j) of the CPSA expresses Congressional direction to the Commission to establish an agenda for action each fiscal year and, if feasible, to select from that agenda some of those projects for priority attention. These priorities are reflected in the draft strategic plan developed under GPRA.

Participation in the Hearing

Persons who desire to make oral presentations at the hearing on May 13, 1997, should call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 504–0800, telefax (301) 504–0127, not later than April 29, 1997. Persons who desire a copy of the draft strategic plan (available April 1, 1997) may call or write Rockelle Hammond, office of the Secretary CPSC, Washington DC 20207, telephone (301) 504–0800, (301) 504–0127.

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text of their presentations to the Office of the Secretary not later than May 6, 1997. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on May 13, 1997 and will conclude the same day.

Written Comments

Written comments on the Commission's draft strategic plan, and agenda and priorities for fiscal year 1999, should be received in the Office of the Secretary not later than April 29, 1997.

Dated: March 7, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–6229 Filed 3–11–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Limited Reevaluation Study for the Deeping of the Arthur Kill/Howland Hook Navigation Channel

AGENCY: Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: In response to a House of Representatives, Committee on Public Works and Transportation Resolution dated May 9, 1979 to alleviate current and future navigation restrictions associated with the Arthur Kill/Howland Hook navigation channel, The U.S. Army Corps of Engineers, New York District, prepared a feasibility report and a final environmental impact statement in October 1995 that recommended a six foot deepening (from −35 to −41 feet) for a distance of approximately 2.1 miles and a five foot deepening (−35 to −40 feet) along another 1.0 mile section of the channel

The New York District suspended work on the project in 1991. The Final Environmental Impact Statement (FEIS) however was completed. The New York District has now initiated a Limited Re-evaluation study to reaffirm the recommended plan. Upon re-evaluation of the status of a FEIS which was filed on July 11, 1986, the New York District has determined that it is appropriate to prepare a supplemental environmental impact statement. This notice of intent supersedes the earlier notice to prepare a new environmental impact statement published in the Federal Register on September 30, 1996.

FOR FURTHER INFORMATION CONTACT: For more information regarding this notice, please contact Mr. Mark Burlas, ATTN: CENAN–PL–EA, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, NY 10278–0090, or phone (212) 264–4663.

SUPPLEMENTARY INFORMATION: The Arthur Kill navigation channel is a component of the New York Harbor Estuarine System connecting Raritan Bay and Newark Bay. The channel is situated between New Jersey and Staten Island, New York. The Arthur Kill/Howland Hook navigation channel's northern limit is the confluence of the Kill van Kull and Newark Bay channels. The project area extends south for approximately 3.1 miles.

Currently, navigation in the project area is severely constrained. The existing depth of the Arthur Kill/Howland Hook channel section is not sufficient to allow the safe and efficient passage of fully loaded container and liquid bulk (tankers) vessels calling on terminals in the channel. The current mode of operation calls for tankers to lighter-off in anchorages and enter the Arthur Kill/Howland Hook section of channel during high tides. Containerships calling on terminals must be loaded to less than their design

capacities at their home ports and sail without a full load.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–6155 Filed 3–11–97; 8:45 am]

BILLING CODE 3710–06–M

Corps of Engineers

Availability of the Environmental Assessment for the Limited Reevaluation Study for Deepening of the Kill Van Kull and Newark Bay Navigation Channels

AGENCY: Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: A Final Environmental Impact Statement (FEIS) for the Kill Van Kull and Newark Bay Channel Deepening Project was prepared and the project was authorized in the Supplemental Appropriations Act of 1985. A decision was made to deepen the channels in two phases and a Supplemental EIS was prepared to address disposal and sediment contamination issues and finalized in 1987. Phase I, the deepening to −40 feet mean low water (MLW) has been completed. The U.S. Army Corps of Engineers, New York District has prepared an Environmental Assessment (EA) for the Phase II deepening of the channels to their authorized depth of −45 feet MLW. The proposed project extends from the confluence of the Kill Van Kull and Anchorage Channels to Station 139+20N, the northern edge of the Port Elizabeth reach, approximately eight miles. The non-federal sponsor prefers to defer portions of the original project including the Port Newark Channel, and a portion of the Newark Bay Channel north of Station 139+20N. This segment was included in the economic, engineering, and environmental analyses, but is not being recommended for construction at this time. The New York District has initiated a Limited Reevaluation Study to reaffirm the recommended plan. An EA is being prepared to update the NEPA process.

FOR FURTHER INFORMATION CONTACT: For more information regarding this notice, please contact Ms. Mary M. Browning, ATTN: CENAN–PL–EA, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, NY 10278–0090, or phone (212) 264–2198.

SUPPLEMENTARY INFORMATION: The Kill Van Kull and Newark Bay is a component of the Hudson-Raritan Estuarine System which lies below the confluence of the Hackensack and Passaic Rivers. The channel is situated between New Jersey and Staten Island, New York, and is northwest of the Upper Bay of New York Harbor.

Currently, navigation in the project area is severely constrained. The existing depth of the Kill Van Kull and Newark Bay Channels are not sufficient to allow the safe and efficient passage of fully loaded container and liquid bulk (tankers) vessels still willing to call on terminals in the channel. The current mode of operation calls for tankers to lighter-off in anchorages and enter the Kill Van Kull and Newark Bay Channels during high tides. Container ships calling on terminals must be loaded to less than their design capacities at their home ports and sail without a full load. This is inefficient, costly, and results in unnecessary navigational and environmental risks. Deepening the channels to their authorized depth of −45 feet MLW will provide for more economically efficient and safe utilization of these channels by vessels with drafts greater than 40 feet.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–6156 Filed 3–11–97; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF ENERGY

[Docket No. ETEC–023]

Certification of the Radiological Condition of Building 023 at the Energy Technology Engineering Center Near Chatsworth, CA

AGENCY: Office of Environmental Restoration, DOE.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed radiological surveys and taken remedial action to decontaminate Building 023 located at the Energy Technology Engineering Center (ETEC) near Chatsworth, California. This property previously was found to contain radioactive materials from activities carried out for the Atomic Energy Commission and the Energy Research and Development Administration (AEC/ERDA), predecessor agencies to DOE. Although DOE owns the majority of the buildings and equipment, a subsidiary of Rockwell International, Rocketdyne, owned the land. Rocketdyne has recently been sold to Boeing North American Incorporated.

FOR FURTHER INFORMATION CONTACT: Don Williams, Program Manager, Office of Northwestern Area Programs, Office of Environmental Restoration (EM–44), U.S. Department of Energy, Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: DOE has implemented environmental restoration projects at ETEC (Ventura County, Map Book 3, Page 7, Miscellaneous Records) as part of DOE's Environmental Restoration Program. One objective of the program is to identify and clean up or otherwise control facilities where residual radioactive contamination remains from activities carried out under contract to AEC/ERDA during the early years of the Nation's atomic energy program.

ETEC is comprised of a number of facilities and structures located within Administrative Area IV of the Santa Susana Field Laboratory. The work performed for DOE at ETEC consisted primarily of testing of equipment, materials, and components for nuclear and energy related programs. These nuclear energy research and development programs conducted by Atomics International under contract to AEC/ERDA began in 1946. Several buildings and land areas became radiologically contaminated as a result of facility operations and site activities. An ETEC area that has been designated for cleanup under the DOE Environmental Restoration Program is Building 023. Other areas undergoing decontamination will be released as they are completed and verified to meet established cleanup criteria and standards for release without radiological restrictions as established in DOE Order 5400.5.

Building 023 is located within the central portion of ETEC and is situated on B Street near 12th Street among several adjacent buildings on paved ground. It is approximately 20 feet below the general grade of 12th Street. The facility consists of galvanized steel walls and roof on a concrete slab floor with various types of internal walls and partitions. It is a single floor structure which was constructed in two phases: the first section (circa 1962), ''023'', has been used for the storage and operation of a small sodium loop for studies of radioactive contamination transport; the second section (circa 1976), ''023A'', consists of a storage and setup room and a well-equipped analytical chemistry laboratory.

The first Radiological User Permit for Building 023, Authorization No. 105, was issued by AEC in November 1976. This authorization related to the use of a small section (or sections) of activated stainless steel Experimental Boiler Reactor fuel cladding to be used in a small sodium test loop. The purpose of this test was to gather data on the

transport of radiological contamination in sodium loops. The sodium loop tests were halted in 1982 and the loop was dismantled in 1986.

To allow the release of Building 023 for use without radiological restrictions, all radioactive material/contamination was removed from the facility. This decontamination and decommissioning was performed in three phases, starting in 1986 with the removal of the sodium loop and ending in 1993 after removal of the remainder of the radioactive liquid waste holdup system. After the decontamination efforts were completed, a comprehensive final survey of the building interior was performed to demonstrate compliance with standards for release without radiological restrictions. The State of California Department of Health Services has concurred that the proposed release guidelines provide adequate assurance for release without further radiological restrictions.

Rockwell/Rocketdyne performed a final radiological survey in 1994. The Environmental Survey and Site Assessment Program of the Oak Ridge Institute for Science and Education performed independent verification of the decontamination project in 1994. Post-decontamination surveys have demonstrated that Building 023 is in compliance with DOE decontamination criteria and standards for release without radiological restrictions. DOE intends to comply with applicable Federal, State, and local requirements which relate to property transfer.

Final DOE costs for the decontamination of Building 023 were $89,000, including final survey and waste disposal. The final cost for Rockwell International was approximately $90,000.

No appreciable personnel radiation exposure was anticipated or encountered from activities associated with the decontamination of Building 023.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the U.S. DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. Copies of the certification docket will also be available at the following locations: DOE Public Document Room, U.S. DOE, Oakland Operations Office, the Federal Building, 1301 Clay Street, Oakland, California; California State University, Northridge, Urban Archives Center, Oviatt Library, Room 4, 18111 Nordhoff, Northridge, California; Simi Valley Library, 2629 Tapo Canyon Road, Simi Valley, California; and the Platt Branch, Los Angeles Public Library, 23600 Victory Boulevard, Woodland Hills, California.

DOE has issued the following statement of certification:

Statement of Certification: Energy Technology Engineering Center, Building 023

The U.S. Department of Energy, Oakland Operations Office, Environmental Restoration Division, has reviewed and analyzed the radiological data obtained following decontamination of Building 023 at the Energy Technology Engineering Center. Based on analysis of all data collected and the results of independent verification, DOE certifies that the following property is in compliance with DOE radiological decontamination criteria and standards as established in DOE Order 5400.5. This certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants. Accordingly, the property specified below is released from DOE's Environmental Restoration Program.

Property owned by Boeing North American Incorporated:

Building 023, at the Energy Technology Engineering Center (situated within Area IV of the Santa Susana Field Laboratory), located in a portion of Tract ''A'' of Rancho Simi, in the County of Ventura, State of California, as per map recorded in Book 3, Page 7 of Miscellaneous Records of Ventura County.

Issued in Washington, D.C. on February 28, 1997.

James J. Fiore,

Acting Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 97–6179 Filed 3–11– 97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM97–2–48–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on February 28, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets proposed to be effective April 1, 1997:

Sixth Revised Sheet No. 19
Third Revised Sheet No. 68H

ANR states that the purpose of this filing is to comply with the annual redetermination of the levels of ANR's Transporter's Use (%) as required by ANR's currently effective tariff, to become effective April 1, 1997. This redetermination reflects an increase in certain fuel use percentages that comprise ANR's fuel matrix applicable to transportation service on its transmission facilities, storage service and gathering service.

ANR states that all of its Volume No. 1 and Volume No. 2 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest this 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6104 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–72–002]

ANR Pipeline Company; Notice of Compliance Filing

March 6, 1997.

Take notice that on March 3, 1997, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, proposed to become effective December 1, 1996:

Substitute Second Revised Sheet No. 37
Substitute Original Sheet No. 37A
Substitute Fifth Revised Sheet No. 39
Substitute Sixth Revised Sheet No. 120

ANR states that these tariff changes are being filed pursuant to the Commission's February 14, 1997 letter order in the captioned proceeding. The revised tariff sheets address the priority of Rate Schedule FTS–2 service during the ten (10) days each month that such service will not be scheduled as firm service.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6129 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–66–002]

Canyon Creek Compression Company; Notice of Compliance Filing

March 6, 1997.

Take notice that on February 28, 1997, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective May 1, 1997.

Canyon states that the purpose of the filing is to: (1) reflect changes in its tariff to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Federal Energy Regulatory Commission's (Commission) Regulations by Order Nos. 587 and 587–B; and (2) comply with the Commission's Order issued January 3, 1997, in Docket No. RP97–66–000.

Canyon states that copies of the filing are being mailed to its jurisdictional customers, all parties set out on the official service list at Docket No. RP97–66–000, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 21, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6126 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1741–000]

Cleveland Electric Illuminating Company; Notice of Filing

March 6, 1997.

Take notice that on February 18, 1997, Cleveland Electric Illuminating Company tendered for filing its supplement to the quarterly report of transactions for the period October 1, 1996 to December 31, 1996.

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 March 18, 1997. 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. 97–6115 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–4–22–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on February 28, 1997, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Fourteenth Revised Sheet No. 31
Twenty-Fifth Revised Sheet No. 32
Twenty-Fifth Revised Sheet No. 33
Eleventh Revised Sheet No. 34
Fourteenth Revised Sheet No. 35
Fourteenth Revised Sheet No. 36

CNG requests an effective date of April 1, 1997, for its proposed tariff sheets.

CNG states that the purpose of this filing is to update CNG's effective Transportation Cost Rate Adjustment (''TCRA''). The effect of the proposed TCRA on each element of CNG's rates is summarized on Workpaper 4, which is attached to this filing. CNG has computed its TCRA in accordance with the methods prescribed by Section 15.3 of the General Terms; this calculation is set forth in detail on Workpaper 1.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6108 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–4–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

March 6, 1997.

Take notice that on February 28, 1997, Colorado Interstate Gas Company (CIG) filed Third Revised Sheet No. 11A of its FERC Gas Tariff and First Revised Fourth Revised Sheet No. 230, First Revised Volume No. 1, which it has designated as the ''Primary Case'', reflecting a decrease in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.71% to 0.68% effective April 1, 1997.

CIG also filed as an ''Alternate Case'', which proposed changes in its FERC Gas Tariff, Substitute Third Revised Sheet No. 11A, First Revised Volume No. 1, reflecting a decrease in the fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.71% to 0.70% effective April 1, 1997.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6109 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–58–002]

East Tennessee Natural Gas Company; Notice of Tariff Filing

March 6, 1997.

Take notice that on March 3, 1997, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets listed on Appendix A to the filing.

East Tennessee states that the filing is being filed in compliance with the Commission's directives in Orders No. 587 and 587–B, and the Commission's January 8, 1997 order in this proceeding. East Tennessee proposes an effective date of May 1, 1997 for the revised sheets.

East Tennessee states that the revised tariff sheets reflect the changes to East Tennessee's tariff that result from the Gas Industry Standards Board's (''GISB'') consensus standards that were adopted by the Commission in Order Nos. 587 and 587–B. The filed tariff sheets also reflect the changes required by the January 8, 1997 order to the pro forma sheets in East Tennessee's November 1, 1996 GISB compliance filing.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as on or before March 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6122 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP97–20–003, and RP97–194–001]

El Paso Natural Gas Company; Notice of Request for Waiver and Technical Conference

March 6, 1997.

Take notice that on March 3, 1997, El Paso Natural Gas Company (El Paso) submitted a request for waiver of Order Nos. 587, et seq., and ordering paragraph (B) of the Commission's order issued February 13, 1997 in these proceedings to permit El Paso to delay implementation of the Gas Industry Standards Board Standards from April 1, 1997 until June 1, 1997.

El Paso also requested that the Commission Staff convene a technical conference as soon as possible pursuant to the February 13, 1997 order to discuss the application of the GISB Standards on El Paso's system and the process for monitoring the resulting impacts on the scheduling system and related procedures. Due to the technical nature of this discussion, El Paso requests that parties' representatives attending the conference be experienced with the scheduling process and computer system design.

El Paso states that copies of the filing were served upon all parties of record at Docket Nos. RP97–20–000, et seq., and RP97–194–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 13, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6120 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–3–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on February 28, 1997, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 1, 1997:

Nineteenth Revised Sheet No. 8A
Twelfth Revised Sheet No. 8A.01
Eleventh Revised Sheet No. 8A.02
Seventheenth Revised Sheet No. 8B
Tenth Revised Sheet No. 8B.01

FGT states that Section 27 of the General Terms and Conditions (GTC) of its Tariff provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. The fuel reimbursement charges pursuant to Section 27 consist of the Fuel Reimbursement Charge Percentage (FRCP), designed to recover current fuel usage on an in-kind basis, and the Unit Fuel Surcharge (UFS), designed to recover or refund previous under or overcollections on a cash basis. Both the FRCP and the UFS are applicable to Market Area deliveries and are effective for seasonal periods, changing effective each April 1 (for the Summer Period) and each October 1 (for the Winter Period).

FGT states that it is filing to establish an FRCP of 2.85% to become effective April 1, 1997 based on the actual company fuel use, lost and unaccounted for volumes, and Market Area deliveries for the period from April 1, 1996 through September 31, 1996. FGT states that it is also filing to establish a Summer Period UFS of ($0.0132) per MMBtu to become effective April 1, 1997.

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, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6107 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–59–002]

Midwestern Gas Transmission Company; Notice of Tariff Filing

March 6, 1997.

Take notice that on March 3, 1997, Midwestern Gas Transmission Company (Midwestern), filed the revised tariff sheets listed on Appendix A to the filing, in compliance with the Commission's directives in Orders No. 587 and 587–B, and the Commission's January 8, 1997 order in this proceeding. Midwestern proposes an effective date of May 1, 1997 for the revised sheets.

Midwestern states that the revised tariff sheets reflect the changes to Midwestern's tariff that result from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in Order Nos. 587 and 587–B. The filed tariff sheets also reflect the changes required by the January 8, 1997 order to the pro forma sheets in Midwestern's November 1, 1996 GISB compliance filing.

Midwestern states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before March 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6123 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–73–002]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on February 28, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to this filing. These tariff sheets are proposed to be effective May 1, 1997.

MRT states that the compliance tariff sheets attached as Appendix B incorporate changes to MRT's Tariff to implement the GISP standards, in compliance with the Commission Order in Docket No. RP97–73–000 issued on January 16, 1997.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois, and Missouri.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with 18 CFR 385.211 of the Commission's Rules. All such protests must be filed on or Before March 21, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6130 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–19–003]

Mojave Pipeline Company; Notice of Request for Waiver

March 6, 1997.

Take notice that on March 3, 1997, Mojave Pipeline Company (Mojave) submitted a request for waiver of Order Nos. 587, et seq., and ordering paragraph (A) of the Commission's order issued February 18, 1997 in these proceedings to permit Mojave to delay implementation of the Gas Industry Standards Board Standards from April 1, 1997 until June 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 13, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6119 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–8–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

March 6, 1997.

Take notice that on February 28, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Nineteenth Revised Sheet No. 5A, with a proposed effective date of March 1, 1997.

National states that pursuant to Article II, Section 2 of the approved settlement at Docket Nos. RP94–367–000, *et al.*, National is required to recalculate the maximum Interruptible Gathering (''IG'') rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 22 cents per dth.

National further states that, as required by Article II, Section 4, National is filing a revised tariff sheet within 30 days of the effective date for the revised IG rate.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 97–6110 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–1–004]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

March 6, 1997.

Take notice that on February 28, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective April 1, 1997.

National Fuel states that the purpose of this filing is to submit actual tariff sheets revised to conform to the Commission order issued on February 14, 1997 in Docket Nos. RP97–1–002 and –003 and to conform with the GISB Standards incorporated by Order No. 587, et al., Standards for Business Practices of Interstate Natural Gas Pipelines.

National Fuel also states that this filing is submitted to comply with the Commission's Order No. 587–B, issued on January 30, 1997 in Docket No. RM96–1–003 by incorporating by reference into its FERC Gas Tariff, the Electronic Delivery Mechanism Standards promulgated Gas Industry Standards Board and adopted in Order No. 587–B.

National Fuel states that it is serving copies of this filing with its firm customers, interested state commissions and each person designated on the official service list compiled by the Secretary. National states that copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6118 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–200–018]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on Marcy 3, 1997, NorAm Gas Transmission Company (NGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, copies of the following revised tariff sheets to be effective March 1, 1997:

Eleventh Revised Sheet No. 7
Fourth Revised Sheet No. 7A
Fourth Revised Sheet No. 7B
Fourth Revised Sheet No. 7C
Fourth Revised Sheet No. 7D

NGT states that these tariff sheets are filed herewith to reflect specific negotiated rate transactions for the month of March, 1997.

Any person desiring to protest the said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to be proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6117 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–61–002]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on March 3, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets listed on Exhibit 1 to the filing, to be effective May 1, 1997.

NGT states that the purpose of this filing is to comply with the ''Order on Compliance Filing'' issued in the referenced docket on January 16, 1997. Such order required NGT to file actual tariff sheets sixty (60) days prior to May 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 24, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6125 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–274–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on March 3, 1997, NorAm Gas Transmission Company (NGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 1997:

Sixth Revised Sheet Nos. 5 and 6

NGT states that the revised tariff sheets are filed in compliance with the Stipulation and Agreement (Settlement) approved by Commission order in Docket No. RP91–49–004 on March 31, 1992. *Arkla Energy Resources, a division of Arkla, Inc.,* 58 FERC ¶ 61,359 (1992). NGT's March 3, 1997 filing is its fifth annual filing pursuant to the Settlement, and it proposes to continue the currently effective rate for the CSC Charge as provided in the settlement, at $0.03 per MMBtu.

Any person desiring to be heard or to protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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. 97–6132 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–22–003]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on February 28, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the pro forma tariff sheets listed on Appendix A to the filing, to become effective April 1, 1997.

Northern Border states that this filing is made in compliance with Order No. 587, issued in Docket No. RM96–1–000 on July 17, 1996; the ''Notice Clarifying Procedures for filing Pro Forma Tariff Sheets'', issued September 12, 1996; the Commission's Order on Compliance Filing issued November 15, 1996 in Docket No. RP97–22–000, and the Commission's Order on Compliance and Rehearing issued February 18, 1997 in Docket Nos. RP97–22–001 and RP97–22–002 (February 18 Order). These pro forma tariff sheets reflect the requirements of Order No. 587 that interstate pipelines follow standardized procedures for critical business practices—nominations, flowing gas (allocations, balancing, and measurement), invoicing, and capacity release.

Northern Border states copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6121 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–275–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on March 4, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective on April 4, 1997:

Third Revised Sheet No. 54
Third Revised Sheet No. 61
Third Revised Sheet No. 62
Third Revised Sheet No. 63
Third Revised Sheet No. 64
First Revised Sheet No. 201
First Revised Sheet No. 300

Northern states that the above-listed tariff sheets are being filed in accordance with Section 154.403 of the Commission's Regulations to establish a tariff mechanism for a Periodic Rate Adjustment (PRA) to periodically adjust the fuel retained percentages for the recovery of fuel. This filing proposes to establish a tariff mechanism which will authorize Northern in future tariff filings to make periodic adjustments to the fuel retained percentages. Northern is not proposing in this filing to change any of the fuel retained percentages. Northern states that the instant filing results in no rate impact on firm or interruptible customers and no effect on revenues or costs.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6099 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–37–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on February 28, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective April 1, 1997:

Third Revised Volume No. 1
Seventh Revised Sheet No. 14
Original Volume No. 2
Nineteenth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to propose new fuel reimbursement factors (Factors) for Northwest's transportation and storage rate schedules. The Factors allow Northwest to be reimbursed in-kind for the fuel used during the transmission and storage of gas and for the volumes of gas lost and unaccounted-for that occur as a normal part of operating the transmission system. The Factors are determined each year to become effective April 1 pursuant to Section 14.12 of the General Terms and Conditions contained in Northwest's FERC Gas Tariff, Third Revised Volume No. 1, and pursuant to Section 5 of Sheet No. 2.1 in Northwest's FERC Gas Tariff, Original Volume No. 2.

Northwest states that it proposes a Factor of 1.90% for transportation service Rate Schedules TF–1, TF–2, and TI–1 and for all transportation service rate schedules contained in Original Volume No. 2 of Northwest's FERC Gas Tariff. Northwest also states that it proposes a Factor of 1.18% for service at the Jackson Prairie Storage Project under Rate Schedules SGS–1, SGS–2F and SGS–2I and a Factor of 2.62% for service at the Plymouth LNG Facility under Rate Schedules LS–1, LS–2F and LS–2I.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6106 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EC97–5–000 and ER97–413–000]

Ohio Edison Company, Pennsylvania Power Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company; Notice of Filing

March 6, 1997.

Take notice that on March 4, 1997, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the Applicants) filed a supplement to Exhibit G to their November 8, 1996, merger application.

This supplement contains important approvals of the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio related to the Applicants' proposed merger.

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 March 14, 1997. 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. 97–6112 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1640–000]

PECO Energy Company; Notice of Filing

March 6, 1997.

Take notice that on February 13, 1997, PECO Energy Company (PECO) filed a Service Agreement dated February 5, 1997 with North American Energy Conservation, Inc. (NAEC) under PECO's FERC Electric Tariff Original volume No. 5 (Tariff). The Service Agreement adds NAEC as a customer under the Tariff.

PECO requests an effective date of February 5, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to NAEC and to the Pennsylvania Public Utility Commission.

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 March 17, 1997. 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. 97–6114 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1081–001]

Sonat Power Marketing, Inc.; Notice of Filing

March 6, 1997.

Take notice that on February 14, 1997, Sonat Power Marketing, Inc. (SPMI) tendered for filing a request for acceptance of its Western Systems Power Pool membership to SPMI's affiliate, Sonat Power Marketing L.P.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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 March 17, 1997. 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. 97–6113 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–271–000]

Southern Natural Gas Company, Sea Robin Pipeline Company, and South Georgia Natural Gas Company; Notice of Petition for Waiver

March 6, 1997.

Take notice that on March 3, 1997, Southern Natural Gas Company, Sea Robin Pipeline Company and South Georgia Natural Gas Company (collectively referred to as Southern Pipelines) tendered for filing a petition for an interim waiver of the requirements of the Commission's Order No. 587–B issued January 30, 1997, in Docket No. RM96–1–003.

Southern Pipelines states that copies of the filing have been mailed to all of the shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before March 13, 1997. 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. 97–6101 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–68–002]

Stingray Pipeline Company; Notice of Compliance Filing

March 6, 1997.

Take notice that on February 28, 1997, Stringray Pipeline Company (Stingray), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective May 1, 1997.

Stringray states that the purpose of this filing is to: (1) reflect changes in its tariff to conform to the standards

adopted by the Gas Industry Standards Board and incorporated into the Federal Energy Regulatory Commission's (Commission) Regulations by Order Nos. 587 and 587–B; and (2) comply with the Commission's Order issued December 23, 1996, in Docket No. RP97–68–000.

Stingray states that copies of this filing are being mailed to its jurisdictional customers, all parties set out on the official service list at docket No. RP97–68–000, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 21, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6128 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–60–002]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

March 6, 1997.

Take notice that on March 3, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets listed on Appendix A to the filing.

Tennessee states that the filing is being filed in compliance with the Commission's directives in Order Nos. 587 and 587–B, and the Commission's January 8, 1997 order in this proceeding. Tennessee proposes an effective date of May 1, 1997 for the revised sheets.

Tennessee states that the revised tariff sheets reflect the changes to Tennessee's tariff that result from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in Order Nos. 587 and 587–B. The filed tariff sheets also reflect the changes required by the January 8, 1997 order to the pro forma sheets in Tennessee's November 1, 1996 GISB compliance filing.

Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before March 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6124 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–273–000]

Texas-Ohio Pipeline, Inc.; Notice of Petition for Waiver

March 6, 1997.

Take notice that on March 3, 1997, Texas-Ohio Pipeline, Inc. (Texas-Ohio) tendered for filing a petition for waiver of the requirements of the Commission's Order No. 587–B.

Texas-Ohio states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before March 13, 1997. 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. 97–6103 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–237–001]

TransColorado Gas Transmission Company; Notice of Request for Waiver

March 6, 1997.

Take notice that on March 3, 1997, TransColorado Gas Transmission Company (TransColorado) requested waiver of the implementation date in the Commission's letter order issued February 24, 1997 to permit TransColorado to delay implementation of the Gas Industry Standards Board (GISB) Standards from April 1, 1997 to June 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 13, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6131 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–129–000]

Trunkline Gas Company; Notice of Informal Settlement Conference

March 6, 1997.

Take notice that an informal settlement conference will be convened in these proceedings on March 13, 1997 at 10:00 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, contact Marc G. Denkinger (202) 208–2215 or Lorna J. Hadlock (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6116 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ97–2–35–000]

West Texas Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on March 3, 1997, West Texas Gas, Inc. (WTG), tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. WTG submitted Twenty-Second Revised Sheet No. 4 to be effective April 1, 1997.

WTG states that this tariff sheet and the accompanying explanatory schedules constitute WTG's Quarterly PGA filing submitted in accordance with the purchased gas adjustment provisions of Section 19 of the General Terms and Conditions of WTG's FERC Gas Tariff, First Revised Volume No. 1.

Because the proposed tariff sheet reflects a reduction in rates, WTG requests appropriate waivers as necessary to permit this filing to be placed into effect on less than 30 days notice, on April 1, 1997.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6111 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–272–000]

WestGas InterState, Inc.; Notice of Petition for Waiver

March 6, 1997.

Take notice that on March 3, 1997, WestGas InterState, Inc. (WGI) tendered for filing a petition for waiver of the requirements of the Commission's Order No. 587–B.

WGI states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before March 13, 1997. 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. 97–6102 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–67–002]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1997.

Take notice that on February 28, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective May 1, 1997.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 21, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6127 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–269–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

March 6, 1997.

Take notice that on February 28, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, certain revised tariff sheets listed on Appendix A to the filing, with an effective date of March 1, 1997.

Williston Basin states that the revised tariff sheets are being filed pursuant to the Service Agreement applicable to Rate Schedule X–13 service between Williston Basin and Northern States Power Company. The rate for firm transportation hereunder has been restated to reflect the second biennial restatement under the terms of the Service Agreement. The restated rate reflects a reservation charge of $17.16023 per Mcf per month, excluding applicable surcharges.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6100 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1773–000, et al.]

Interstate Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 5, 1997.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket No. ER97–1773–000]

Take notice that on February 19, 1997, Interstate Power Company (IPW), tendered for filing a Notice of Cancellation of Service Agreement No.

16 under FERC Electric Tariff, Original Volume No. 7.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER97–1774–000]

Take notice that on February 19, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Waste Management of New Hampshire, Inc. This Transmission Service Agreement specifies that Waste Management of New Hampshire, Inc. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1997, will allow NMPC and Waste Management of New Hampshire, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for Waste Management of New Hampshire, Inc. as the parties may mutually agree.

NMPC requests an effective date of February 7, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Waste Management of New Hampshire, Inc.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. American Electric Power Service Corporation

[Docket No. ER97–1775–000]

Take notice that on February 19, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed service agreement with Holland Board of Public Works under the AEP companies' Power Sales Tariffs. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the Service Agreement to be made effective for service billed on and after January 19, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER97–1776–000]

Take notice that on February 19, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed Service Agreement with Morgan Stanley Capital Group, Inc. which it had filed in unexecuted form on January 31, 1997.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER97–1778–000]

Take notice that on February 19, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between LG&E and East Kentucky Power Cooperative under LG&E's Open Access Transmission Tariff.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER97–1779–000]

Take notice that on February 19, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between LG&E and Big Rivers Electric Corporation under LG&E's Open Access Transmission Tariff.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER97–1780–000]

Take notice that on February 3, 1997, Portland General Electric Company, submitted an amendment to PGE–2 to add an alternate form of service agreement. The existing form of service agreement is unchanged.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Otter Tail Power Company

[Docket No. ER97–1783–000]

Take notice that on February 19, 1997, Otter Tail Power Company (OTP), tendered for filing a transmission service agreement between itself and *Minnesota Power & Light Co. (MP).* The agreement establishes MP as a customer under OTP's transmission service tariff (FERC Electric Tariff, Original Volume No. 7).

OTP respectfully requests an effective date sixty days after filing. OTP is authorized to state that MP joins in the requested effective date.

Copies of the filing have been served on MP, the Minnesota Public Utilities Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER97–1784–000]

Take notice that on February 19, 1997, Wisconsin Public Service Corporation (''WPSC''), tendered for filing an executed Transmission Service Agreement with itself for its own off-system sales. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Illinois Public Service Company

[Docket No. ER97–1785–000]

Take notice that on February 19, 1997, Central Illinois Public Service Company (CIPS), submitted three service agreements, dated between February 7, 1997 and February 12, 1997, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff: American Energy Solutions, Inc., City Water, Light & Power, and Pennsylvania Power & Light Company.

CIPS requests an effective date of February 12, 1997 for these service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on the three customers and the Illinois Commerce Commission.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of Colorado

[Docket No. ER97–1786–000]

Take notice that on February 19, 1997, Public Service Company of Colorado (PSCO), tendered for filing a Transmission Service Agreement (TSA) between itself and Public Service Company of Colorado—Power Marketing. PSCO states that the TSA sets out the transmission arrangements under which PSCO will provide its

power marketing division firm point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Compnay

[Docket No. ER97–1787–000]

Take notice that on February 19, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 27, 1997, between KCPL and Citizens Lehman Power Sales (Citizens). KCPL proposes an effective date of January 27, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and Citizens.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of Colorado

[Docket No. ER97–1788–000]

Take notice that on February 19, 1997, Public Service Company of Colorado (PSCO), tendered for filing a Transmission Service Agreement (TSA) between itself and Public Service Company of Colorado—Power Marketing. PSCO states that the TSA sets out the transmission arrangements under which PSCO will provide its power marketing division non-firm point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Central Louisiana Electric Company, Inc.

[Docket No. ER97–1789–000]

Take notice that on February 20, 1997, Central Louisiana Electric Company, Inc. (''CLECO''), tendered for filing a service agreement under which Central Louisiana Electric Company, Inc. (''CLECO'') as transmission provider, will provide non-firm point-to-point transmission service to Morgan Stanley Capital Group Inc. under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Morgan Stanley Capital Group Inc.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER97–1790–000]

Take notice that on February 20, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Non-Firm Transmission Service Agreement with Puget Sound Power & Light Company under, PacifiCorp's FERC Electric Tariff, Original Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota)

[Docket No. ER97–1791–000]

Take notice that on February 20, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and Southern Minnesota Municipal Power Agency.

NSP requests that the Commission accept the agreement effective February 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Power and Light Company

[Docket No. ER97–1792–000]

Take notice that on February 20, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service establishing Sonat Power Marketing, L.P. as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of February 13, 1997, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER97–1793–000]

Take notice that on February 20, 1997, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company, (collectively, the ''CSW Operating Companies'') submitted for filing a Restated and Amended Operating Agreement and Notices of Termination to terminate certain supplements to the Operating Agreement that are intended to be superseded by the Restated and Amended Operating Agreement filed in this proceeding. The CSW Operating Companies request that the Restated and Amended Operating Agreement and the Notices of Termination be accepted become effective as of January 1, 1997.

The CSW Operating Companies state that the filing has been served on the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission and Oklahoma Corporation Commission.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER97–1794–000]

Take notice that on February 24, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Pennsylvania Power & Light Company. This Transmission Service Agreement specifies that Pennsylvania Power & Light Company has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Pennsylvania Power & Light Company to enter into separately scheduled transactions under which NMPC will provide transmission service for Pennsylvania Power & Light Company as the parties may mutually agree.

NMPC requests an effective date of February 12, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service

Commission and Pennsylvania Power & Light Company.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Northern States Power Company (Minnesota)

[Docket No. ER97–1795–000]

Take notice that on February 24, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing the Non-Firm Point-to-Point Transmission Service Agreement between NSP and Blue Earth Light & Water Department.

NSP requests that the Commission accept the agreement effective February 5, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Southern California Edison Company

[Docket No. ER97–1796–000]

Take notice that on February 21, 1997, Southern California Edison Company (Edison), tendered for filing Service Agreements (Service Agreements) with AIG Trading Corporation, Citizens Lehman Power Sales, and CNG Power Services Corporation for Non-Firm Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888.

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission regulations. Edison also submitted a revised Sheet No. 152 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of February 22, 1997 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Indiana Gas and Electric Company

[Docket No. ER97–1797–000]

Take notice that on February 20, 1997, Southern Indiana Gas and Electric Company (''SIGECO''), tendered for filing two (2) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Electric Clearinghouse, Inc.
2. Coastal Electric Services Company.
3. Minnesota Power & Light Company.
4. Cinergy Services, Inc., as agent for The Cincinnati Gas and Electric Company and PSI Energy, Inc.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Northeast Utilities Service Company

[Docket No. ER97–1798–000]

Take notice that on February 20, 1997, Northeast Utilities Service Company, on behalf of its affiliate Western Massachusetts Electric Company (''WMECO''), tendered for filing the following proposed change to a service agreement filed under WMECO's FERC Electric Service Tariff, Original Volume No. 1, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations:

Borderline Sales Service Amended Service Agreement, between WMECO and Massachusetts Electric Company, dated as of November 12, 1996.

The proposed amendment to the service agreement would add a delivery point and provide for construction of facilities to accommodate the delivery point. Copies of the filing were served upon Massachusetts Electric Company and the Massachusetts Department of Public Utilities.

Comment date: March 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Electric Power Company

[Docket No. ER97–1799–000]

Take notice that on February 24, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Non-Firm Transmission Service Agreement between itself and Michigan Public Power Agency. The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Michigan Public Power Agency to receive non-firm transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 7.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Michigan Public Power Agency, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: March 19, 1997, 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. 97–6190 Filed 3–11–97; 8:45 am]

BILLING CODE 6717–01–P

Southeastern Power Administration

Intent To Formulate Power Marketing Policy Jim Woodruff Project

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice.

SUMMARY: Pursuant to its Procedure for Public Participation in the Formulation of Marketing Policy published in the Federal Register of July 6, 1978, Southeastern intends to formulate a marketing policy for future disposition of power from its Jim Woodruff Project.

Southeastern has not established a written marketing policy for the Jim Woodruff Project. Southeastern has negotiated contracts for the sale of project power, which are maintained in the headquarter offices of Southeastern. Proposals and recommendations for consideration in formulating a proposed marketing policy are solicited, as are requests for further information or consultation.

EFFECTIVE DATE: Comments must be submitted on or before May 12, 1997.

ADDRESSES: Five copies of written proposals or recommendations should be submitted to the Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 213–3800.

FOR FURTHER INFORMATION CONTACT: Charles A. Borchardt, Administrator, Southeastern Power Administration,

Elberton, Georgia 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Jim Woodruff Project, with 36,000 kilowatts of installed capacity, is on the Apalachicola River two tenths of a mile below the confluence of the Chattahoochee and Flint Rivers and approximately on the Georgia-Florida border. The project is a run-of-the-river project subject to reduced generation during periods of high or low streamflow conditions. Southeastern executed a contract with Florida Power Corporation (Florida Power) on July 19, 1957 that provided for, among other things, transmission of project power to the preference customers, support capacity and energy necessary to insure the dependability of the project capacity, and project integration. Capacity and energy from the project are sold to two municipal and four electric cooperative preference customers in the panhandle of Florida. Excess energy is sold to Florida Power. The proposed policy establishes the marketing area for project power and deals with the allocation of power among or for the benefit of area customers. The proposed policy will also deal with utilization of area utility systems for essential purposes, wholesale rates, resale rates, and energy and economic efficiency measures.

Under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), Southeastern is responsible for the transmission and disposition of electric power and energy from reservoir projects operated by the Department of Army. Southeastern has negotiated a contract with Florida Power under this authority. To pay the transmission, support capacity and firming, and integration fees under this contract to Florida Power Southeastern must obtain an appropriation each year in a budget approved by Congress and the President. Because of budget constraints, Southeastern has had difficulty in obtaining these appropriations. This difficulty has compelled Southeastern to consider selling the government power at the bus bar of the project. Southeastern requests comments on this change in its marketing practices. Current practices do not contemplate such a disposition of the power from the project.

Issued in Elberton, Georgia, February 28, 1997.

Charles A. Borchardt,

Administrator.

[FR Doc. 97–6178 Filed 3–11–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5708–5]

Agency Information Collection Activities Under OMB Review Standards of Performance for Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels, Subparts AA and AAa, OMB Control Number 2060–0038, expiration date 4/30/97. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 11, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1060.08.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards (NSPS) for Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels, Subparts AA and AAa; OMB No. 2060–0038; Agency ICR No. 1060.08, expiration date 4/30/97. This is a request for extension of a currently approved collection.

Abstract: The Administrator may require owners and operators subject to Section 111 of the Clean Air Act (CAA) to comply with recordkeeping and reporting requirements, as specified in Section 114(a) of CAA.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

The information collected is used for inspection purposes to determine if the pollution control devices used by the affected industries are properly installed and operated and the standards are being met. Performance test reports are needed as these are the Agency's records of a source initial capability to comply with the emission standard, and note the operating conditions under which compliance was achieved.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 30, 1996 (FR 45960). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18.70 hours. 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 the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owner/operators of Electric Arc Furnaces & Argon-Oxygen Decarbarization Vessels.

Estimated Number of Respondents: 65.

Frequency of Response: initial reports and semiannual reports.

Estimated Total Annual Hour Burden: 34,082 hours.

Estimated Total Annualized Cost Burden: $536,100.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1060.08 and OMB Control No. 2060–0038 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and

Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: March 5, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–6211 Filed 3–11–97; 8:45 am]

BILLING CODE: 6560–50–P

[FRL–5708–6]

National Guidance on Source Water Protection; Notice of Public Meetings

The Environmental Protection Agency (EPA) Regional Offices are holding public meetings for the purpose of information exchange on various issues related to the development of guidance for State source water assessment and protection programs. Under the new provisions of the Safe Drinking Water Act of 1996, States are required to delineate the sources of all public water supplies and identify potential sources of contamination. States may allocate up to 10% of monies available under the Drinking Water State Revolving Fund (SRF) for this purpose. Additional monies from the Drinking Water SRF can be allocated for non-mandatory protection programs and support for local protection efforts.

The protection of drinking water supplies will require the active participation of a great number of stakeholders who have not traditionally been directly involved with the public water supply program. These include various State agencies, local governments, other Federal agencies, environmental advocates, public health professionals, the agricultural community, watershed activists, developers and many others. EPA is inviting all interested members of the public to attend these meetings and actively provide viewpoints, ideas and suggestions to EPA on its drinking water protection activities. EPA encourages the public's response to EPA's Source Water Assessment and Protection Guidance draft guidance which will be issued in final by August 1996.

We hope you can join us and share your experience and perspectives. We also hope that your early involvement will support the development of strong State assessment and protection programs. Space will be limited so we encourage you to pre-register by calling the Safe Drinking Water Hotline at 1–800–426–4791 (9:00 a.m.–5:30 p.m., Monday–Friday) or send an e-mail message to Hotline-sdwa@epamail.epa.gov.

The meetings are scheduled as follows:

EPA region	Location	Date
1	Worcester, MA.	May 28, 1997.
	Concord, NH	May 29, 1997.
2	Suffern, NY	April 29, 1997.
3 and 4	Raleigh, NC	May 28 & 29, 1997.
3	Pittsburgh, PA.	May 21 & 22, 1997.
4	Atlanta, GA	May 6 & 7, 1997.
	Raleigh, NC	May 6, 1997.
5	Lansing, MI	April 1, 1997.
	Springfield, IL	April 11, 1997.
	St. Cloud, MN	April 22, 1997.
	Indianapolis, IN.	April 28, 1997.
	Fond Du Lac, WI.	To be scheduled.
6	Dallas, TX	April 2 & 3, 1997.
7	Lenexa, KS	May 14, 1997.
8	Denver, CO	April 22 & 23, 1997.
9	Las Vegas, NV.	April 16, 1997.
	Los Angeles, CA.	May 21, 1997.
10	Salem, OR	April 30, 1997.
	Anchorage, AK.	To be scheduled.
	Boise, ID	To be scheduled.
	Lacey, WA	May 6, 1997.

Please call the Safe Drinking Water Hotline 1–800–426–4791 (9:00 a.m.–5:30 p.m. Monday–Friday) for updated information.

For more information about EPA's Source Water Protection efforts and the Regional Stakeholder meetings please visit the Office of Ground Water and Drinking Water home page at http://www.epa.gov/OGWDW/swp.html. If you are interested in receiving a copy of the draft guidance and/or attending one of the meetings, please call the EPA Drinking Water Hotline at 1–800–426–4791 (9:00 a.m.–5:30 p.m. Monday–Friday) or send an e-mail message to hotline-sdwa@epamail.epa.gov.

Written comments on the guidance are requested to be sent by June 15, 1997 to EPA's Office of Ground Water and Drinking Water, Implementation and Assistance Division, Prevention and Support Branch, 401 M St. SW., Mail Code 4606, Washington, DC. 20460.

Dated: March 4, 1997.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–6212 Filed 3–11–97; 8:45 am]

BILLING CODE: 6560–50–P

[FRL–5708–1]

Scientific Counselors Board Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2), notice is hereby given that the Environmental Protection Agency (EPA), Office of Research and Development's (ORD), Board of Scientific Counselors (BOSC), will hold its Executive Committee Meeting, April 7–8, 1997, at the Hyatt Arlington Hotel, 1325 Wilson Boulevard, Arlington, Virginia. On Monday, April 7, the meeting will begin at 1:00 pm and will recess at 5:00 pm, and on Tuesday, April 8, the meeting will begin at 8:00 am and will adjourn at 4:30 pm. All times noted are Eastern time. Agenda items include, but are not limited to, BOSC Operating Principles, Laboratory Peer Review Discussion, ORD Research Plan Evaluation: Methods Development, Use of Peer Review in ORD, and Research Plan for Arsenic in Drinking Water. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton (202) 260–0929. The meeting is open to the public. Any Member of the public wishing to make comments at the meeting, should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701), 401 M Street, SW., Washington, DC 20460; by telephone at (202) 260–0468. In general, each individual making an oral presentation will be limited to a total time of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC8701), 401 M Street, SW., Washington, DC 20460, 202–260–0468.

Dated March 5, 1997.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–6214 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–M

[PF–716; FRL–5589–7]

AgrEvo USA Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing regulations establishing tolerances for residues of propamocarb (propyl-3-[dimethyl-amino] propylcarbamate) hydrochloride (hereafter referred to as propamocarb) and its metabolites in or on potatoes and their derived commodities, as well as secondary tolerances in meat and milk. This notice includes a summary of the petition that was prepared by the petitioner, AgrEvo USA Company.

DATES: Comments, identified by the docket control number [PF–716], must be received on or before April 11, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2. 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically be sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or in ASCII file format. All comments and data in electronic form must be identified by docket control number [PF–716]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below this document.

Information submitted as a comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By Mail, Connie Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm 227, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305–6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 6F4707 from AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808. The petition proposes, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 by establishing tolerances for the Propamocarb in or on potatoes at 0.5 part per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficieny of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, AgrEvo included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of AgrEvo; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Propamacarb Uses

Propamocarb is a specific pesticide with specific activity against several Oomycete species which cause seed, seedling, root and stem rots and foliar diseases in many edible crops and ornamental plants. The mode of action of propamocarb is different compared to other Oomycete fungicides, which provides for efficacy against strains that have developed resistance to other fungicides.

B. Metabolism and Analytical Method

1. *Analytical method.* A practical analytical method utilizing gas/liquid chromatography and N-FID or MSD is available and has been validated for detecting and measuring levels of propamocarb in or on food. The limit of quantification (LOQ) is 0.05 mg/kg (ppm).

2. *Metabolism*. The absorption, distribution, metabolism and excretion of propamocarb has been evaluated in rats. Propamocarb is rapidly absorbed, extensively metabolized and rapidly eliminated, primarily via the urine, following oral administration. Metabolite profiles were similar following single and repeated oral dosing and following intravenous dosing. The primary route of metabolism is oxidative degradation with hydrolytic cleavage occurring as a secondary pathway.

C. Residues in Plants and Animals

1. *Nature and magnitude of the residue in plants.* The fate of propamocarb in plants is clearly understood. Metabolism studies in cucumbers, potatoes and spinach demonstrated that propamocarb is degraded into carbon dioxide which is reincorporated into natural plant constituents. The primary residue found in all crops, and the only residue of concern, is the parent, propamocarb hydrochloride.

More than 50 residue trials on potatoes have been conducted throughout the world. The results from these studies indicated that residues of propamocarb in raw potatoes from foliar applications were below the LOQ, even when applied at 2.5–times the maximum proposed label rate of 4.5 lb ai/A. No measurable residues of propamocarb were detected in any of the processed commodities following treatment at 2.5–times the maximum proposed label rate and a shorter than proposed pre-harvest interval (3 days vs. the proposed 14 days). An additional processing study at 5–times the proposed label rate (22.5 lb a.i./acre) is now underway. Based on these results, tolerances are proposed for the residues of propamocarb in or on potato at 0.5 ppm.

Six residue trials have been conducted on tomatoes, either in the greenhouse or in arid climates where no rainfall likely occurred. Based on these data, AgrEvo USA expects that residues in tomatoes would not exceed 0.3 ppm when used as proposed. Typical residues are anticipated to be significantly lower.

2. *Nature and magnitude of the residue in animals.* Data are not yet available on the metabolism of propamocarb in livestock. A cow metabolism study was initiated in September, 1996, and will be submitted to the Agency during 1997. However, in a rat metabolism study, propamocarb was extensively degraded and rapidly excreted, with >90 percent excreted in the urine within 24 hours. Therefore, AgrEvo believes that the potential for residues to occur in animal

commodities from ingestion of potato processing wastes which contain propamocarb residues at or below 0.05 ppm is negligible.

C. Toxicological Profile

The toxicity of propamocarb has been evaluated by EPA as part of previous regulatory actions and is summarized below. The conclusions presented are those determined by the Agency as reported by the registrant.

1. *Acute toxicity.* There are no acute toxicity concerns with propamocarb. The acute rat oral LD_{50} was 2,900 mg/kg in males and 2,000 mg/kg in females. The acute rat dermal LD_{50} was ≤3,000 mg/kg. The acute (4–hour) inhalation LC_{50} in rats was >7.9 mg/l. Propamocarb was not a skin sensitizer in guinea pigs. Based on these results, propamocarb hydrochloride was classified as Toxicity Category III for acute oral and dermal toxicity, and eye irritation, and Category IV for acute inhalation toxicity and skin irritation.

2. *Subchronic toxicity.* In a 90–day feeding study, propamocarb was administered to albino rats at concentrations of 0, 20, 50, 100, and 500/1,000 ppm in the diet. The only effects noted were slightly reduced food efficiency and body weight gains at 1,000 ppm.

In a 90–day feeding study in beagle dogs, propamocarb was administered in the diet at concentrations of 0, 50, 100, 500, and 1,000/2,000 ppm. No treatment-related findings were observed.

A 21–day dermal toxicity study was performed with propamocarb in Sprague-Dawley rats at dose levels of 0, 100, 500 and 1,000 mg/kg/day, 6 hours per day, 5 days per week over a 21–day period. No treatment related effects were observed.

A 21–day dermal toxicity study was performed with propamocarb in rabbits at dose levels of 0, 150, 525 and 1,500 mg/kg/day, 6 hours per day, 5 days per week, over a 21–day period. The No Obsereved Effects Level (NOEL) for this study was considered by the Agency to be 150 mg/kg/day based on dose-related skin irritation in mid- and high-dose animals and a decrease in weight gain in mid-dose females.

3. *Chronic toxicity/oncogenicity.* A 2–year feeding chronic toxicity/carcinogenicity study was performed in Sprague-Dawley rats with propamocarb at dietary concentrations of 0, 40, 200 or 1,000 ppm. There was no evidence of carcinogenicity or other treatment-related effect except for a possible reduction in food intake in female rats at the highest level tested. Thus, 1,000 ppm (41 mg/kg/day) was considered to be the NOEL. However, this study did not satisfy the Agency's criteria for a Maximum Tolerated Dose (MTD). A new study at higher dose levels is now in progress.

A 2–year feeding chronic toxicity/carcinogenicity study was performed in CD-1 mice with propamocarb at dietary concentrations of 0, 20, 100 and 500 ppm. No evidence of carcinogenicity or toxicity was noted at any dose level. Thus, 1,000 ppm (53 mg/kg/day for males and females, respectively), was considered to be the NOEL. However, this study did not meet the Agency's criteria for a MTD. A new study at higher dose levels is now in progress.

A 2–year feeding study was performed in beagle dogs with propamocarb at dietary concentrations of 0, 1,000, 3,000, 10,000 ppm. Decreased weight gain, decreased food efficiency and an increased incidence of acute gastric mucosal erosions and/or chronic erosive gastritis were noted in all treated groups. Thus, a NOEL for this study was not determined but was considered to be slightly lower than the lowest dose level tested (33.3 mg/kg/day).

4. *Genotoxicity.* No evidence of genotoxicity was observed in a battery of studies including Salmonella and E. coli gene mutation assays, 2 mouse micronucleus assays, an in vitro mammalian cytogenetic assay using cultured human lymphocytes, a yeast mitotic gene conversion assay and a yeast mitotic recombination assay.

5. *Reproduction and developmental toxicity.* In a developmental toxicity study, rats were administered propamocarb by gavage at dose levels of 0, 74, 221, 740, or 2,210 mg/kg/day on gestation days 6–19. The NOEL for maternal toxicity was 740 mg/kg/day based on mortality, clinical observations and decreased body weight gain at 2,210 mg/kg/day. The NOEL for developmental toxicity was 221 mg/kg/day based on increased post-implantation loss, decreased fetal weights and increased incidence of minor skeletal anomalies (retarded ossification) at 740 and/or 2,210 mg/kg/day.

In another developmental toxicity study, rabbits were administered propamocarb by gavage at dose levels of 0, 15, 45, 150, 300, or 600 mg/kg/day on gestation days 6–18. The NOEL for both maternal toxicity and developmental toxicity was 150 mg/kg/day, based on decreased maternal body weight gain and increased post-implantation loss at 300 mg/kg/day.

A three-generation reproduction study was conducted using rats fed diet containing propamocarb at dietary concentrations of 0, 40, 200, and 1,000 ppm for 100 days and then continuously through 3 successive generations. No treatment-related effects were noted on either the parents or offspring.

6. *Neurotoxicity.* An acute neurotoxicity study was performed in rats at dose levels of 0, 20, 200 and 2,000 mg/kg of propamocarb hydrochloride. The overall NOEL for this study was determined to be 200 mg/kg based on decreased weight gain, soiled fur and decreased motor activity in males and/or females at 2,000 mg/kg.

A 90–day neurotoxicity study was conducted in rats at dietary concentrations of propamocarb hydrochloride of 0, 200, 2,000 and 20,000 ppm. No evidence of neurotoxicity (FOB, motor activity or neuropathology) was observed at any dose level. Plasma, red blood cell and brain cholinesterase levels were also not affected. The NOEL was determined to be 2,000 ppm (142 mg/kg/day) based on decreased weight gain at 20,000 ppm.

7. *Endocrine effects.* No special studies have been conducted to investigate the potential of propamocarb to induce estrogenic or other endocrine effects. However, the standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects yet no such effects were detected. Thus, the potential for propamocarb to produce any significant endocrine effects is considered to be minimal.

E. Aggregate Exposure

Propamocarb is registered for non-food uses on turf and ornamental plants (BANOL Fungicide, EPA Reg. No. 45639–88). As such, non-occupational exposure would include exposures resulting from consumption of potential residues in food or water, as well as exposure to residues from applications to golf courses, commercial and ornamental turf, home lawns, sod farms, and ornamental plants. There are no acute toxicity concerns with propamocarb. Thus, only chronic exposures are being addressed here.

1. *Dietary exposure (food).* Potential dietary exposures from food under the proposed tolerances and potential emergency use time-limited tolerances were estimated using the Exposure 1 software system (TAS, Inc.) and the 1977–78 USDA consumption data. For the purposes of this assessment, AgrEvo USA has made the very conservative

assumption that 100 percent of all commodities will contain propamocarb residues and that all of those residues will be at the proposed tolerance levels. (of: 0.05 ppm in potato tubers (whole RAC), and the meat, milk, fat, liver, kidney, and meat by-products of cattle, goats, hogs, horses, and sheep; and for future time-limited tolerances supporting section 18 Emergency Uses, 0.3 ppm in tomatoes (whole RAC); 1.0 ppm in tomato juice, puree, and catsup; 3.0 ppm in tomato paste). Thus, this estimate should result in a gross overestimation of actual human exposure. Copies of these dietary exposure analyses are appended to this document.

2. *Dietary exposure (drinking water).* The potential for propamocarb to leach into groundwater has been assessed in four terrestrial field dissipation studies conducted in several states and on various soil types. These studies were conducted using rates recommended for application to turf, which are approximately 24 lb a.i./acre, six times (6X) higher than the total rate recommended for use in potatoes and tomatoes. The degradation of propamocarb in these studies was rapid, with half-lives ranging from a low of 6 days to a high of 17 days. This compound adsorbs strongly to soil, having a moderately high soil adsorption coefficient (Kads) of 5.2 and a Koc of 359 in sandy loam soil. The compound did not leach under any of the various climatic test conditions, in contrast to it s high solubility in water, and did not exhibit mobility in either acidic or alkaline soil types. Based on these environmental fate data and the anticipated conditions of use, the potential for movement of propamocarb into groundwater is very low, and as such the potential contribution of any such residues to the total dietary intake of propamocarb will be negligible. No Maximum Contaminant Level or Health Advisory Level for residues of propamocarb in drinking water has been established.

3. *Non-dietary exposure.* As a professional use turf and ornamental fungicide, propamocarb is used primarily (>90 percent of use) on golf courses for control of Pythium blight (BANOL Fungicide, EPA Reg. No. 45639–88). Some limited use of BANOL occurs on ornamental plants produced in greenhouses or containers, and to a very limited extent on sod farms or by professional lawn care applicators to commercial turf. The product is rarely used on homeowner turf due to the fact that the diseases it controls (Pythium, Phytophthora) occurs primarily in high fertility, high maintenance turf (e.g. golf courses), not in homeowner turf. Thus, although non-dietary exposures have not been quantified, AgrEvo USA expects them to be minimal since they will occur primarily to golfers who will be wearing shoes and socks and who will not enter previously treated areas until after the grass has dried. Furthermore, based on the limited frequency of use (no more than three applications per year), these non-food uses for propamocarb are not likely to result in potential chronic exposure and thus should not be factored into a chronic exposure assessment.

G. Cumulative Effects

The potential for cumulative effects of propamocarb and other substances having a common mechanism of toxicity must also be considered. The precise mechanism of toxicity for propamocarb is unknown. Although a member of the carbamate group of pesticides, propamocarb is not an *n*-methyl carbamate, and demonstrated no inhibitory effects on blood or brain cholinesterase following either acute or repeated oral administrations to rats and dogs. *In vitro* studies using rat or dog blood plasma showed very slight cholinesterase inhibitory effects only at extremely high dose levels, equivalent to about 2,200 mg/kg bodyweight. This level is 20,000X the established Reference Dose for propamocarb. Thus, AgrEvo USA anticipates no cumulative effects with other substances.

H. Safety Determinations

1. *U.S. population.* The Agency has previously established a Reference Dose (RfD) value of 0.11 mg/kg/day for propamocarb based on a LOEL of 1,000 ppm (33.3 mg/kg/day) from a 2–year dog chronic toxicity study, applying an uncertainty factor of 100 to account for interspecies extrapolation and intraspecies variation, plus an additional factor of 3 to account for the lack of a NOEL. The FAO/WHO/JMPR have recommended an Acceptable Daily Intake (ADI) of 0.1 mg/kg/day.

Using the conservative (worst-case) dietary exposure assumptions described above in paragraph E. 1., chronic dietary exposure will utilize only 1 percent of the RfD for the U.S. population. There is generally no concern for exposures below 100 percent of the RfD since it represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Thus, AgrEvo USA concludes that there is a reasonable certainty that no harm will result to the U.S. population in general from aggregate exposure to propamocarb residues.

2. *Infants and children.* Data from rat and rabbit developmental toxicity studies and rat multigeneration reproduction studies are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide.

No treatment-related effects to either parental animals or offspring were noted in a three-generation rat reproduction study at dose levels up to 1,000 ppm (33.3 mg/kg/day). No evidence of teratogenicity was noted in either rat or rabbit developmental toxicity studies, even at maternally toxic dose levels. Increased post-implantation loss was noted in the rabbit study, but only at maternally toxic dose levels. The NOEL for both maternal and developmental toxicity in rabbits was 150 mg/kg/day. Decreased fetal weights, increased post-implantation loss and retarded ossification were noted in rats, and the developmental NOEL of 221 mg/kg/day was lower than the maternal NOEL of 740 mg/kg/day. However, the Agency has concluded that due to the high dose at which fetal toxicity was observed, no definite conclusion can be made regarding developmental toxicity in this study.

FFDCA section 408 provides that the Agency may apply an additional safety factor for infants and children to account for pre- and post-natal toxicity or incompleteness of the database. The toxicology database for propamocarb regarding potential pre- and post-natal effects in children is complete according to existing Agency data requirements and does not indicate any particular developmental or reproductive concerns. Furthermore, the previously established RfD of 0.11 mg/kg/day, which is based on a 33.3 mg/kg/day LOEL from the 2–year dog feeding study, already provides for a safety factor of 1,364 relative to the 150 mg/kg/day developmental NOEL from the rat developmental toxicity study. Thus, AgrEvo USA considers the existing RfD of 0.11 mg/kg/day to be appropriate for assessing potential risks to infants and children and an additional uncertainty factor is not warranted.

Using the conservative assumptions described above, aggregate exposure to propamocarb is expected to utilize 3 percent of the RfD in non-nursing infants and 2 percent of the RfD in children aged 1–6. These numbers

would be significantly lower if anticipated residues were utilized rather than tolerance values. Therefore, AgrEvo concludes that there is a reasonable certainty that no harm will result to infants or children from aggregate exposure to propamocarb residues.

I. International Tolerances

The Codex Alimentarius Commission (Codex) has established tolerances (MRLs) for propamocarb in the following raw agricultural commodities:

Commodity	Part per million
Beetroot	0.2 ppm
Brussels sprouts	1.0 ppm
Cabbage, head	0.1 ppm
Celery	0.2 ppm
Cucumber	2.0 ppm
Cauliflower	0.2 ppm
Lettuce, head	10.0 ppm
Pepper, sweet	1.0 ppm
Radish	5.0 ppm
Strawberry	0.1 ppm
Tomato	1.0 ppm

The FAO/WHO/JMPR have recommended an Acceptable Daily Intake (ADI) of 0.1 mg/kg/day.

J. Conclusions

AgrEvo USA believes that the proposed use of propamacarb on potatoes would not pose a significant risk to human health, including that of infants and children, and is in compliance with the requirements of the Food Quality Protection Act of 1996. Moreover, the proposed tolerances for propamocarb in potato commodities, meat and milk, of 0.05 ppm, should be established.

II. Public Record

Interested persons are invited to submit comments on this notice of filing. Comments must bear a notation indicating the docket control number, [PF–716]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket control number [PF–716] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping.

Dated: February 26, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–5681 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–712; FRL–5587–7]

The Cryolite Task Force; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing regulations establishing tolerances for residues of the insecticidal fluorine compounds cryolite and/or synthetic cryolite (sodium aluminum fluoride or sodium aluminofluoride) in or on potatoes and in processed potato waste. This notice includes a summary of the petition that was prepared by the petitioner, The Cryolite Task Force.

DATES: Comments, identified by the docket control number [PF-712] must be received on or before April 11, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted either in ASCII format (avoiding the use of special characters and any form of encryption) or in WordPerfect in 5.1 file format. All comments and data in electronic form must be identified by the docket control number [PF-712]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The official record for this rulemaking, as well as the public version described above, will be kept in paper form. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2. No CBI should be submitted through e-mail. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: William Jacobs, Acting, Product Manager 14, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 219, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305-6600; e-mail: jacobs.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition from The Cryolite Task Force c/o Gowan, P.O. Box 5568, Yuma, AZ 85366. The petition proposes, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR 180.145 to renew the regulations that established tolerances for the insecticidal fluorine compounds cryolite and/or synthetic cryolite in or on potatoes at 2.0 parts per million (ppm) and processed potato waste at 22 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) (Pub. L. 104-170), The Cryolite Task Force included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of The Cryolite Task Force; EPA is in the process of evaluating the petition. As required by section 408(d)(3), EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for purposes of clarity.

I. The Cryolite Task Force's Petition Summary

This petition is submitted by the Cryolite Task Force (Consortium No. 62569), under section 408 of the FFDCA, as most recently amended by the FQPA.

This submission amends petitions PP 9F3739 and FAP 1H5604 by providing the additional information specified by the FQPA. A permanent tolerance is proposed for residues of the insecticide sodium aluminofluoride (cryolite and/or synthetic cryolite) in or on the raw agricultural commodities (RAC) potatoes, as provided by the new FFDCA section 408. In addition, the petitioner proposes that EPA establish a permanent tolerance for residues of cryolite in processed potato waste, as provided under the new FFDCA section 408.

Time-limited tolerances for residues of sodium aluminofluoride (cryolite and/or synthetic cryolite) in/on potatoes and processed potato waste were initially granted on May 5, 1993. These tolerances expired on May 6, 1996. A time limitation was required initially for these regulations because a chronic dog feeding study and a two-generation rat reproduction study were outstanding. These two studies were submitted and were found acceptable in reviews dated April 13, 1994 (chronic dog) and February 24, 1995 (rat reproduction). In the Federal Register of May 8, 1996 (61 FR 20781) (FRL–5362–6), EPA proposed establishing permanent tolerances of 2 ppm and 22 ppm for residues of cryolite in/on potatoes and processed potato waste, respectively. A 30–day comment period was specified by the Agency for these proposed regulations. However, prior to publication of final regulations, the FQPA specified additional requirements for tolerance petitions. This submission amends PP 9F3739 and FAP 1H5604 by providing the additional information specified.

A. Residue Data

1. *Name, identity, and composition of the residue.* Cryolite (sodium aluminofluoride, sodium hexafluoroaluminate or sodium aluminum fluoride) is a fluorine-containing insecticide which is found in naturally occurring mineral deposits and also is produced synthetically.

Empirical Formula: Na_3AlF_6
Molecular Weight: 209.97
CAS Registry No.: 15096-52-3
OPP Chemical Code: 075101

A Reregistration Eligibility Decision (RED) was issued for cryolite in August 1996. As documented in the May 8, 1996 Federal Register and reiterated in the RED, the Agency has determined that plant residues are inorganic surface residues of cryolite, measured as total fluoride; and that the residue of concern in animals also is total fluoride.

Provisions in the FQPA which are relevant to degradates or metabolites of pesticide chemical residues are not applicable to elemental fluorine.

2. *Magnitude of the residue in plants.* As documented in the May 8, 1996 Federal Register and reiterated in the RED, the Agency has concluded that complete and acceptable crop residue data are available to support the proposed tolerance of 2 ppm in or on potatoes.

Data previously reviewed by EPA show background levels of fluoride in untreated potatoes ranging from 0.14 ppm to 0.31 ppm. Levels of fluoride found in treated potatoes ranged from 0.18 ppm to 0.94 ppm.

3. *Magnitude of the residue in processed food/feed.* As documented in the May 8, 1996 Federal Register and reiterated in the RED, EPA has concluded that an acceptable potato processing study supports the proposed tolerance of 22 ppm in or on processed potato waste. This study indicates that cryolite residues concentrated 11x in potato peels/potato waste processed from potatoes treated at a 6.7x exaggerated rate. Residues did not concentrate in potato chips, flakes, or granules.

4. *Directions for use.* Labeling has been approved for foliar application to potatoes at up to 11.5 lbs. active ingredient (a.i.) per acre, with a maximum seasonal application of 92 lbs. a.i. per acre.

5. *Analytical method.* EPA concluded in the May 8, 1996 Federal Register and reiterated in the cryolite RED that adequate methodology is available for data collection and tolerance enforcement. Methods for both plant residues and animal tissues have undergone successful Agency validation and will be published in PAM, Vol. II. Using these methods, total fluoride is determined using a pH/ion meter with a fluoride-specific electrode. The limit of quantitation is 0.05 ppm. The residue analytical method does not distinguish between naturally occurring fluoride and fluoride resulting from agricultural use of cryolite. Current FDA multi-residue screening protocols are not appropriate for inorganic fluoride residues.

6. *Practical methods for removing residues.* Plant residues are inorganic surface residues of cryolite. Data previously submitted in FAP 1H5604 show that washing and peeling are effective methods of removing these residues.

7. *Plant metabolism.* EPA concluded in the May 8, 1996 Federal Register and reiterated in the cryolite RED that the qualitative nature of the residue in plants is understood and that plant residues are inorganic surface residues

of cryolite which are measured as fluoride.

8. *Animal metabolism*. EPA concluded in the May 8, 1996 Federal Register and reiterated in the cryolite RED that cryolite metabolism in animals manifests itself as free fluoride, that the qualitative nature of the residue is understood and that total fluoride is the residue of concern.

9. *Magnitude of the residue in meat, milk, poultry and eggs*. EPA concluded in the May 8, 1996 Federal Register and reiterated in the cryolite RED that there is no reasonable expectation of finite fluoride residues in ruminant or poultry tissues as a result of livestock ingestion of cryolite.

B. Toxicological Data

The cryolite RED concluded that the toxicological data base was adequate for a reregistration eligibility decision for numerous crop uses, including potatoes. No additional toxicology requirements were specified in the RED. The cryolite residue of toxicological concern is fluoride; and health effects identified for fluoride in humans and animals are skeletal and dental fluorosis. Dental fluorosis (mottling of tooth enamel) is not considered to be an adverse effect.

Further, the Agency has determined that although fluoride accumulation is demonstrated in a number of studies, the accumulation itself is not considered an adverse effect.

1. *Acute toxicity*. A rat acute oral toxicity study (MRID 00138096) showed an LD_{50} greater than 5,000 milligrams/kilograms (mg/kg). A rabbit acute dermal toxicity study (MRID 00128107) demonstrated an LD_{50} of 2,100 mg/kg. An $LC_{50} > 2.06$ mg/L and < 5.03 mg/L was seen in an acute inhalation study with rats (MRID 00128107). Technical cryolite is a moderate eye irritant in rabbits (MRID 00128106). Cryolite is not a skin irritant to rabbits (MRID 00128106) and is not a dermal sensitizer to guinea pigs (MRID 00138097).

2. *Subchronic toxicity*. Cryolite was tested in a 28-day range-finding feeding study in rats (MRID 00128109) at dose levels of 0, 250, 500, 1,000, 2,000, 4,000, 10,000, 25,000, and 50,000 ppm in the diet (representing approximately 0, 25, 50, 100, 200, 400, 1,000, 2,500 and 5,000 mg/kg/day). The only compound related effect seen in this study was a change in coloration and physical property of the teeth. A no observed effect level (NOEL) was not determined in this study. The lowest observed effect level (LOEL) is 250 ppm (25 mg/kg/day) based on dental fluorosis.

In a 90–day rat feeding study (MRID 00158000), cryolite was tested at dose levels of 0, 50, 5,000, and 50,000 ppm (corresponding to 0, 3.8, 399.2, and 4,172.3 mg/kg/day in males and 0, 4.5, 455.9, and 4,758.1 mg/kg/day in females). The NOEL was 50 ppm (3.8 mg/kg/day) for effects other than fluoride accumulation. The LOEL was 5,000 ppm (399.2 mg/kg/day) based on lesions observed in the stomach. Fluoride accumulated at all dose levels in this study. Cryolite was tested in a 90–day dog feeding study (MRID 00157999) at dose levels of 0, 500, 10,000, and 50,000 ppm (corresponding to 0, 17,368, and 1,692 mg/kg/day). The NOEL was 10,000 ppm (368 mg/kg/day). The LOEL was 50,000 ppm (1,692 mg/kg/day) for effects other than fluoride accumulation. Fluoride accumulation occurred at all dose levels.

A 21–day subchronic dermal toxicity study in rabbits (MRID 41224801) is considered invalid because it is likely that cryolite was ingested by the test animals during the study. For this reason, the systemic dermal NOEL and LOEL could not be determined from this study. EPA noted in the RED that an additional subchronic dermal study is not necessary, because based on its chemical/physical properties, cryolite would not be absorbed through the skin to any appreciable extent.

3. *Genotoxicity*. Cryolite was negative in an Ames reverse mutation test (MRID 41838401) using *Salmonella typhimurium* with and without activation at dose levels of 167, 500, 1,670, 5,000, 7,500, and 10,000 µg/plate. Cryolite was tested in an *in vitro* chromosome aberration assay (MRID 41838402) using human lymphocytes at 100, 500, and 1,000 µg/ml, with and without activation. The results were negative. Cryolite also was negative in an unscheduled DNA synthesis study (MRID 41838403) with rat hepatocytes at dose levels up to and including 50 µg/ml.

4. *Chronic toxicity*. The Agency concluded in the May 8, 1996 Federal Register and reiterated in the cryolite RED that the available information does not support the regulation of cryolite insecticides as carcinogens. The Agency has classified cryolite as a Group D chemical (not classifiable as to human carcinogenicity. Further, EPA has noted that fluoride has been the subject of a comprehensive review by the National Research Council (National Academy of Sciences Subcommittee of Health Effects of Ingested Fluoride) who concluded that ''. . .the available laboratory data are insufficient to demonstrate a carcinogenic effect of fluoride in animals'' and that ''. . .the weight of evidence from more that 50 epidemiological studies does not support the hypothesis of an association between fluoride exposure and increased cancer risk in humans.'' As stated in the May 8, 1996 Federal Register and reiterated in the cryolite RED, the Agency is in agreement with the conclusions reached by the National Academy of Science (NAS).

The following specific chronic/oncogenicity studies are included in the cryolite toxicology data base:

A 2–year bioassay in B6C3F1 mice (HED DOC No. 009682) was conducted by the National Toxicology Program (NTP) using sodium fluoride as the test material at dose levels of 0, 25, 100, and 175 ppm, in water, representing 0, 2.4, 9.6, and 16.7 mg/kg/day in males and 0, 2.8, 11.3, and 18.8 mg/kg/day in females. The NOEL was less than 25 ppm (2.4 mg/kg/day). The LOEL was 25 ppm (2.4 mg/kg/day) based on attrition of the teeth in males, discoloration and mottling of the teeth in males and females, and increased bone fluoride in both sexes. NTP considered that there was no evidence of carcinogenic activity in male and female mice.

A 2–year bioassay in F344/N rats (HED DOC No. 009682) also was conducted by the NTP using sodium fluoride as the test material at dose levels of 0, 25, 47, 100, and 175 ppm, in water, representing 0, 1.3, 5.2, and 8.6 mg/kg/day in males and 0, 1.3, 5.5, and 9.5 mg/kg/day in females. Osteosarcoma of the bone was observed only in 1 male of 50 (1/50) in the 100 ppm group and in 3 of 80 (3/80) males in the 175 ppm group. The NOEL was less than 25 ppm (1.3 mg/kg/day). The LOEL was 25 ppm (1.3 mg/kg/day) based on mottling of teeth, dentine incisor dysplasia, increased serum, urine and bone fluoride levels in males and females and incisor odontoblast and incisor ameloblast degeneration in males. NTP considered that there was ''equivocal evidence'' of carcinogenic activity in male rats in this study and ''no evidence'' of carcinogenic activity in female rats.

EPA concluded in the May 8, 1996 Federal Register and reiterated in the cryolite RED that the NTP studies utilizing sodium fluoride in lieu of cryolite satisfy the guideline study requirements for both the rodent chronic feeding study and the rat carcinogenicity study. Fluoride has been identified as the residue of toxicological concern in cryolite and synthetic cryolite and these compounds act as free fluoride. It should be noted that the NTP studies, which utilized freely soluble NaF represent a worst-case toxicological scenario on a ppm basis compared to what would be expected with cryolite *per se*, from which fluoride ion dissociation is much more limited.

A 1-year chronic dog feeding study (MRID 42575101) was conducted with cryolite at dose levels of 0, 3,000, 10,000, and 30,000 ppm, representing 0, 95, 366, and 1,137 mg/kg/day in males and 0, 105, 387, and 1,139 mg/kg/day in females (in terms of fluoride, the doses are 0, 51, 198, and 614 mg F/kg/day for males and 0, 57, 209, and 615 mg F/kg/day for females). The NOEL was less than 3,000 ppm (95 mg/kg/day in males and 105 mg/kg/day in females). The LOEL was 3,000 ppm based on increases in emesis, nucleated cells in males, renal lesions, and a decrease in urine-specific gravity in females.

5. *Reproductive toxicity.* A two-generation rat reproduction study (MRID 43387501) was conducted with cryolite at dietary dose levels of 0, 200, 600, and 1,800 ppm (representing 0, 14, 42, and 128 mg/kg/day for males and 0, 16, 49, and 149 mg/kg/day for females, respectively, during premating). The systemic toxicity NOEL was not determined. The LOEL for systemic toxicity was 200 ppm (15 mg/kg/day) based on dental fluorosis. The NOEL and LOEL for reproductive toxicity were 600 and 1,800 ppm, respectively (46 and 138 mg/kg/day) based on decreased pup body weights.

The National Research Council (NRC) has reviewed the potential for reproductive effects from fluoride *per se*. In the report Health Effects of Ingested Fluoride, the NRC concluded that:

> There have been reports of adverse effects on reproductive outcomes associated with high levels of fluoride in many animal species. In most of the studies, however, the fluoride concentrations associated with adverse effects were far higher than those encountered in drinking water. The apparent threshold concentration for inducing reproductive effects was 100 mg/L in mice, rats, foxes and cattle; 100-200 mg/L in minks, owls and kestrels; and over 500 mg/L in hens. Based on these findings, the subcommittee concludes that the fluoride concentrations associated with adverse reproductive effects in animals are far higher than those to which human populations are exposed. Consequently, ingestion of fluoride at current concentrations should have no adverse effects on human reproduction.

6. *Developmental toxicity.* A developmental toxicity study was performed with cryolite in rats (MRID 00128112) at dose levels of 0, 750, 1,500, and 3,000 mg/kg/day (gavage). The NOEL for both developmental and maternal toxicity was 3,000 mg/kg/day. At this dose level, the only observation was whitening of the teeth of dams. A developmental toxicity study was conducted in female mice (MRID 42297902) with cryolite at dose levels of 0, 30, 100, and 300 mg/kg/day (gavage). The NOEL for maternal toxicity was 30 mg/kg/day and the LOEL was 100 mg/kg/day based on a single mortality in this group. Fetuses at 300 mg/kg/day exhibited bent ribs and bent limb bones. The NOEL for developmental toxicity was 100 mg/kg/day. The LOEL was 300 mg/kg/day based on an increase in bent ribs and bent limbs. A range-finding developmental toxicity study in female rabbits (MRID 42297901) tested cryolite at dose levels of 0, 10, 30, 100, 300, and 1,000 mg/kg/day (gavage). The NOEL for maternal toxicity was determined to be 10 mg/kg/day and the LOEL was 30 mg/kg/day based on an increased incidence of soft stool and dark colored feces and decreased defecation and urination. The NOEL for developmental toxicity was 30 mg/kg/day. The developmental LOEL could not be assessed due to excessive maternal toxicity at dose levels of > 30 mg/kg/day.

7. *Metabolism/metabolite toxicity.* As noted in the May 8, 1996 Federal Register and reiterated in the RED, cryolite behaves toxicologically as free fluoride. That is, dissociation produces free fluoride ions which are assimilated into bone. There are numerous references in the open literature concerning the metabolism of cryolite and other fluoride salts. The National Research Council concluded in their 1993 comprehensive report entitled ''Health Effects of Ingested Fluoride'' that fluoride is readily absorbed by the gut and rapidly becomes associated with teeth and bones. The remaining fluoride is eliminated almost exclusively by the kidneys with the rate of renal clearance related directly to urinary pH.

8. *Endocrine effects.* The two-generation rat reproduction study, the rat, rabbit and mouse developmental studies and the dog chronic studies summarized above did not demonstrate any effects with cryolite that are similar to those produced by naturally occurring estrogens, or other endocrine effects. No endocrine effects were determined in the rat and mouse NTP studies.

In addition, it should be noted that national and international regulatory organizations (U.S. EPA Office of Water, U.S. DHHS, the Canadian Government, and the World Health Organization) have assessed potential health risks from exposure to fluoride. EPA has concluded that the endpoints and estimated effect levels documented by these organizations are similar and that the health effects of fluoride in animals and humans include dental and skeletal fluorosis. Endocrine effects have not been recognized as toxicological endpoints for fluoride by any worldwide regulatory authority.

C. Aggregate Exposure

1. *Dietary exposure-food.* As noted in the May 8, 1996 Federal Register and reiterated in the RED, the Agency has estimated dietary exposure to cryolite using reassessed tolerances for all crops (including the proposed tolerances for potatoes) and percent of crop treated assumptions. In the RED, EPA estimated dietary exposure to cryolite from all crops to be approximately 0.020 mg/kg/day for the U.S. population, 0.024 mg/kg/day for children 1-6, 0.015 mg/kg/day for children 7-12, and 0.028 mg/kg/day for nursing females 13+ years. For the highest exposed subgroup (females 20 years old and over), the Agency estimated exposure of 0.038 mg/kg/day (61 FR 20781). The Agency estimated dietary exposure resulting from the specific use of cryolite on potatoes to be approximately 0.00016 mg/kg/day. The Task Force believes that these exposure estimates in fact overstate actual dietary exposure since cryolite tolerance levels, rather than residues actually present at the consumer level were used by EPA in the exposure assessments.

2. *Dietary exposure- drinking water.* In the Environmental Fate Assessment conducted for the RED, the Agency concluded that the use of cryolite should have negligible impacts on fluoride levels in ground and surface water. For this reason, the contribution of cryolite to potential exposure to fluoride from drinking water need not be considered in the aggregate risk assessment.

However, fluoride is intentionally supplemented to drinking water for prevention of dental caries and may also be present at natural background levels. The U.S. Public Health Service recommends an optimal fluoride concentration of 0.7 to 1.2 mg/L to prevent dental caries and minimize dental fluorosis.

Fluoride levels in public drinking water are regulated under the Safe Drinking Water Act. A Maximum Concentration Limit (MCL) of 4.0 mg/L (0.114 mg/kg/day) has been established. EPA has previously estimated that levels of fluoride in/on food from the agricultural use of cryolite plus fluoride levels in U.S. drinking water supplies results in a daily dietary intake of fluoride of approximately 0.095 mg/kg/day. This is substantially less than the Maximum Concentration Limit (MCL) of 4.0 mg/L (0.144 mg/kg/day), a level which provides no known or anticipated adverse health effect as determined by the Surgeon General.

As noted in the May 8, 1996 Federal Register and reiterated in the RED, the Agency has concurred with the findings

of the Surgeon General that adverse health effects have not been found in the U. S. population below 8 mg F/L (0.23 mg/kg/day).

3. *Non-dietary exposure*. Cryolite is used almost exclusively as an agricultural crop protection insecticide. Conceivably, cryolite also could be used in outdoor homeowner/residential sites for insect control in ornamentals and shade trees. Cryolite is not registered for either lawn or crack and crevice treatments. EPA concluded in the RED that a post-application exposure assessment for cryolite (including both occupational and residential exposure) was not appropriate since no toxicological endpoints relevant to non-dietary exposure have been identified for cryolite. The Task Force concludes that non-dietary exposure represents a negligible component of potential aggregate exposure to cryolite and need not be considered in the aggregate risk assessment.

D. Cumulative Effects

The residue of toxicological concern in cryolite is fluoride. Although fluoride supplements in drinking water are not considered to be pesticidal substances, the dietary contribution of drinking water to overall fluoride exposure has been discussed elsewhere in this summary. Current tolerances for insecticidal fluorine-containing compounds are limited to cryolite and synthetic cryolite. For this reason, consideration of potential cumulative effects of residues from pesticidal substances other than sodium aluminofluoride with a common mechanism of toxicity are not applicable.

E. Safety Determination

1. *U.S. population*. As discussed above, non-dietary exposure to cryolite is negligible. For dietary exposure, EPA has concluded that rather than establishing a traditional Reference Dose (RfD), a weight-of-the-evidence risk assessment is a more appropriate approach for cryolite. The toxicological endpoint of concern for dietary exposure to cryolite is skeletal fluorosis. EPA has approximated that total dietary fluoride levels in food plus drinking water is 0.095 mg/kg/day. Of this total exposure, the dietary (food) contribution is about 0.020 mg/kg/day for the U.S. population, and 0.038 mg/kg/day for the highest exposed subgroup (females 20 years old and over). The proposed potato tolerances have been estimated by EPA to contribute approximately 0.00016 mg/kg/day to total dietary exposure. These exposure estimates likely overstate actual dietary exposure, since marketbasket residue levels for cryolite have not been considered. As noted above, the Agency has concurred with the findings of the Surgeon General that adverse health effects (skeletal fluorosis) have not been found in the U.S. population below 8 mg F/L (0.23 mg/kg/day).

2. *Infants and children*. EPA has concluded previously that in rats, the developmental NOEL for cryolite is 3,000 mg/kg/day (1,584 mg/kg/day F), that in mice, the developmental NOEL is 100 mg/kg/day (52.8 mg/kg/day F), and that in rabbits, the developmental NOEL is 30 mg/kg/day (15.8 mg/kg/day F). The NOEL for reproductive toxicity of cryolite determined in a 2-generation rat reproduction study was determined by the Agency to be 46 mg/kg/day (24.3 mg/kg/day F).

These data show clearly that no additional margin of safety is required for exposure of infants and children to cryolite. The developmental NOEL ranges from more than 166x (rabbit) to more than 16,000x (rat) for the maximum combined exposure of infants and children to residues of fluoride from all agricultural uses of cryolite plus drinking water. The reproductive NOEL is about 256x greater than maximum combined exposure of infants and children to residues of fluoride.

F. International Tolerances

No Codex, EC or other international tolerances are in effect for cryolite; thus, potential dietary exposure to fluoride from the agricultural use of cryolite on crops would not include imported foodstuffs.

II. Public Record

A record has been established for this notice under docket control number [PF–712] (including comments and data submitted electronically as described below). A public version of the record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–6015 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–715; FRL–5589–6]

Zeneca Ag Products; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of three pesticide petitions proposing the establishment of tolerances for residues of azoxystrobin (not accepted by ANSI) in or on raw agricultural commodities of grape (pesticide petition (PP) 5F4541), pecan (PP 6F4642), and tomato, peach, banana, peanut, and wheat (PP 6F4762). This notice includes a summary of the petitions that was prepared by the petitioner, Zeneca Ag Products.

DATES: Comments, identified by the docket control number [PF–715], must be received on or before, April 11, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. S.W., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Comments and data will also be accepted on disks in WordPerfect 5.1 file format or in ASCII file format. All comments and data in electronic form must be identified by docket control number [PF–715]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below this document.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Product Manager (22), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, 703–305–5540, e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received three pesticide petitions (PP) 5F4541, 6F4642, and 6F4762 from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of azoxystrobin (methyl (*E*)–2-[2–[6–(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and the *Z*-isomer of azoxystrobin (methyl (*Z*)–2–[2–[6–(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) in or on the following raw agricultural commodities:

Commodity	Part per million (ppm)
Grapes	1.0 ppm
Pecans	0.01 ppm
Tomato	0.2 ppm
Tomato paste	0.6 ppm
Peanut	0.01 ppm
Peanut oil	0.03 ppm
Peanut hay	1.5 ppm
Peach	0.80 ppm
Banana (whole fruit including peel)	0.5 ppm
Banana pulp	0.05 ppm
Wheat grain	0.04 ppm
Wheat bran	0.12 ppm
Wheat hay	13.0 ppm
Wheat straw	4.0 ppm
Cattle, fat	0.01 ppm
Cattle, mbyp	0.01 ppm
Cattle, meat	0.01 ppm
Goats, fat	0.01 ppm
Goats, mbyp	0.01 ppm
Goats, meat	0.01 ppm
Hogs, fat	0.01 ppm
Hogs, mbyp	0.01 ppm
Hogs, meat	0.01 ppm
Horses, fat	0.01 ppm
Horses, mbyp	0.01 ppm
Horses, meat	0.01 ppm
Milk	0.006 ppm
Poultry, fat	0.01 ppm
Poultry, liver	0.01 ppm
Poultry, mbyp	0.01 ppm
Poultry, meat	0.01 ppm
Sheep, fat	0.01 ppm
Sheep, mbyp	0.01 ppm
Sheep, meat	0.01 ppm

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petitions.

The proposed analytical methods for non-oily crops are gas chromatography with nitrogen-phosphorus detection (GC-NPD) or in mobile phase using high performance liquid chromatography with ultra-violet detection (HPLC-UV).

The proposed analytical method for oily crops is GC-NPD.

The proposed analytical method for animal tissue and eggs is (GC-NPD).

The analytical methods summarized above have not been validated by the Agency. Public versions of these analytical methods can be obtained from Pesticide Docket, U.S. Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460, (703)305–5805.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Zeneca Ag Products included in the petition a summary of the petition and authorization for the summary to be

published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Zeneca Ag Products; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

Petition Summary:

A. Residue Chemistry

1. *Plant metabolism*. Plant metabolism has been evaluated in three diverse crops--grapes, wheat and peanuts--which should serve to define the metabolism of azoxystrobin in a wide range of crops. Parent azoxystrobin is the major component found in crops. Azoxystrobin does not accumulate in crop seeds or fruits, in fact very low residues are found in wheat grain, banana pulp, pecan nutmeat, and peanut (nuts). Metabolism of azoxystrobin in plants is complex with more than 15 metabolites identified. These metabolites are present at low levels, typically much less than 5 percent of the Total Recoverable Residue (TRR).

Grapes: In grapes parent azoxystrobin was the major component representing between 34.6 percent and 64.6 percent TRR. The metabolism of azoxystrobin was complex, involving at least six distinct metabolic pathways, yielding a large number of minor metabolites. In total 15 metabolites have been identified. Metabolite Compound 28 (4-hydroxy-6–(2-cyanophenoxy)pyrimidine) was present at levels of up to 5.2 percent TRR, Compound 13 (2-cyanophenol) was present at levels of up to 5.7 percent, with no other metabolites present at levels greater than 4.0 percent TRR.

Wheat: In wheat the total radioactive residues in the grain were very low, ranging from 0.075 to 0.077 ppm azoxystrobin equivalents. As expected, residues in forage and straw were higher (1.02 to 2.79 ppm and 3.06 to 9.41 ppm, respectively).

The only significant residue in the grain was parent azoxystrobin (17.1 –22.0 percent TRR, 0.013 – 0.017 ppm). No metabolite was present at > 3.3 percent TRR.

In wheat straw, the major component of the residue was parent azoxystrobin (22.1 – 43.3 percent TRR, 0.676 – 4.07 ppm). In total, 14 metabolites were identified, the most significant of which was Compound 28 (8.2 – 10.4 percent TRR, 0.319 – 0.731 ppm – sum of free conjugated and bound forms). The *Z*-isomer was present at 2.1 – 3.5 percent TRR (0.064 – 0.329 ppm). No other metabolite was present at > 3.5 percent TRR.

In wheat forage azoxystrobin was the major component of the residue (54.9 – 64.7 percent TRR, 0.56 – 1.81 ppm). The two most significant metabolites were Compound 28 (3.2 – 3.7 percent TRR, 0.038 – 0.090 ppm - total) and *Z*-isomer (1.9 – 2.9 percent TRR, 0.019 – 0.081 ppm). No other metabolite was present at > 1.1 percent TRR.

Peanuts: In peanuts the total radioactive residues in the nuts and hulls were low compared to those in the foliage.

The majority of the residue in the nuts was identified as radiolabeled natural products, resulting from the mineralization of azoxystrobin in soil and subsequent incorporation of the evolved $^{14}CO_2$ via photosynthesis. The major radiolabeled natural products identified were fatty acids and these accounted for 42.1 – 49.1 percent TRR (0.101 – 0.319 ppm). Incorporation of radioactivity into simple sugars was also confirmed, accounting for 5.8 – 8.5 percent TRR (0.014 – 0.042 ppm). The presence of radiolabeled glutamic acid, an amino acid, was also confirmed. Azoxystrobin was not detected in the nut (0.001 ppm) and no individual metabolite was present at a level greater than 0.002 ppm.

In the hay the major component of the residue was parent azoxystrobin (33.0 – 43.8 percent TRR, 13.3 – 20.4 ppm). In total 10 metabolites were identified, the most significant of which was Compound 28, in both the free and conjugated forms (7.0 – 9.0 percent TRR, 2.74 – 3.62 ppm). The next most significant metabolites were Compound 13 in both the free and conjugated forms (6.3 percent TRR, 2.53 ppm) and *Z*-isomer (2.4 – 2.8 percent TRR, 0.965 – 1.30 ppm).

2. *Analytical Method. Non-oily Crops:* Azoxystrobin and *Z*-isomer residues in grape and grain samples are extracted in 90:10/acetonitrile:water. An aliquot of the extract is cleaned up by adsorption chromatography on a silica sorbent. The eluate is evaporated to dryness and taken up in a known volume of acetone for analysis by GC-NPD or in mobile phase for analysis by high performance liquid chromatography with ultraviolet detection (HPLC-UV). The limit of quantitation of the method is typically 0.02 to 0.05 ppm.

Oily Crops: Azoxystrobin and *Z*-isomer residues in oily crop samples are extracted in 90:10/ acetonitrile:water. An aliquot of the extract is cleaned up by passing through a C^{18} sep-pak. All extracts were cleaned up by gel permeation chromatography eluting through alumina and Florisil solid phase extraction cartridges. The eluate was evaporated to dryness and redissolved in a known volume of acetone for analysis by GC-NPD. The limit of quantitation of the method is typically 0.01 ppm.

Animal Tissues (Liver), Milk and Eggs: Residues of azoxystrobin in tissue and egg samples are extracted in acetonitrile . An aliquot of the extract is cleaned up by gel permeation chromatography (GPC) eluting through alumina-n and Florisil solid phase extraction cartridges. The eluate is evaporated to dryness and taken up in a known volume of acetone for analysis by GC-NPD. The limit of quantitation is typically 0.01 ppm.

Residues of azoxystrobin in milk samples are extracted in acetonitrile and partitioned in dichloromethane. The extract is again cleaned up by GPC eluting through alumina-n and Florisil solid phase cartridges. The eluate is evaporated to dryness and taken up in a known volume of acetone for analysis by GC-NPD. The limit of quantitation is typically 0.006 ppm.

3. *Magnitude of residues. Grapes:* Trials were carried out in 1994 in 5 different states: California, New York, Arkansas, Michigan, and Washington. An additional 9 trials were conducted in 1995 in New York, California (6) and Oregon and Washington.

Azoxystrobin 80WG was applied at a rate of 0.25 lb ai/A. A total of 6 applications was made. The first application was at 1 to 5 inch shoot growth, the second at 8 to 12 inch shoot growth. The third application was at bloom plus or minus 2 days. The last three applications were made at 46 (+/– 3), 35 (+/– 3), and 12–14 days prior to normal harvest.

Residues in grapes ranged between 0.20 and 0.84 ppm, supporting the proposed tolerance of 1 ppm. No concentration of residues was seen in grape juice or raisins.

Pecans: Trials were carried out between June and November 1994 in 4 different states: Alabama, Georgia, Mississippi and Texas.

Azoxystrobin 80WG was applied at a rate of 0.2 lb ai/A. A total of 6 applications was made. Applications were made from bud break up to 42 days preharvest on a three week application schedule.

Azoxystrobin and *Z*-isomer residues on pecans after the final spray were < 0.01 ppm, supporting the proposed tolerance of 0.01 ppm.

Banana: A total of 6 residue trials was conducted in Hawaii, Florida, and Puerto Rico during 1995–1996. Azoxystrobin was applied eight times at

a rate of 0.135 lb ai/A. Applications were made every 12–14 days with the last application just prior to harvest. Immediately following the second application, bags were placed over several bunches of bananas in both the treated and untreated plots. The bags were left in place until harvest. Samples of bagged and unbagged bananas were collected immediately after the last application, after the spray deposit had dried. Samples of whole bananas and banana pulp were analyzed for residues of azoxystrobin and the *Z*-isomer.

Azoxystrobin residues on bagged whole bananas sampled immediately after the last application ranged from < 0.01 to 0.15 ppm. Azoxystrobin residues on unbagged whole bananas sampled immediately after the last application ranged from 0.08 to 0.26 ppm. Residues of azoxystrobin in banana pulp were low in both bagged and unbagged bananas ranging from < 0.01 to 0.03 ppm. Residues of *Z*-isomer were < 0.01 ppm in all samples of whole bananas and banana pulp, both bagged and unbagged. These data support the proposed tolerances of 0.5 ppm in whole bananas and 0.05 ppm in banana pulp.

Peaches: Fourteen trials were carried out in North Carolina (2), California (4), Michigan (2), Texas, Arkansas, Pennsylvania (2), Georgia, and South Carolina on peaches during 1995. Azoxystrobin was applied at 0.15 lb ai/A starting at pink bud to 5 percent blossom and repeating at 5–10 day intervals. All the samples were analyzed for azoxystrobin and the *Z*-isomer.

Azoxystrobin residues on peaches, sampled 11–14 days after the final spray, ranged from 0.07 – 0.70 ppm. Residues of the *Z*-isomer were low and ranged from < 0.01 – 0.05 ppm. These data support the proposed tolerance of 0.8 ppm.

Peanuts: Twelve residue trials were carried out in Georgia (2), North Carolina (3), Oklahoma, Texas (2), Florida, and Alabama on peanuts during 1994 and in 1995. Azoxystrobin was applied as a foliar broadcast spray at 0.4 lb ai/A at two spray intervals: 8 to 9 weeks after planting and 12 to 13 weeks after planting.

Azoxystrobin residues on peanut hay, sampled about 50 days after the final spray, ranged from 0.25–0.91 ppm. Residues of the Z-isomer were low and ranged from < 0.02 – 0.38 ppm. A trace residue of azoxystrobin (0.01 ppm), was found in one nutmeat sample only, all the remainder were < 0.01 ppm. These data support the proposed tolerances of 0.01 ppm in the peanut and 1.5 ppm in peanut hay. Processing data indicate a possible 3× concentration in peanut oil supporting a proposed tolerance of 0.03 ppm.

Tomato: Sixteen residue trials were carried out in California (10), Florida (2), New Jersey, North Carolina, and Indiana on tomatoes during 1994 and 1995. Azoxystrobin was applied at 0.1 lb ai/A starting at early fruiting and repeating on a 6–8 day interval until eight applications had been made. Samples of mature fruits were taken 1 day after the final spray and analyzed for azoxystrobin and the *Z*-isomer.

Azoxystrobin residues, one day after the final spray, ranged from 0.01 – 0.16 ppm. Only traces of the *Z*-isomer ranging from < 0.01 – 0.02 ppm were found. These data support the proposed tolerances of 0.2 ppm in tomato; processing data showing a possible 3× concentration in tomato paste support a proposed tolerance of 0.6 ppm.

Wheat: Six magnitude of the residue trials were carried out on wheat in Georgia, Tennessee, Montana, Nebraska, Virginia, and Oregon during 1994. Azoxystrobin was applied twice at growth stages Zadoks 43–45 and 55–59 at 0.2 lb ai/A Samples of hay, straw and grain were analyzed for azoxystrobin and the *Z*-isomer.

Azoxystrobin residues on hay, sampled two weeks after the final spray, were 0.19 to 6.5 ppm. At harvest, 33–74 days after treatment, residues in wheat grain were low and ranged from < 0.01 – 0.03 ppm. Residues on straw ranged from 0.03 – 3.4 ppm.

A total of 16 residue trials were conducted in Mississippi, Illinois, Ohio, Wisconsin, Texas (2), Nebraska, Montana (2), North Dakota, Colorado, Kansas (2), Oklahoma, New Mexico, and California during 1995. Azoxystrobin was applied 2 times at a rate of 0.2 lb ai/A. Application timings were at Zadoks 43–45 (boot) and 30–45 days prior to grain harvest (no later than Zadoks 58, head emergence).

Azoxystrobin residues on hay sampled 13 to 33 days after the last application ranged from 0.09 to 11.1 ppm. Residues of azoxystrobin on straw sampled 36 to 52 days after the last application ranged from 0.03 to 1.31 ppm. Residues of azoxystrobin on grain sampled 36 to 52 days after the last application were low, ranging from < 0.01 to 0.06 ppm.

Residues of *Z*-isomer on hay ranged from < 0.01 to 0.8 ppm. Residues of *Z*-isomer on straw were low, ranging from < 0.01 to 0.13 ppm. Residues of the *Z*-isomer on grain were < 0.01 ppm on all samples. These data support proposed tolerances of 0.04 ppm on grain, 4.0 ppm on straw and 13 ppm on hay. Processing data indicate a possible 3× concentration in wheat bran, supporting a proposed tolerance of 0.12 ppm.

B. Toxicological Profile (Azoxystrobin Technical)

1. *Acute toxicity.*

Study Type	Study Results	Tox. Category
Acute Oral Rat	LD_{50} > 5,000 mg/kg	IV
Acute Dermal Rat	LD_{50} > 2,000 mg/kg	III
Acute Inhalation Rat	LC_{50} = 698 mg/l for females	
	LC_{50} = 962 mg/l for males	III
Eye Irritation Rabbit	Slight irritant, no corneal effects	III
Skin Irritation Rabbit	Slight irritant	IV
Skin Sensitization Guinea Pig	Not a skin sensitizer	

2. *Genotoxicity.* Azoxystrobin gave a weak clastogenic response in mammalian cells *in vitro* at cytotoxic doses. In the whole animal azoxystrobin was negative in established assays for chromosomal damage (clastogenicity) and general DNA damage, at high dose levels (≥ 2,000 mg/kg). The weak clastogenic effects seen *in vitro* are not expressed in the whole animal and azoxystrobin is considered to have no genotoxicity *in vivo*.

Assay	Type	Results
In vitro	Ames	negative
	L5178Y	weakly positive

Assay	Type	Results
.....	IVC	weakly positive
In vivo	Micronucleus	negative
.....	UDS	negative

3. *Reproductive and developmental toxicity. Reproductive toxicity.* Azoxystrobin showed no evidence of reproductive toxicity.

The No Observed Effect Level (NOEL) for toxicity was judged to be 300 ppm azoxystrobin, which for the premating period, translates into a daily dose of 32 mg azoxystrobin/kg body weight/day based on body weight reductions relative to control and liver toxicity in adult males.

The liver toxicity observed in the reproductive toxicity study was manifest as gross distension of the common bile duct accompanied by histological change. The histological changes in the intraduodenal bile duct were characterized by an increase (a hyperplasia) in the number of lining (epithelial) cells and bile duct inflammation (cholangitis). In the liver, there was an increased severity of hepatic proliferative cholangitis. The increased severity of the microscopic liver effects were confined to those animals showing gross bile duct changes, suggesting that these effects were secondary to biliary toxicity.

These observations were confined to male F0 and F1 adult rats and were not detected in female animals or in pups.

Azoxystrobin in Diet (ppm)	Dose (mg/kg/day)
60	6.5
300	32
1,500	162

Developmental Toxicity. There were no adverse effects in the rat or rabbit on the number, survival and growth of the fetuses in utero. Azoxystrobin caused no developmental toxicity in the rat or in the rabbit up to and including dose levels shown to be maternally toxic.

Study Type: Developmental Toxicity	NOEL/LEL (mg/kg/day)	Effect Description
Rabbit (by gavage)	No developmental effects. NOEL for developmental toxicity > 500 mg/kg/day. NOAEL for maternal toxicity = 50 mg/kg/day..	No developmental effects. NOAEL for maternal toxicity = 50 mg/kg/day. LEL for maternal toxicity = 150 mg/kg/day; effects were reduced body weight, clinical effects.
Rat (by gavage)	No developmental effects, NOEL = 25 mg/kg/day for maternal and fetotoxicity.	LEL for fetotoxicity is 100 mg/kg/day; effect was ''delayed ossification''. LEL for maternal toxicity 100 mg/kg/day; effect was reduced body weight.

4. *Subchronic Toxicity*. Azoxystrobin is of low subchronic toxicity in 21–day dermal testing.

5. *Chronic Toxicity. Oncogenicity - Rat:* Azoxystrobin is non-oncogenic in the rat.

Azoxystrobin in Diet (ppm)	Male rat (mg/kg/day)	Female rat (mg/kg/day)
60	3.6	4.5
300	18.2	22.3
1500/750	82.4	117.6

The NOEL/NOAEL for azoxystrobin in the rat is 18 mg/kg bwt/day.

Zeneca suggests that this chronic rat study has the lowest No Observed Adverse Effect Level (NOAEL) of the chronic studies conducted with azoxystrobin. The Reference Dose (RfD) for azoxystrobin should be based upon the NOAEL of 18 mg/kg bwt/day with an uncertainty factor of 100, RfD = 0.18 mg/kg bwt/day.

A dietary inclusion level of 1,500 ppm was established as a Maximum Tolerated Dose (MTD) in female rats, where decrements in body weight gain relative to control of approx. 19 percent at week 53 and 11 percent at week 105 were observed. The maximum reduction relative to control was seen at week 73 (approx. 20 percent). In male rats this dose level was in excess of an MTD (biliary toxicity), resulting in a reduction in the top dose level from 1500 ppm to 750 ppm for the second year of the study. Reductions in male body weight gain relative to control animals were seen throughout the duration of the study with a maximum reduction of approx. 11 percent in the first year (at week 45), continuing into the second year (maximum reduction of approx. 13 percent at week 99).

In the rat, there was no statistical increase in the number of tumor-bearing animals, animals with malignant tumors, benign tumors, multiple tumors, single tumors or metastic tumors in animals treated with azoxystrobin at dose levels of up to 1,500 ppm (up to 117.1 mg azoxystrobin/kg bwt/day) for 2 years.

Oncogenicity - Mouse.

Azoxystrobin is non-oncogenic in the mouse.

Azoxystrobin in Diet (ppm)	Male mouse (mg/kg/day)	Female mouse (mg/kg/day)
50	6.2	8.5
300	37.5	51.3
2000	272.4	363.3

There was no increased tumor incidence or early onset of tumors in mice receiving up to 2,000 ppm azoxystrobin for up to 2 years. Dietary administration of 2,000 ppm Azoxystrobin was associated with reduced growth and food utilization.

An MTD was established in the mouse oncogenicity study based on body weight gain depression and decreased food utilization seen at the highest dose test of 2000 ppm. At this dose level body weight gain was depressed 20 percent at week 13 and 28 percent at week 53 in males, and 11 percent at week 13 and 19 percent at week 53 in females.

There was no statistically significant change or alteration in tumor incidence in the mouse attributable to treatment with azoxystrobin at dose levels of up to 2,000 ppm (up to 363.3 mg azoxystrobin/kg bwt/day) for 2 years.

One-year Feeding Study - Dog. Azoxystrobin was administered to groups of 4 beagle dogs at dose levels of 0, 3, 25 and 200 mg/kg bwt/day, as a daily oral dose.

Adaptive liver responses were observed at 25 and 200 mg/kg bwt/day which were not considered to be toxicologically significant. The adaptive liver responses were increased liver weights and increased serum liver enzyme activities in the absence of any liver histopathology. Liver weights were increased in both sexes at 200 mg/kg bwt/day, and in females at 25 mg/kg bwt/day. Plasma alkaline phosphatase, cholesterol and triglyceride levels were elevated at the top dose in both sexes, with plasma albumin elevated at 200 mg/kg/day in males only. Plasma triglycerides were also elevated at 25 mg/kg bwt/day in males only. No such effects were observed at 3 mg/kg bwt/day.

These changes were not accompanied by any histopathological change in the liver. Such changes in the absence of signs of a toxic lesion are generally considered to reflect the liver compensating for the increased work it must perform in metabolizing the test compound. While they can be considered to be effects of azoxystrobin treatment, these changes are of no toxicological significance.

The NOEL in this study was 200 mg/kg bwt/day.

6. *Animal metabolism*. Azoxystrobin is well absorbed and completely metabolized in the rat. Excretion is rapid and there is no accumulation of azoxystrobin or metabolites. There are no significant plant metabolites that are not animal metabolites.

7. *Metabolite toxicology.* Toxicity testing results on the azoxystrobin parent compound are indicative of the toxicity of all significant metabolites seen in either plants or mammals.

C. Aggregate Exposure

1. *Dietary exposure.* a. *Food*. For the purpose of assessing the potential dietary exposure from these proposed tolerances, EPA generally estimates aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the tolerances proposed for azoxystrobin as listed above. The TMRC is obtained by multiplying the tolerance level residue for each food by the consumption data which estimate the amount of food and food products eaten by the U.S. population and various population subgroups. Animal feeds (such as wheat forage) are fed to animals; thus, exposure of humans to residue in the animal feeds might result if such residues are transferred to meat, milk or poultry. Animal metabolism and feeding studies indicate that low residues may occur in meat and milk when azoxystrobin is used as proposed. The TMRC for each animal product is obtained by multiplying the tolerance (worst-case) level of residues possible in meat and milk by the food consumption data which estimate the amount of food and food products eaten by various population subgroups. These are very conservative assumptions--100 percent of foods, meat and milk products will contain azoxystrobin residues and those residues would be at the level of the tolerance--that produce a very conservative overestimate of human dietary exposure. Zeneca performed chronic dietary exposure analyses using the food consumption data in the U.S. Department of Agriculture's (USDA) Nationwide Food Consumption Survey for 1989 through 1992 combined and Technical Assessment System Inc.'s ''EXPOSURE 1'' analysis software. The potential exposure for the U.S. population is 0.0009 mg/kg bwt/day. Potential exposure for children's population subgroups ranged from 0.0013 mg/kg bwt/day for children 7–12 Years Old to 0.0029 mg/kg bwt/day for children 1–6 Years Old.

b. *Drinking water.* Azoxystrobin does not leach. It is unlikely that azoxystrobin could be present in drinking water or groundwater. Therefore it is not appropriate to assess aggregate exposure from drinking water.

Azoxystrobin is an analogue of naturally occurring strobilurins which are sensitive to sunlight (photolysis). Azoxystrobin, although more stable than the strobilurins, has a favorable environmental profile. Azoxystrobin is degraded rapidly under agricultural field conditions with a soil half-life of less than 2 weeks. The compound is non-volatile and does not leach, but it is very susceptible to photolysis. Photolysis accounts for the majority of the initial loss of the compound, the remainder being degraded microbially.

Based on laboratory data the predicted mobility of azoxystrobin in soil is relatively low. The soil adsorption coefficient corrected for soil organic matter (K_{oc}) ranges from 300 to 1690. Consequently, the potential mobility is low to medium. As a measure of possible mobility the standard GUS index value is 1.0; which equates to a non-leacher.

Results from field trials support these laboratory data. After using ^{14}C-labeled azoxystrobin as a ''worst case'' field application - bare surface, irrigated and poorly retentive soil (light texture and low organic matter content), the compound was retained in the upper 2 inches or so of the soil throughout its lifetime.

As azoxystrobin does not leach it is very unlikely to enter into water bodies except by accidental, direct over-spray. However, the compound in laboratory tests degrades with a half-life of approximately 7 weeks in flooded anaerobic soils. There is also potential for photolytic degradation in natural aqueous environments; the aqueous photolysis half-life is 11–17 days.

2. *Non-dietary exposure.* Other potential sources of exposure of the general population to residues of pesticides is non-occupation exposure. Since the proposed registrations for azoxystrobin are limited to commercial crop production, turf farms and golf courses, the potential for non-occupational exposure to the general population is not expected to be significant.

D. Cumulative Effects

Azoxystrobin is a new class of chemistry for pesticides, a beta-methoxyacrylate fungicide. Azoxystrobin has the same biochemical mode of action as the naturally occurring strobilurins, inhibition of electron transport. Since there are no other registered pesticides in this chemical class or with this mode of action or mechanism of action, cumulative exposure assessment is not appropriate at this time.

No evidence or information exists to suggest that toxic effects produced by azoxystrobin would be cumulative with those of any other chemical compounds.

E. Safety Determination

1. *U.S. population in general.* Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, Zeneca estimates that the aggregate exposure to azoxystrobin will utilize 0.5 percent of the RfD for the U.S. population. This chronic dietary exposure analysis is based on food consumption for the combined years 1989–1992 in the USDA's Nationwide Food Consumption Survey and analysis using Technical Assessment Systems, Inc.'s ''EXPOSURE 1'' analysis software. Generally there are no concerns for exposures below 100 percent of the RfD. The EPA defines the RfD to represent the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of azoxystrobin Zeneca has considered the 2–generation reproduction study in the rat and the developmental toxicity studies in the rat and rabbit. Azoxystrobin showed no evidence of reproductive toxicity. Azoxystrobin caused no developmental toxicity in the rat or rabbit up to and including dose levels shown to be maternally toxic. There were no adverse effects, in the rat or rabbit, on the number, survival and growth of the fetuses in utero.

Based on the current toxicological data requirements, the database relative to pre- and post- natal effects for children is complete. Further, azoxystrobin shows no evidence of reproductive or developmental toxicity, therefore we suggest that use of an additional uncertainty factor is not warranted and that the RfD of 0.18 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumption described above, Zeneca concludes that the percent of the RfD that will be utilized by aggregate exposure to residues of azoxystrobin ranges from 0.8 percent for the population subgroups Nursing infants and children 7–12 years old up to 1.6 percent for the population subgroup Children 1–6 years old. Zeneca concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to azoxystrobin residues.

F. International Tolerances

There are no Codex Maximum Residue Levels established for azoxystrobin.

II. Public Record

Interested persons are invited to submit comments on this notice of filing. Comments must bear a notation indicating the docket control number, [PF–715]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket control number [PF–715] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII files avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–5683 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181035; FRL 5591–3]

Mancozeb; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade, and Consumer Protection (hereafter referred to as the ''Applicant'') to use the pesticide, mancozeb (CAS 8018–01–7), formulated as Dithane DF, to treat up to 5,000 acres of ginseng to control stem and leaf blight. Since this request proposes a use which has been requested or granted in any 3 previous years, and a complete application for registration and petition for tolerance has not yet been submitted to the Agency; and since mancozeb has also been the subject of a Special Review, EPA is soliciting public comment before making the decision whether or not to grant the exemption, in accordance with 40 CFR 166.24(a)(5) and (6).

DATES: Comments must be received on or before March 27, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181035,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1

file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181035]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of mancozeb on ginseng to control stem and leaf blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, *Alternaria blight* rarely kills the ginseng root, which is the marketed portion; however, loss of the foliage results in significant root yield loss in a harvested crop, and retards root growth and overwintering ability in younger crops. Infestations of *Alternaria blight* in one season greatly increase the potential for epidemics in subsequent seasons, since the fungus remains in the infected plant debris. Rovral 50W, the only fungicide carrying a section 3 label for use against *Alternaria blight* on ginseng, is no longer effective since *Alternaria panax* has developed a resistance to it. If not controlled, *Alternaria blight* can be expected to infest all of Wisconsin's 5,000 acres of ginseng and growers will suffer significant economic loss.

Under the proposed exemption, 2.0 lbs of product (1.5 lbs of a.i.) per acre may be used on up to 5,000 acres. A maximum of 12 applications at a minimum of 7–day intervals may be made by ground equipment. Therefore, use under this exemption could potentially result in application of up to 120,000 lbs. product (90,000 lbs. a.i.) total.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the Federal Register and solicit public comment on an application for a specific exemption if the requested chemical has been subject to a Special Review, and is intended for a use that could pose a risk similar to the risk posed by any use of the pesticide which is or has been subject of the Special Review. [40 CFR 166.24 (a)(5)].

The Agency initiated a Special Review of the ethylene bisdithiocarbamate (EBDC) fungicides on July 17, 1987, which includes mancozeb. A notice of final determination was issued March 2, 1992. The Agency took this action based on an assessment of the risks from exposure to ethylenethiourea (ETU) present in, or formed as a result of metabolic conversion from pesticide products containing the active ingredient mancozeb. ETU, a potential human carcinogen, teratogen, and thyroid toxicant, is present as a contaminant, degradation product, and metabolite of all the EBDC pesticides. The Agency concluded that the estimated cumulative risk of 10^{-5} from all current 55 food uses was unacceptable and, therefore, canceled the following 11 food uses: apricots, carrots, celery, collards mustard greens, nectarines, peaches, rhubarb, spinach succulent beans and turnips. These cancellations reduce estimated lifetime dietary risk to 1.6×10^{-6} which the Agency has determined does not outweigh the benefits of the 44 retained uses.

The regulations also require the Agency to publish a notice of receipt in the Federal Register and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24(a)(6)]. Exemptions for the use of mancozeb on ginseng have been requested for the past ten years (1987 – 1996). The registrant, Rohm and Haas, has indicated that they intend to pursue a registration in cooperation with IR-4 this year, and it is expected that an application for registration will be submitted to the Agency before the end of 1997.

A record has been established for this notice under docket number [OPP–181035] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Wisconsin Department of Agriculture, Trade, and Consumer Protection.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: February 28, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–6014 Filed 3–11–97 8:45 am]

BILLING CODE 6560–50–F

[OPP–181036; FRL 5593–6]

Propamocarb Hydrochloride; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Pennsylvania Department of Agriculture and the California Department of Pesticide Regulation (hereafter referred to as the ''Applicants'') to use the pesticide propamocarb hydrochloride (CAS 25606–41–1) to treat potentially up to 5,500 acres in Pennsylvania and 190,000 acres in California of tomatoes to control immigrant strains of late blight which are resistant to historically used control materials. The Applicants propose the first food use of an active ingredient therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before March 27, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181036,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181036]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8326; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of propamocarb hydrochloride on tomatoes to control late blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Recent failures to control late blight in tomatoes as well as potatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight *Phytophthora infestans*, which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the U.S. were previously controlled by treatment with metalaxyl. The Applicants state that presently, there are no fungicides registered in the U.S. that will provide adequate control of the immigrant strains of late blight. The Applicants state that the requested chemical has been shown to be effective against these strains of late blight. The active ingredient holds current registrations throughout many European countries for control of this disease. The Applicants indicate that at least a 50 percent yield reduction is expected based on the current infestation. Net revenues are expected to be reduced by over $500 million for the affected acreage without the use of the requested chemical.

The Applicants propose to apply propamocarb hydrochloride, manufactured by AgrEvo USA Company, as Tattoo C, at a maximum rate of 0.9 lbs. a.i. (2.3 pt of product) per acre by chemigation, ground or air, with a maximum of 5 applications per season. A 7–day Preharvest Interval (PHI) will be observed. Use under these exemptions could potentially amount to a maximum 175,950 lbs. of propamocarb hydrochloride.

This notice does not constitute a decision by EPA on the applications. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing the first food use of an active ingredient. Such notice provides for opportunity for public comment on the applications. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

A record has been established for this rulemaking under docket number [OPP–181036] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing.

The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Pennsylvania Department of Agriculture and the California Department of Pesticide Regulation.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: February 28, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–6013 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–721; FRL–5592–7]

BASF Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of pesticide petitions proposing the tolerances for residues of the pesticide pyridaben, [2-tert-butyl-5-(4-ter-butylbenzylthio)-4-chloropyridazin-3(2*H*)-one] and its metabolites PB-7 (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl)benzylthio]-4-chloropyridazin-3(2*H*)-one) and PB-9 (2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl)benzylthio]-chloropyridazin-3(2*H*)-one). BASF is petitioning EPA for the establishment of tolerances for use of pyridaben to control certain pests on apples, pears, citrus, almonds, peaches (imported commodity), plums (imported commodity), and grapes (imported commodity). The proposed tolerances for pyridaben are: apples at 0.6 ppm, wet apple pomace at 1.0 ppm, pears at 0.75 ppm, citrus at 0.5 ppm, dried citrus pulp at 1.5 ppm, citrus oil at 10.0 ppm, almonds at 0.05 ppm, almond hulls at 4.0 ppm, peaches at 0.05 ppm, plums at 0.05 ppm, and grapes at 0.75 ppm. The proposed tolerances for pyridaben and its metabolites are: milk at 0.01 ppm, meat at 0.05 ppm, meat by-products at 0.05 ppm, and fat at 0.05 ppm. This summary was prepared by the petitioner.

DATES: Comments, identified by the docket control number [PF–721], must be received on or before April 11, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or in ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–721]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as comments concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). The CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Keigwin, Product Manager (PM) 10, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Crystal Mall #2, Rm. 210, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6788, e-mail: keigwin.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) 5F4543 (on citrus), 4E4370 (on imported commodities) and 6F4651 (apples), 6F4741 (almonds), and 6F4721 (pears) from BASF Corporation, Agricultural Products, PO Box 13528, Research Triangle Park, NC 27709. The petition proposes, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C section 346a, to amend 40 CFR part 180 to establish tolerances for the pesticide pyridaben [2-tert-butyl-5-(4-ter-butylbenzylthio)-4-chloropyridazin-3(2*H*)-one] in or on the raw agricultural commodities: apples, wet apple pomace, pears, citrus, dried citrus pulp, citrus oil, almonds, almond hulls, peaches, plums, and grapes, respectively. The petition also proposes to establish tolerances for pyridaben and its metabolites PB-7 (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl)benzylthio]-4-chloropyridazin-3(2*H*)-one) and PB-9 (2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl)benzylthio]-chloropyridazin-3(2*H*)-one) in or on the raw agricultural commodities: milk, meat, meat-by-products, and fat. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of this petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA), Pub. L. 104–170, BASF included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of BASF. EPA is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDCA, EPA is including the summary as a part of the notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Plant and Animal Metabolism

BASF Corporation notes that metabolism in plants and animals is understood.

B. Analytical Method

The proposed analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography/electron capture detector (gc/ecd).

C. Magnitude of the Residues

Nine pear residue trials were conducted in six states. Residues of pyridaben were measured by gc/ecd. The method of detection had a limit of detection of 0.05 parts per million (ppm). Residues ranged from 0.07 to 0.58 ppm.

Twelve apple residue trials were conducted in six states. Residues of

pyridaben were measured by gc/ecd. The method of detection had a limit of detection of 0.05 ppm. Residues ranged from 0.08 to 0.44 ppm.

Nineteen citrus residue trials were conducted in four states. Residues of pyridaben were measured by gc/ecd. The method of detection had a limit of detection of 0.05 ppm. Residues ranged from 0.05 to 0.42 ppm.

Eight almond residue trials were conducted in California. Residues of pyridaben were measured by gc/ecd. The method of detection had a limit of detection of 0.05 ppm. Residues were < 0.05 ppm in all trials.

Eight peach residue trials were conducted in Chile. Residues of pyridaben were measured by gc/ecd. The method of detection had a limit of detection of 0.05 ppm. Residues were < 0.05 ppm in all trials.

Six plum residue trials were conducted in Chile. Residues of pyridaben were measured by gc/ecd. The method of detection had a limit of detection of 0.05 ppm. Residues were < 0.05 ppm in all trials.

Eight grape residue trials were conducted in Chile. Residues of pyridaben were measured by gc/ecd. The method of detection had a limit of detection of 0.05 ppm. Residues ranged from < 0.05 to 0.22 ppm.

D. Toxicological Profile

1. *Acute toxicity testing. a. Acute oral toxicity (rat):* LD_{50} = 1100 milligrams/kilogram (mg/kg) in males; 570 mg/kg in females. Tox Category: III

b. Acute oral toxicity (mouse): LD_{50} = 424 mg/kg in males; 383 mg/kg in females. Tox Category: II

c. Acute dermal toxicity (rat): LD_{50} = > 2000 mg/kg in males and females. Tox Category: III

d. Acute inhalation toxicity (rat): LC_{50} = 0.66 mg/l in males; 0.62 mg/l in females. Tox Category: III

e. Primary eye irritation (rabbit): Pyridaben is a slight ocular irritant. Tox Category: III

f. Primary dermal irritation (rabbit): Pyridaben is not a dermal irritant. Tox Category: IV

g. Dermal sensitization (guinea pig): Pyridaben is not a dermal sensitizer.

2. *Acute neurotoxicity (rat):* Rats were dosed once with 0, 50, 100 and 200 mg/kg. The no observed effect level (NOEL) for systemic toxicity was determined to be 50 mg/kg for both males and females. The lowest observed effect level (LOEL) for systemic effects was determined to be 100 mg/kg in both sexes based on decreased food consumption, decreased body weight gain and increased clinical signs. The LOEL for neurobehavioral effects was determined to be 200 mg/kg in males and >200 mg/kg in females.

3. *Subchronic toxicity testing. a. 21–Day dermal (rat):* Rats were repeatedly dosed with pyridaben at 0, 30, 100, 300 and 1000 mg/kg/day for 21 days. The NOEL was determined to be 100 mg/kg/day and the LOEL 300 mg/kg/day based on decreased body weight gain in females.

b. 90–Day rodent (rat): CD rats were dosed with pyridaben at 0, 30, 65, 155 and 350 ppm in the diet for 13 weeks. The NOEL was determined to be 65 ppm (4.94 mg/kg/day) for males and 30 ppm (2.64 mg/kg/day) in females. The LOEL for males was determined to be 155 ppm (11.55 mg/kg/day) based on reduced body weight gain, reduced food consumption, reduced food efficiency, and altered clinical pathology parameters. The LOEL for females was determined to be 65 ppm (5.53 mg/kg/day) based on reduced body weight gain and reduced food efficiency.

c. 90–Day non-rodent (dog): Beagle dogs were dosed with pyridaben at 0, 0.5, 1, 4, and 16 mg/kg/day in the diet for 13 weeks. The NOEL was determined to be 1 mg/kg/day and the LOEL determined to be 4 mg/kg/day based on reduced body weight gain and an increase in clinical signs in both sexes.

d. 90–Day neurotoxicity (rat): Rats were dosed with pyridaben at 0, 30, 100, and 350 ppm in the diet for 13 weeks. The systemic NOEL was determined to be 100 ppm (equivalent to 8.5 mg/kg/day in males and 9.3 mg/kg/day in females). The systemic LOEL was determined to be 350 ppm (equivalent to 28.8 mg/kg/day in males and 31.1 mg/kg/day in females) based on decreased body weight gain, decreased food consumption and decreased food efficiency. No neuropathological effects were noted in the study.

4. *Chronic toxicity testing.* a. 1–Year non-rodent (dog): Two studies were run. In the first, beagle dogs were dosed with pyridaben at 0, 1, 4, 16 and 32 mg/kg/day in the diet for one year. In the second, beagle dogs were dosed with pyridaben at 0 and 0.5 mg/kg/day in the diet for 1 year. The NOEL was determined to be <0.5 ppm and LOEL determined to be 0.5 mg/kg/day based on increased clinical signs and decreased body weight gain in both sexes.

b. Combined rodent chronic toxicity/carcinogenicity (rat): Wistar rats were fed 0, 4, 10, 28 and 80 ppm pyridaben in the diet to assess carcinogenicity and 0, 4, 10, 28 and 120 ppm in the diet to assess chronic toxicity for 104 weeks. The NOEL was determined to be 28 ppm in both sexes (equivalent to 1.13 mg/kg/day in males and 1.46 mg/kg/day in females). The LOEL was determined to be 120 ppm in both sexes (equivalent to 5.0 mg/kg/day in males and 6.52 mg/kg/day in females) based on decreased body weight gain in both sexes and decreased alanineamino transferase (ALT) levels in males. Pyridaben was not carcinogenic under the conditions of the test.

c. Carcinogenicity in the rodent (mouse): CD-1 mice were fed 0, 2.5, 8.0, 25 and 80 ppm pyridaben in the diet for 78 weeks. The NOEL was determined to be 25 ppm in both sexes (equivalent to 2.78 mg/kg/day in both sexes). The LOEL was determined to be 80 ppm in both sexes (equivalent to 8.88 mg/kg/day in males and 9.74 mg/kg/day in females) based on decreased body weight gain, decreased food efficiency and changes in organ weights and histopathology. Pyridaben was not carcinogenic under the conditions of the test.

5. *Developmental toxicity testing. a. Developmental toxicity (rat):* Sprague-Dawley rats were dosed with 0, 2.5, 5.7, 13 and 30 mg/kg/day pyridaben in the diet from days 6 through 15 of gestation. The maternal NOEL was determined to be 4.7 mg/kg/day and the maternal LOEL was determined to be 13 mg/kg/day based on decreased body weight gain, and decreased food consumption during the dosing period. The developmental NOEL was determined to be 13 mg/kg/day and the developmental LOEL was determined to be 30 mg/kg/day based on decreased fetal body weight and an increase in incomplete ossification in selected bones.

b. Developmental toxicity (rabbit): New Zealand white rabbits were dosed with 0, 1.5, 5, and 15 mg/kg/day pyridaben in the diet from days 6 through 19 of gestation. The maternal NOEL was determined to be 5 mg/kg/day and the maternal LOEL was determined to be 15 mg/kg/day based on decreased body weight gain, and decreased food consumption during the dosing period. The developmental NOEL was determined to be <15 mg/kg/day and the developmental LOEL was determined to be <15 mg/kg/day.

c. Developmental toxicity (rabbit): Himalayan rabbits were dosed, by dermal application, with 0, 70, 170 and 450 mg/kg/day pyridaben from days 6 through 19 of gestation. The maternal systemic NOEL was determined to be 70 mg/kg/day and the maternal LOEL was determined to be 170 mg/kg/day based on decreased body weight gain, and decreased food consumption during the dosing period. The developmental NOEL was determined to be 170 mg/kg/day and the LOEL determined to be 450

mg/kg/day based on decreased ossification of the skull.

6. *Reproductive toxicity testing.* Multi-generation reproduction (rat): CD rats were dosed with 0, 10, 28 and 80 ppm pyridaben in the diet. The parental/systemic NOEL was determined to be 28 ppm in both sexes (equivalent to 2.20 mg/kg/day in males and 2.41 mg/kg/day in females). The parental/systemic LOEL was determined to be 80 ppm (equivalent to 6.31 mg/kg/day in males and 7.82 mg/kg/day in females) based on decreased body weight, decreased body weight gain and decreased food efficiency. The reproductive NOEL and LOEL were both determined to be >80 ppm in males and females.

7. *Mutagenicity testing. a.* Ames Testing: Negative

b. In vitro cytogenicity (Chinese hamster lung cells): Negative

c. In vivo micronucleus assay (mouse): Negative

d. DNA damage/repair (*E. coli*): Negative

E. Threshold Effects

Based on the available chronic toxicity data, EPA has established the Reference Dose (RfD) for pyridaben at 0.005 mg/kg/day. The RfD for pyridaben is based on a 1-year feeding study in dogs with a threshold LOEL of 0.5 mg/kg/day based on increased clinical signs and decreased body weight gain in both sexes and an uncertainty factor of 100.

F. Non-Threshold Effects

Using its Guidelines for Carcinogenic Risk Assessment, EPA has classified pyridaben as Group ''E '' for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18-month feeding study in mice and a 2-year feeding study in rats at the dosage levels tested. The doses tested were adequate for identifying a cancer risk. Thus, a cancer risk assessment is not necessary.

G. Aggregate Exposure

1. *Dietary exposure.* Since pyridaben is regulated based upon non-carcinogenic chronic toxicity, BASF conducted a DRES analysis based on anticipated residue levels determined by EPA. The anticipated residue levels were derived from the average residue levels from field trials conducted at the maximum proposed use rate and minimum pre-harvest interval, and a correction factor of 2.3 to account for all organosoluble residues as determined by EPA. This analysis demonstrates that the exposure to non-nursing infants < 1 year, the most sensitive subpopulation is approximately 73.4 percent of the RfD and to the general population exposure is approximately 11.3 percent of the RfD.

2. *''Other'' exposure.* Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the studies submitted to EPA for assessment of environmental risk, BASF does not anticipate exposure to residues of pyridaben in drinking water. There is no established maximum concentration level for residues of pyridaben in drinking water under the Safe Drinking Water Act. BASF has not estimated non-occupational exposure for pyridaben since the current registration for pyridaben is limited to commercial greenhouse use for non-food ornamental plants and the only other domestic use will be for commercial apple, pear, citrus and almond production. The potential for non-occupational exposure to the general population is considered to be insignificant.

3. *Cumulative exposure.* BASF also considered the potential for cumulative effects of pyridaben and other substances that have a common mechanism of toxicity. BASF has concluded that consideration of a common mechanism of toxicity is not appropriate at this time since there is no reliable information to indicate that toxic effects produced by pyridaben would be cumulative with those of any other chemical compounds.

H. Determination of Safety for U.S. Population

Using the exposure assumptions described in Unit I.G. of this document, BASF concludes that aggregate exposure to pyridaben will utilize approximately 11.3 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, BASF concludes that there is a reasonable certanity that no harm will result from aggregate exposure to residues of pyridaben, including all anticipated dietary exposure and all other non-occupational exposures.

I. Determination of Safety for Infants and Children

Developmental toxicity (delayed ossification) was observed in developmental toxicity studies using rats and rabbits. The NOEL's for developmental effects were established at 13 mg/kg/day in the rat study and 15 mg/kg/day in the rabbit study. The developmental effect observed in these studies is believed to be a secondary effect resulting from maternal stress (decreased body weight gain and food consumption).

In a 2-generation reproduction study in rats, pups from the high dose group, which were fed diets containing 80 ppm (equivalent to 6.31 and 7.82 mg/kg/day in male and females, respectively) gained less weight beginning on lactation day 14. Parental/systemic toxicity including decreased body weights, body weight gains and food efficiency in males, and slightly decreased body weights and body weight gains in females during lactation was also observed in the high dose group. The results of this study indicate that the loss in weight gain in pups from the high dose group was affected by nursing.

No clear scientific consensus yet exists to determine the most appropriate endpoints for assessing risk in children. However, in consideration of the data that show both developmental and reproductive toxicity were effects secondary to parental toxicity, BASF believes that the established RfD of 0.005 mg/kg/day is the most conservative approach for assessing risk in children. Using the exposure assumptions described in Unit I.G. of this document, BASF has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of pyridaben from the proposed use in citrus, apples, pears, almonds, peaches, plums, and grapes is approximately 73.4 percent for non-nursing infants (<1 year), the most sensitive sub-population. Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result in infants and children from aggregate exposure to the residues of pyridaben, including all anticipated dietary exposure and all other non-occupational exposures.

J. Other Considerations

The qualitative nature of the residues in plants and animals is adequately understood. Residues of the parent molecule, pyridaben are the only residues of concern. Residues of pyridaben do not concentrate in the processed commodities apple and citrus juice. There is a practical analytical method for detecting and measuring levels of pyridaben in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances.

K. International Tolerances

A maximum residue level has not been established for pyridaben by the Codex Alimentarius Commission.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF–721]. All written comments filed in response to this petition will be available, in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays. A record has been established for this notice under docket control number [PF–721] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this notice, as well as the public version, as described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 6, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–6209 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50827; FRL–5595–2]

Receipt of a Notification to Conduct Small-Scale Field Testing of a Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of a notification (352-NMP-L) of intent to conduct small-scale field testing involving a baculovirus, *Autographa californica* Multiple Nuclear Polyhedrosis Virus (AcMNPV), which has been genetically engineered to express a synthetic gene which encodes for an insect-specific toxin from the scorpion *Leiurus quinquestriatus hebraeus*. Dupont intends to test this microbial pesticide on leafy vegetables in six states. Target pests for these field trials include: the cabbage looper, *Trichoplusia ni*, and the diamondback moth, *Plutella xylostella*. The Agency has determined that the notification may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this notification.

DATES: Written comments must be submitted to EPA by April 11, 1997.

ADDRESSES: By mail, submit written comments identified by the docket control number [OPP–50827] to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–50827]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: William R. Schneider, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, CS #1, 2805 Jefferson Davis Hwy., Arlington, VA, (703) 308–8683, e-mail: schneider.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received a notification from DuPont Agricultural Products of Delaware (352-NMP-L). The proposed small-scale field trial involves the introduction of a genetically engineered isolate of the baculovirus, *Autographa californica* Multiple Nuclear Polyhedrosis Virus (AcMNPV), which has been genetically engineered to express a synthetic gene which encodes for an insect-specific toxin from the venom of the scorpion *Leiurus quinquestriatus hebraeus*.

The purpose of the proposed testing will be to assess and compare the efficacy of formulated and unformulated genetically engineered construct, formulated and unformulated wild type AcMNPV, and various controls against the cabbage looper, *Trichoplusia ni*, and the diamondback moth, *Plutella xylostella*. The proposed program will be conducted in spring 1997, and will consist of one trial per site. There will be one site per state in Georgia (0.12 acres), Florida (0.25 acres), Mississippi (0.12 acres), California (0.12 acres), Texas (0.37 acres), and Illinois (0.37 acres). The total amount of AcMNPV for all of the testing will not exceed 2.2E13 occlusion bodies for each of the viruses tested. The test sites will either be 2 rows or 4 rows wide and 50 feet long.

On completion of the test, the genetically engineered AcMNPV treated plants will remain standing for at least 2 weeks prior to shredding, mowing, and plowing under. Following review of DuPont's notification and any comments received in response to this notice, EPA may approve the test, ask for additional data, require additional modifications to the test protocols, or require an Experimental Use Permit application to be submitted. In accordance with 40 CFR 172.50, under no circumstances shall the proposed test proceed until the submitter has received notice from EPA of its approval of such test.

A record has been established for this notice under docket control number [OPP–50827] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects in 40 CFR Part 172

Environmental protection, Genetically engineered microbial pesticides.

Dated: March 5, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–6208 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–F

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. 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 April 4, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Cumberland Bancorp, Inc., Carthage, Tennessee; to acquire 9.2 percent of the voting shares of The Bank of Mason, Mason, Tennessee.

Board of Governors of the Federal Reserve System, March 5, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–6094 Filed 3–11–97; 8:45 am]

BILLING CODE 6210–01–F

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. 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 April 4, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Commercial Bancshares Savings and Employee Stock Ownership Plan, West Liberty, Kentucky; to become a bank holding company by acquiring 32 percent of the voting shares of Commercial Bancshares, Inc., West Liberty, Kentucky, and thereby indirectly acquire Commercial Bank, West Liberty, Kentucky.

2. Southeast Bancorp, Inc., Corbin, Kentucky; to acquire 100 percent of the voting shares of First Bank of East Tennessee, National Association, La Follette, Tennessee.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorporation Inc., St. Louis, Missouri, and Ameribanc, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Roosevelt Financial Group, Inc., Chesterfield, Missouri, and thereby indirectly acquire Missouri State Bank & Trust Company, St. Louis, Missouri.

In connection with this application, Applicants have also applied to acquire Roosevelt Bank, Chesterfield, Missouri, a federal savings bank, and thereby engage in the operation of a federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Wauneta Falls Bancorp, Inc., Wauneta, Nebraska; to acquire 100 percent of the voting shares of Ogallala National Bank, Ogallala, Nebraska.

Board of Governors of the Federal Reserve System, March 6, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–6164 Filed 3–11–97; 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.

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 March 25, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. United Community Banks, Inc., Blairsville, Georgia; to retain United Family Finance Co., Blue Ridge, Georgia (formerly Mountain Mortgage & Loan, Inc.), and thereby continue to engage in making, acquiring, or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The activities will be performed throughout the State of Georgia.

Board of Governors of the Federal Reserve System, March 5, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–6093 Filed 3–11–97; 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.

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 March 26, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Lloyds TSB Group PLC and Lloyds Bank PLC, both of London, England; to retain indirectly all the voting shares of IAI Holdings Inc., and its subsidiaries, including Investment Advisers, Inc., IAI Securities, Inc., IAI Trust Company, IAI Ventures, Inc., and Itasca Ventures, LLC, all of Minneapolis, Minnesota, and thereby engage in the following nonbanking activities: (i) performing functions or activities that may be conducted by a trust company, pursuant to 12 CFR 225.25(b)(3) of the Board's Regulation Y; (ii) providing investment advisory services, pursuant to 12 CFR 225.25(b)(4) of the Board's Regulation Y; (iii) providing full-service brokerage services, pursuant to 12 CFR 225.25(b)(15) of the Board's Regulation Y; (iv) providing foreign exchange execution and advisory services *Banco Commerciale Italiano S.p.A.*, 76 Fed. Res. Bull. 649 (1990); (v) providing advice on futures contracts and options on futures contracts based on certain financial commodities, pursuant to 12 CFR 225.25(b)(19) of the Board's Regulation Y; *Caisse Nationale de Credit Agricole, S.A.*, 82 Fed. Res. Bull. 754 (1996); *Security Pacific Corporation*, 74 Fed. Res. Bull. 820 (1988); and providing investment advisory and administrative services to open-end investment companies (''mutual funds'') *Mellon Bank Corporation*, 79 Fed. Res. Bull. 626 (1993); *Bank of Ireland*, 82 Fed. Res. Bull. 1129 (1996). Notificants would engage in these activities in accordance with the limitations and conditions previously established by the Board by regulation or order, with certain exceptions relating to the proposed provision of advisory and administrative services to mutual funds that are discussed in the notice.

Board of Governors of the Federal Reserve System, March 6, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–6165 Filed 3–11–97; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, March 17, 1997.

PLACE: Marriner' S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to the Voluntary Guide to Conduct for Senior Federal Reserve System Officials.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 10, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–6329 Filed 3–10–97; 10:44 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The program has been extended for an additional one-year period by the Omnibus Consolidated Appropriations Act (Public Law 104–208). The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from January 1, 1996 to December 31, 1996. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after April 1, 1997.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION: Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less and procurement of A-E services with an estimated value of $50,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds $25,000 and procurement of A-E serivces with an estimated value exceeding $50,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 2, 3, 7, 8, and the National Capital Region in SIC Group 15, and the National Capital Region in individual SIC code 1794) shall be conducted on an unrestricted basis.

Procurements for construction services in SIC Group 15 issued by GSA contracting activities in Regions 2, 3, 7, and 8, and the National Capital Region, and in individual SIC code 1794 in the National Capital Region, shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 7 encompasses the states of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

Region 8 encompasses the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (All PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Regions 4, 9, and the National Capital Region) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by contracting activities in Regions 4, 9, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements may be conducted on an unrestricted basis.

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: March 6, 1997.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 97–6163 Filed 3–11–97; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–97–06]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. NIOSH Training Grants, 42 CFR Part 86, Application And Regulations—(0920–0261)—Extension—Public Law 91–596 authorizes CDC/NIOSH to support ''education programs that provide an adequate supply of qualified personnel * * * by grants or contracts ''to assure a safe and healthful work environment. NIOSH awards grants for both short-term and long-term training to academic institutions and other organizations interested in providing training for professionals. Grants are also provided to Educational Resource Centers (ERCs) which provide multidisciplinary graduate training for industrial hygienists, occupational physicians, occupational health nurses, safety professionals and other occupational health-related disciplines in addition to continuing education for practicing professionals and outreach in the Region. 42 CFR Part 86, ''Grants for Education Programs in Occupational Safety and Health, Subpart B-Occupational Safety and Health Training, provides guidelines for implementing Public Law 91–596. The training grant application form is used by the National Institute of Occupational Safety and Health to collect information from potential applicants. The information is used to determine the eligibility of applicants for review, to calculate the amount of each award and to judge the merit of each application. CDC Form 2.145A is used for new and competing continuation grants; CDC Form 2.145B is used for non-competing awards. If this information is not collected, grants cannot be reviewed and awarded. The total cost to respondents for the three year period is $352,500.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Universities	57	1	82.46	4,700
Total				4,700

2. Foreign Quarantine Regulations—(0920–0134)—Extension—Section 361 of the Public Health Service (PHS) Act (42 USC 264) authorizes the Secretary of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Legislation and the existing regulations governing quarantine activities (42 CFR Part 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents in order to protect the public health. Currently, with the exception of rodent inspections and the cruise ship sanitation program inspections are performed only on those vessels and aircraft which report illness prior to arrival or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health screening of persons, pets, and other importations of public health importance and make referrals to PHS when indicated. These practices and procedures assure protection against the introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting as well as a minimum of interference with trade and travel.

Respondents would include airplane pilots, ships' captains, importers, and travelers. The nature of the quarantine would dictate which forms are completed by whom. Thus, the ''respondents'' portion of the information below is replaced by the requisite form title. The estimated cost to the public is $22,200.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Radio reporting of death/illness:				
—Aaircraft	105	1	0.033	3.5
—Cruise ships	90	23.3	0.0166	35.0
—Other ships	22	1	0.0166	.04
Report by persons held in isolation/surveillance	11	1	0.50	5.5
Report of death or illness on carrier during stay in port	5	1	0.05	0.3
Requirements for admission of dogs and cats:				
(1)	5	1	0.05	0.3
(2)	2650	1	0.25	662.5
Application for permits to import turtles	10	1	0.50	5.0

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Requirements for registered importers of nonhuman primates:				
(1)	40	1	0.166	6.6
(2)	50	1	0.5	25.0
Total				777.38

Dated: March 5, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–6158 Filed 3–11–97; 8:45 am]

BILLING CODE 4163–18–P

[30 Day–31]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Emergency Epidemic Investigations (0920–0008)—Reinstatement—During most emergency situations, CDC specialists (epidemiologist, biostatisticians, laboratory specialists, etc.) work under the aegis of a State or local health department. Usually such investigations are completed by the State or local government, with technical assistance from CDC. Occasionally, an investigation must be continued or is multistate or global. In these cases, the CDC collects or sponsors the collection of information from the public.

This request, therefore, is for the reinstatement of OMB approval to collect data in such emergency situations. The total burden hours are 3,000.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
General Public	12,000	1	.25

Dated: March 5, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–6159 Filed 3–11–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Detailed Case Data Component (DCDC) of the National Child Abuse and Neglect Data System (NCANDS).

OMB No.: 0980–0256.

Description: The Detailed Case Data Component of the National Child Abuse and Neglect Data System compiles automated case-level data on child maltreatment investigated by State child protective services agencies. Data are collected on reports of abuse and neglect, characteristics of victims, risk factors associated with victims and their families, and the development of policies and programs relating the child abuse and neglect at the National, State and local levels.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Case Data Component	56	1	110	6,160

Estimated Total Annual Burden Hours: 6,160.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: March 6, 1997.

Bob Sargis,

IRM Staff.

[FR Doc. 97–6095 Filed 3–11–97; 8:45 am]

BILLING CODE 4184–01–M

Health Care Financing Administration

[HCFA 2540 and HCFA–R–48]

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 summaries of proposed collections 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.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility (SNF) and Skilled Nursing Facility Health Care Complex Cost Report, 42 CFR 413.157(b)(5)(ii), 413.13(h), 413.20(b), 413.24 and 413.56; *Form No.:* HCFA–2540; *Use:* The Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report is the cost report to be used by freestanding SNFs to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries. *Frequency:* Annually; *Affected Public:* Business or other for profit, Not for profit institutions, and State, local, or tribal government; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours Requested:* 1,372,000.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital Conditions of Participation—42 CFR 482.12(c)(5)(1), 482.12(d), 482.12(e)(2), 482.12(f)(2), 482.22(c), 482.27(a)(2), 482.27(a)(4)(ii), 482.30(c)(1), 482.30(d)(3), 482.41(b), 482.43, 482.53(d), 482.56(b), 482.57(b)(1), 482.60(c), 482.61, 482.62(a) and 482.66(a)(7); *Form No.:* HCFA-R–48; *Use:* Hospitals seeking to participate in the Medicare and Medicaid programs must meet the Conditions of Participation (COP) for Hospitals, 42 CFR Part 482. The information collection requirements contained in this package are needed to implement the Medicare and Medicaid COP for hospitals. *Frequency:* Annually; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours Requested:* 53,522.

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/regs/prdact95.htm, 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: March 4, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–6222 Filed 3–11–97; 8:45 am]

BILLING CODE 4120–03–P

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following teleconference meeting of the SAMHSA Special Emphasis Panel II in March.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–4783.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. The discussion could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Dates: March 19, 1997, 1:00 p.m. to 5:00 p.m.

Place: Parklawn Building, Room 12–94—Telephone Conference, 5600 Fishers Lane, Rockville, Maryland 20852.

Closed: March 19, 1997, 1:00 p.m. to 5:00 p.m.

Panel: FEMA—Crisis Counseling—Idaho and California.

Contact: Pamela Roddy, Ph.D., Review Administrator, Room 17–89, Parklawn Building, Telephone: (301) 443–1001 and FAX: (301) 443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: March 5, 1997.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 97–6172 Filed 3–11–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–026–2822–00–D580]

Emergency Closure of Public Lands; California

AGENCY: Bureau of Land Management, United States Department of the Interior.

ACTION: Emergency closure of certain public lands to motorized vehicle use in Lassen County, California.

SUMMARY: In accordance with title 43, Code of Federal Regulations, Sec. 8341.2, notice is hereby given that all the below listed lands and roads therein, administered by the Bureau of Land Management, have been closed to all motorized vehicle use until further notice; except for emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles, law enforcement vehicles and other motorized vehicles specifically approved by an authorized officer of the Bureau of Land Management. This closure is necessary to protect fire damaged lands from off-highway vehicle travel during restoration efforts. This closure affects all of the public lands and roads located within the following lands of Lassen County, California.

T.28N., R13E., M.D.M.
T.28N., R14E., M.D.M.
T.29N., R13E., M.D.M.
T.29N., R14E., M.D.M.

A total of approximately 3,160 acres.

DATES: This emergency closure action goes into effect April 15, 1997, and will remain in effect until the Authorized Officer determines that adverse effects have been eliminated and measures have been taken to prevent recurrence.

FOR FURTHER INFORMATION CONTACT: Linda D. Hansen, Area Manager, Bureau of Land Management, Eagle Lake Resource Area, 2950 Riverside Drive Susanville, CA 96130.

SUPPLEMENTARY INFORMATION: The authority for this closure and rule

making is 43 CFR 8341.2. Any person who fails to comply with a closure order or rulemaking is subject to arrest and fines of up to $1,000 and/or imprisonment not to exceed 12 months.

Linda D. Hansen,

Area Manager.

[FR Doc. 97–6219 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–40–P

[CO–050–1220–00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on March 20, 1997 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Bureau of Land Management's (BLM), Canon City District Office, 3170 East Main Street, Canon City, Colorado. The meeting will be a continuation of the previous meeting and focus on developing recreation guidelines.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday March 20, 1997 from 9:15 a.m. to 4 p.m.

ADDRESSES: For further information, contact Ken Smith, Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Donnie R. Sparks,

District Manager.

[FR Doc. 97–6223 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–JB–B

[CA–010–1920–00–4686; CACA 36507]

Opening of Lands; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening Order.

SUMMARY: To provide for exchange base in the Bureau of Land Management's Bishop Resource Area, Congress enacted 110 Stat. 4093, which revoked a statutory withdrawal, and provided that the lands would be opened as specified by opening order in the Federal Register. This order opens the land only to exchanges.

EFFECTIVE DATE: March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Alex, BLM California State Office (CA–931), 2135 Butano Drive, Sacramento, California, 95825–0451, (916) 979–2858.

OPENING: The lands described below are hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The lands have been and continue to be open to mineral leasing.

Mount Diablo Meridian

T. 2 N., R. 26 E.,
Sec. 7, N½S½ of Lot 1 of SW¼, N½S½ of Lot 2 of SW¼, NW¼NE¼, SE¼.
T. 4 S., R. 33 E.,
Sec. 31, Lot 1 of SW¼, NW¼NE¼, SE¼;
Sec. 32, SE¼NW¼ NE¼SW¼, SW¼SE¼.
T. 5 S., R. 33 E.,
Sec. 4, W½ of Lot 1 of NW¼, E½ of Lot 2 of NW¼;
Sec. 5, E½ of Lot 1 of NE¼, E½ of Lot 2 of NE¼;
Sec. 17, SE¼NW¼, NW¼SE¼;
Sec. 22, Lots 1 and 2;
Sec. 27, Lot 2, W½NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼;
Sec. 34, NE¼, NW¼, SE¼.
T. 6 S., R. 31 E.,
Sec. 19, E½NE¼SE¼.
T. 6 S., R. 33 E.,
Sec. 10, E½SE¼;
Sec. 11, Lots 1 and 2, W½NE¼, NW¼, W½SW¼, NE¼SW¼;
Sec. 14, Lots 1 through 4, W½NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼;
T. 7 S., R. 32 E.,
Sec. 23, S½SW¼;
Sec. 25, Lot 2, NE¼NW¼.
T. 7 S., R. 33 E.,
Sec. 30, S½ of Lot 2 of NW¼, Lots 1 and 2 of SW¼;
Sec. 31, N½ of Lot 2 of NW¼, SE¼NE¼, NE¼SE¼.
T. 8 S., R. 33 E.,
Sec. 5, NW¼SW¼.
T. 11 S., R. 35 E.,
Sec. 30, Lots 5, 8, 9, 12, and 13;
Sec. 31, Lots 9, 12, 13, 16, 17, and 20.
T. 13 S., R. 35 E.,
Sec. 18, S½ of Lot 2 of NW¼, Lots 1 and 2 of SW¼, SW¼NE¼, NW¼SE¼;
Sec. 29, SE¼NE¼, NE¼SE¼.
T. 13 S., R. 36 E.,
Sec. 17, SW¼NW¼, SW¼;
Sec. 18, S½ of Lot 1 of NW¼, Lot 1 of SW¼, NE¼, SE¼;
Sec. 19, N½ of Lot 1 of NW¼, E½NE¼, NW¼NE¼;
Sec. 20, SW¼NE¼, NW¼, NE¼SW¼, SE¼;
Sec. 28, SW¼SW¼;
Sec. 29, E½NE¼;
Sec. 33, NW¼NW¼, SE¼NW¼.
T. 14 S., R. 36 E.
Sec. 31, Lots 1 and 2 of SW¼, SW¼SE¼.

The lands described above aggregate 1672.125 acres in Mono County and 3606.44 acres in Inyo County.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 97–6157 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–40–P

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m., on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 31 N., R. 8 W.,
Supplemental plat of section 4, accepted February 6, 1997, to meet certain administrative needs of the BLM, Redding Resource Area.
T. 31 N., R. 8 W.,
Supplemental plat of the E½ of the section 8 and the W½ of the section 9, accepted February 6, 1997, to meet certain administrative needs of the BLM, Redding Resource Area.
T. 5 N., R. 13 E.,
Supplemental plat of the S½ of section 27, accepted February 6, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.
T. 5 N., R. 13 E.,
Supplemental plat of the W½ of section 34, and the E½ of section 33, accepted February 6, 1997, to meet certain

administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 4 N., R. 14 E.,

Supplemental plat of the Supplmental plat of the W½ of section 17 and the E½ of section 18, accepted February 7, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 3 N., R. 13 E.,

Supplemental plat of section 1, accepted February 7, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 3 N., R. 13 E.,

Supplemental plat of the SE¼ of section 12, accepeted February 7, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 3 N., Rs. 13 & 14 E.,

Supplemental plat of the E½ of section 13, and the W½ of section 18, accepted February 7, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 25 S., R. 21 E.,

Supplemental plat of section 6, accepted February 25, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

T. 25 S., R. 21 E.,

Supplemental plat of section 8, accepted February 25, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

T. 25 S., R. 21 E.,

Supplemental plat of the SW¼ of section 30, accepted February 25, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: March 3, 1997.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 97–6141 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–40–M

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. March 3, 1997.

The plat representing the dependent resurvey of portions of the subdivisional lines and the survey of lots 1 and 2 in section 8, T. 2 N., R. 38 E., Boise Meridian, Idaho, Group No. 973, was accepted March 3, 1997.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: March 3, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–6140 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Washington State in the Possession of the Burke Museum, University of Washington, Seattle, WA

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 from Washington State in the possession of Burke Museum, University of Washington, Seattle, WA.

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the Puyallup Tribe of Indians.

In 1959, human remains representing four individuals were removed from the property of Mr. M.V. Petersen during an excavation of Mr. Petersen's basement by Mr. James C. Garner and Mr. Butler. No known individuals were identified. The seventeen associated funerary objects include shell fragments, shells, one mammal bone, two fire-cracked rocks, an unmodified cobble, a basal notched point, an adze blade, and two antler adze handles.

Mr. Petersen's property is located in the historically and ethnographically documented traditional territory of the Puyallup Tribe of Indians.

In 1915, human remains representing one individual were recovered near Tacoma, WA, by Mr. Edward F. Drake. No known individual was identified. No associated funerary objects are present.

Tacoma is located within historically and ethnographically documented traditional territory of the Puyallup Tribe of Indians.

In 1948, human remains representing one individual were recovered from the Minter VI Site, Minter Bay, WA, by Mr. John Winterhouse, Jr., during a survey of archeological sites in Southern Puget Sound, WA. No known individual was identified. No associated funerary objects are present.

Minter Bay is located within the historically and ethnographically documented traditional territory of the Puyallup Tribe of Indians.

Based on the above mentioned information, officials of the Burke Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the Burke Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the seventeen 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 Burke Museum 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 Puyallup Tribe of Indians.

This notice has been sent to officials of the Puyallup Tribe of Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. James Nason, Chair of the Repatriation Committee, Burke Museum, Box 353010, University of Washington, Seattle, WA 98195; telephone: (206) 543–9680, before April 11, 1997. Repatriation of the human remains and associated funerary objects to the Puyallup Tribe of Indians may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: March 7, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program

[FR Doc. 97–6181 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains from Nebraska in the Possession of The Burke Museum, University of Washington, Seattle, WA

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 Burke Museum, University of Washington, Seattle, WA.

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma.

In 1947, human remains representing one individual were donated to the Burke Museum by Mrs. Charles C. Moore. No known individuals were identified. No associated funerary objects are present. According to the accession information, these human remains were collected in 1887 by students of Miss Sare E. Ober in Palisade, Hitchcock County, NE.

In 1964, human remains representing two individuals were donated to the Burke Museum by Dr. G.E. Deer. No known individuals were identified. No associated funerary objects are present. Accession information indicates these remains were removed from Gering, Scottsbluff County, NE by Mr. Ted B. Miller, Jr.

Consultation evidence, including oral history and traditional data of annual activities and uses of land areas surrounding Gering and Palisade, Nebraska have been presented by representatives of the Ponca Tribe of Nebraska.

Based on the above mentioned information, officials of the Burke Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Burke Museum 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 the Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma.

This notice has been sent to officials of the Cheyenne-Arapaho Tribe of Oklahoma, Cheyenne River Sioux Tribe, Fort Peck Assiniboine and Sioux Tribes, Northern Cheyenne Tribe, Oglala Sioux Tribe, Pawnee Tribe of Oklahoma, Ponca Tribe of Nebraska, Ponca Tribe of Oklahoma, Three Affiliated Tribes, and Standing Rock Sioux Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. James Nason, Chair of the Repatriation Committee, Burke Museum, Box 353010, University of Washington, Seattle, WA 98195; telephone: (206) 543–9680, before April 11, 1997. Repatriation of the human remains to the Ponca Tribe of Nebraska may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: March 7, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–6182 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate Cultural Items from Arizona in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005(a)(2), of the intent to repatriate a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, which meets the definition of ''cultural patrimony'' under Section 2 of the Act.

The cultural items are 20 yellow wooden sunflowers, five white wooden sunflowers, two leather sunflowers, 26 wooden cones, and one wooden bird.

In 1915, Mr. Kidder and Mr. Guernsey excavated these cultural items from Sunflower Cave, Marsh Pass, AZ during an expedition sponsored by the Peabody Museum of Archaeology and Ethnology. These items were accessioned into the Museum's collections the same year.

Excavation records and anthropological sources indicate these items were likely deposited in Sunflower Cave during the Pueblo I period (750–975 AD). Consultation evidence presented by representatives of the Hopi Tribe on behalf of the Flute Clan practices and have ongoing historical, traditional, and cultural importance central to the Flute Clan and could not have been alienated by any individual.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001(3)(D), these 54 cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Peabody Museum of Archaeology and Ethnology have also 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 items and the Flute Clan of Walpi, First Mesa, of the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Mrs. Barbara Isaac, Assistant Director, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 02138, telephone (617) 495–2254 before April 11, 1997. Repatriation of these objects to the Hopi Tribe on behalf of the Flute Clan may begin after that date if no additional claimants come forward.

Dated: March 7, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–6183 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate Cultural Items From Arizona in the Possession of the San Diego Museum of Man, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005(a)(2), of the intent to repatriate cultural items in the possession of the San Diego Museum of Man which meet the definition of ''sacred objects'' under Section 2 of the Act.

The nine Hopi Katsina masks consist of Hoote, Half Mask, Kohonina, Monakvi, Kowako, Chakwaina, Sipikni, Soyoko, and Mong Koyemsi.

In 1955, the Katsina Half Mask was acquired by the San Diego Museum of Man as part of an exchange with Mr. Ralph Altman of Los Angeles, CA. Accession information indicates this Katsina mask's provenience is Hopi, Northern Arizona.

In 1957, the Katsina Hoote was purchased by the San Diego Museum of Man from ''Trader Bill'' Berner of Phoenix, AZ. Accession information indicates this mask was collected around 1957 in New Oraibi, AZ.

In 1962, the Katsina masks Kohonina and Monakvi were purchased by the San Diego Museum of Man from Mr. Tom Bahti, a dealer in Southwestern arts. The accession information lists these masks as Hopi.

In 1977, the Katsina masks Kowako, Chakwaina, and Sipikni were purchased by the San Diego Museum of Man from Hubert Guy. These Katsina masks had previously passed through several dealers. The accession information indicates the original purchaser, Mr. Ron Munn of La Mesa, CA, purchased these Katsina masks from ''a Hopi man.'' The Katsina Mask Soyoko was also purchased by the San Diego Museum of Man from Hubert Guy, who bought this mask from Mr. Lewis of Snowflake, AZ. The accession information indicates these four Katsina masks are from the Hopi Reservation.

In 1977, the Katsina mask Mong Koyemsi was purchased by the San Diego Museum of Man from Ron Munn. The accession information lists the provenience as the Hopi Reservation.

Accession information and anthropological evidence indicate these Katsina masks are consistent with Hopi practice. Consultation with representatives of the Hopi tribe indicates that these Katsina masks are needed by traditional religious leaders for the practice of Hopi religion by present day adherents.

Based on the above-mentioned information, officials of the San Diego Museum of Man have determined that, pursuant to 25 U.S.C. 3001(3)(C), these nine cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the San Diego Museum of Man have also 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 items and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe and the Navajo Nation. {The Navajo Nation is being notified because of the inaccurate inclusion of one of these Katsina friends on their NAGPRA summary.} Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Ken Hedges, Chief Curator, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239-2001 before April 11, 1997. Repatriation of these objects to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: March 5, 1997.

Veletta Canouts,

Acting Departmental Consulting Archaeologist, Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 97–6184 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion for Native American Human Remains from Lyon County, NV, in the Possession of the Physical Anthropology Laboratory of the University of Nevada-Las Vegas, Las Vegas, NV

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 Physical Anthropology Laboratory of the University of Nevada-Las Vegas, Las Vegas, NV.

A detailed assessment of the human remains was made by UNLV Physical Anthropology Laboratory's professional staff in consultation with representatives of the Yerington Paiute Tribe.

In 1981, human remains representing one individual were recovered from Smith Valley, Lyon County, NV, and turned over to Washoe County Coroner Vernon O. McCarty. This individual was subsequently donated to the UNLV Physical Anthropology Laboratory. No known individual was identified. No associated funerary objects are present.

Morphological evidence indicates this individual is Native American based on extreme wear of dental enamel. Consultation evidence presented by representatives of the Yerington Paiute Tribe indicates there are two historic cemeteries dating from the early 1900s in Smith Valley. Oral history evidence presented by representatives of the Yerington Paiute Tribe further state that the Smith Valley area was occupied by the Paiute in precontact times. Historic and ethnographic evidence indicates the Yerington Paiute Tribe has occupied the Smith Valley area in historic times, and no non-Paiute precontact cultures have been identified within the Smith Valley area.

Based on the above mentioned information, officials of the University of Nevada-Las Vegas Physical Anthropology Laboratory have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Nevada-Las Vegas Physical Anthropology Laboratory 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 the Yerington Paiute Tribe.

This notice has been sent to officials of the Yerington Paiute Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Vicki Cassman, Department of Anthropology and Ethnic Studies, University of Nevada-Las Vegas, 4505 Maryland Parkway, Box 455012, Las Vegas, NV 89154–5012; telephone: (702) 895–3590, fax (702) 895–4357, before April 11, 1997. Repatriation of the human remains to the Yerington Paiute Tribe may begin after that date if no additional claimants come forward.

Dated: March 5, 1997.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 97–6180 Filed 3–11–97; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–360]

International Harmonization of Customs Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Request for public comments on draft proposals for chapters 82–84 and 86–89.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202–205–2595), Lawrence DiRicco—chapters 82–83, 86–89 (202–205–2606), or Craig Houser—chapter 84 (202–205–2597).

Parties having an interest in particular products or HTS chapters and desiring to be included on a mailing list to receive available documents pertaining thereto should advise Diane Whitfield by telephone (202–205–2610) or by mail at the Commission, 500 E St. SW, Room 404, Washington, D.C. 20436. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The media should contact Margaret O'Laughlin in the Office of External Relations (202–205–1819).

Background:

Following receipt of a letter from the United States Trade Representative (USTR) on January 25, 1995, the Commission instituted Investigation No. 332–360, International Harmonization of Customs Rules of Origin, under section 332(g) of the Tariff Act of 1930 (60 FR 19605, April 19, 1995).

The investigation is intended to provide the basis for Commission participation in work pertaining to the Uruguay Round Agreement on Rules of Origin (ARO), under the General Agreement on Tariffs and Trade (GATT) 1994 and adopted along with the Agreement Establishing the World Trade Organization (WTO).

The ARO is designed to harmonize and clarify nonpreferential rules of origin for goods in trade on the basis of the substantial transformation test; achieve discipline in the rules' administration; and provide a framework for notification, review, consultation, and dispute settlement. These harmonized rules are intended to make country-of-origin determinations impartial, predictable, transparent, consistent, and neutral, and to avoid restrictive or distortive effects on international trade. The ARO provides that technical work to those ends will be undertaken by the Customs Cooperation Council (CCC) (now informally known as the World Customs Organization or WCO), which must report on specified matters relating to such rules for further action by parties to the ARO. Eventually, the WTO Ministerial Conference is to ''establish the results of the harmonization work program in an annex as an integral part'' of the ARO.

In order to carry out this work, the ARO called for the establishment of a Committee on Rules of Origin of the WTO, and a Technical Committee on Rules of Origin (TCRO) of the WCO. These Committees bear the primary responsibility for developing rules that achieve the objectives of the ARO.

A major component of the work program is the harmonization of origin rules for the purpose of providing more certainty in the conduct of world trade. To this end, the agreement contemplates a 3-year WCO program, which was formally initiated in July, 1995. Under the ARO, the TCRO is to undertake (1) to develop harmonized definitions of goods considered wholly obtained in one country, and of minimal processes or operations deemed not to confer origin, (2) to consider the use of change in Harmonized System classification as a means of reflecting substantial transformation, and (3) for those products or sectors where a change of tariff classification does not allow for the reflection of substantial transformation, to develop supplementary or exclusive origin criteria based on value, manufacturing or processing operations or other standards.

The draft U.S. proposed rules for the goods of:

Chapter 82—Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal

Chapter 83—Miscellaneous articles of base metal

Chapter 84—Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

Chapter 86—Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds

Chapter 87—Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof

Chapter 88—Aircraft, spacecraft, and parts thereof

Chapter 89—Ships, boats and floating structures

the Harmonized System that are being made available for public comment cover goods that are not considered to be wholly made in a single country. The rules rely largely on the change of heading as a basis for ascribing origin.

Copies of the proposed revised rules will be available from the Office of the Secretary at the Commission, from the Commission's Internet home page (http://www.usitc.gov), or by submitting a request on the Office of Tariff Affairs and Trade Agreements voice messaging system (202–205–2592).

These proposals are intended to serve as the basis for the U.S. proposal to the TCRO of WCO. The proposals may undergo change as proposals from other government administrations and the private sector are received and considered. Under the circumstances, the proposals should not be cited as authority for the application of current domestic law.

If eventually adopted by the TCRO for submission to the Committee on Rules of Origin of the World Trade Organization, these proposals would comprise an important element of the ARO work program to develop harmonized, non-preferential country of origin rules, as discussed in the Commission's earlier notice. Thus, in view of the importance of these rules, the Commission seeks to ascertain the views of interested parties concerning the extent to which the proposed rules reflect the standard of substantial transformation provided in the Agreement.

Forthcoming Commission notices will advise the public on the progress of the TCRO's work and will contain any harmonized definitions or rules that have been provisionally or finally adopted.

Written Submissions

Interested persons are invited to submit written statements concerning this phase of the Commission's investigation. Written statements should be submitted as quickly as possible, and follow-up statements are permitted; but all statements must be received at the Commission by close of business on April 15, 1997, in order to be considered. Again, the Commission notes that it is particularly interested in receiving input from the private sector on the effects of the various proposed rules and definitions on U.S. exports as well as imports.

Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the

requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington DC 20436.

By order of the Commission.

Issued: March 6, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–6191 Filed 3–11–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Prison Industries

Product Development and Production: Public Involvement Procedures

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Department of Justice.

ACTION: Notice.

SUMMARY: In this document, Federal Prison Industries, Inc. (FPI) announces new interim definitions of three key terms: New product, specific product, and significant expansion of an existing product.

ADDRESSES: Federal Prison Industries, Inc., 320 First Street, NW., Washington, DC. 20534.

EFFECTIVE DATE: March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Baldau (202) 305–3582.

SUPPLEMENTARY INFORMATION: Last year, FPI published notices in the Federal Register and *Commerce Business Daily* proposing revisions to the definitions of ''specific product,'' ''new product'' and ''significant expansion of production'' for use with the FPI expansion guidelines. The Federal Register notice was printed on August 7, 1996 (61 FR 41248). The *Commerce Business Daily* notice was printed on September 20, 1996. Each notice asked interested parties to review the revised definitions and submit comments on the proposed revisions to FPI. FPI received submissions from the following individuals and organizations:

U.S. Representative Mac Collins (Georgia, 3rd District);
The American Defense Preparedness Association;
The Business and Institutional Furniture Manufacturers Association;
Trussbilt, Inc.;
The Coalition for Government Procurement;
The American Apparel Manufacturers Association;
Tennessee Apparel Corporation;
Furniture By Thurston; and
The Quarters Furniture Manufacturers Association.

FPI wishes to thank each of the respondents for taking the time to submit their comments. Many of the submissions included suggestions which FPI has incorporated into the revised definitions. Also among the submissions were several comments helpful to FPI in understanding potential implications of the proposed revised definitions. Some of these comments led FPI to adjust its original proposal.

For the purposes of this notice, FPI has separated all the comments we received into one of four groups: (1) Ideas, recommendations or suggestions FPI has adopted in the revised definitions; (2) Ideas, recommendations or suggestions with which FPI respectfully disagrees and has not adopted in the revised definitions; (3) Comments that are more relevant to other aspects of FPI's operations, such as issues concerning mandatory source; and (4) Comments which are vague, broad or general in nature. Such comments do not make a specific point, making it difficult for FPI to address. Below is a summary of all comments received by FPI. In many instances, similar comments from multiple parties have been combined. Also included are some of FPI's responses, where appropriate.

(I) Ideas, Recommendations or Suggestions FPI Has Adopted

The following are ideas, recommendations or suggestions provided by commenters which FPI found useful or constructive, and incorporated, in whole or in part, into the revised expansion definitions.

A commenter noted FPI's initial announcement stated ''FPI announces revised definitions of two key terms: New product and specific product.'' However, ''significant expansion of production'' is also revised. FPI acknowledges the oversight, and has reflected this correction in the new announcement. This notice refers to all three revised definitions.

Commenters suggested FPI defer issuing the new definitions, raising the possibility Congress may require FPI to modify the terms again, resulting in another revision in a short period of time. The commenter stated a delay in issuing the definitions would permit interested parties to take up Rep. McCollum's offer to discuss FPI's operations and regulations next year. FPI appreciates the willingness to accept Rep. McCollum's invitation. Nonetheless, the current definitions present a myriad of problems that need to be addressed. With the commenter's suggestion in mind, FPI is publishing the new definitions as an ''interim rule.'' This will allow time for experience and encourage comments during its implementation.

A commenter suggested amending the provision dealing with cases of extreme public exigency, where FPI would be empowered with the authority to increase production without penalty when asked to do so. The commenter advised that FPI explicitly state that its production levels are temporary, and will not be used as the baseline for future calculations of what is deemed a significant expansion of production. FPI has incorporated such language into the revised definitions.

Several commenters objected to the provision allowing FPI to supply new items of limited duration or volume. The commenters felt this provision did not allow for sufficient private industry input, would be detrimental to small businesses who sell to the Federal government and did not provide adequate safeguards to prevent FPI from misuse of the provision. FPI recognizes the concerns raised by the commenters and has withdrawn the provision from the revised definition.

Commenters suggested the definitions should not eliminate an item's predominant material of manufacture as a determinant of whether an item is a separate specific product. FPI agrees, and notes the new definitions do not make such an elimination. Rather, the predominant material ''will not ordinarily'' be a factor in determining whether an item is a separate specific product. FPI did not mean to imply the predominant material of manufacture is not an important consideration, only that in most cases, it would not result in an item being deemed a separate specific product. An item's predominant material will always be considered, and unless deemed to be significant, will not typically result in a distinction for a separate specific product.

A commenter suggested that FPI state its sales goals in units, not dollars. FPI appreciates the suggestion and will attempt to include production information on units where feasible, as well as dollars, for impact studies. The nature of some of FPI's work makes stating production goals in units difficult. It should be noted that in past impact studies, FPI has attempted to differentiate between inflation and real

growth in projecting the corporation's future sales and market share.

Several commenters suggested FPI revise the provision relating to announcements in the *Commerce Business Daily* (CBD). One commenter argued it was an undue burden on small business owners to have to check the *CBD* every day. Another suggested the time period in which interested parties may submit comments should be lengthened beyond 10 days. FPI acknowledges there may be difficulties associated with checking the *CBD*, especially for a small business. We appreciate the comments, and have amended the revised definitions so that they now allow 21 days for interested parties to comment.

Regarding submissions from interested parties in response to the *CBD* announcements referenced in the prior paragraph, a commenter disagreed with the restriction on submissions stating that comments related to market share and/or the impact resulting from such a production decision would not ordinarily be considered relevant to whether an item should be considered a new product. FPI recognizes the importance that data relating to a reasonable share of the market has to the expansion process. FPI appreciates the comment and agrees to modify the provision so that all information will be considered. The contested reference in the provision has been deleted.

A commenter expressed approval of the provision to have FPI make *CBD* announcements for items FPI does not consider to be a new product, but which an affected party may reasonably construe to be a new product. The commenter noted the purpose of the revision is to give private industry an added level of input into such decisions made by FPI. The commenter regarded this as ''a very constructive approach and again will build a great deal of trust and goodwill between FPI and the private sector.'' FPI appreciates the acceptance of this provision.

A commenter noted the revised definitions will not require FPI to initiate the guidelines process when FPI's market share increases as a result of factors other than an increase in FPI's production. The commenter recognized that ''asking FPI to continually track its market share for every product is a burdensome job.'' The commenter suggested that industry be encouraged to track market size and be allowed to petition FPI's Board of Directors for production relief in the event that a significant reduction in the size of the market can be demonstrated. FPI appreciates the comment and concludes that the new definitions do allow for such action on the part of members of the private sector.

Commenter questioned whether the new significant expansion definition would allow FPI to increase production until it captures 25% of the market before it triggers the expansion process as long as FPI makes only incremental increases. FPI acknowledges that while the circumstances described are theoretically possible, we do not believe it is very likely. First, such a scenario would only occur over a several year period, since any sales increase over 10% would lead to an FPI examination of market share, and trigger the guidelines process if FPI exceeded the 15% and 20% market share thresholds. As a result of the elapsed time, any impact would be minimized. As a potential safeguard against such a scenario, FPI has encouraged potentially affected industries to petition the Board if they believe the FPI growth is having an adverse impact on their particular industry. This encourages the industry to monitor FPI growth, via annual sales and market share reports published by FPI, in conjunction with their own market data, and bring their concerns to the Board's attention, as circumstances warrant.

A commenter suggested changing the provision on cases where FPI's sales inadvertently or insubstantially exceed authorized levels. The commenter suggested strengthening the language regarding FPI's obligation to adjust its sales levels if the corporation exceeds its authorized sales level. FPI has amended the language accordingly.

(II) Ideas, Recommendations or Suggestions With Which FPI Respectfully Disagrees and Has Not Adopted

Though the following comments were not incorporated into the revised guidelines, FPI wishes to emphasize its appreciation for the careful review by all commenters in providing their submissions. In the interest of making this process as visible and open to public scrutiny as possible, FPI has included its reasons for choosing not to accept the following ideas, recommendations or suggestions.

Most of the comments with which FPI disagrees and has not adopted deal with the availability of data under the current definitions or the proposed use of 4-digit Federal Supply Class (FSC) codes as the primary basis for determining a ''specific product.''

Commenters questioned whether there really is unavailability of data under the current definitions. Commenters suggested the procurement data sought by FPI is already collected by GSA's Single Item Numbers (SINs). FPI respectfully disagrees with both comments. The current definitions make use of the Standard Industrial Classification (SIC) system's 7-digit item codes. The government does *not* collect Federal procurement data by 7-digit SIC codes. Rather, Federal purchases are categorized by the FSC system. FPI also reiterates the limitations of GSA's SIN data. GSA does not have schedules for every industry in which FPI operates. Also, through research for past impact studies, FPI has found that while information from GSA's schedules provide an important piece of the Federal market puzzle, data from the schedules do not reflect all Federal buys, and often fail to include large segments of the Federal market.

Regarding the FSC system, commenters felt an FSC code would be too broad and encompass too many separate items to be validly considered a specific product. Commenters also expressed concern over the revised definitions allowing FPI to combine FSC codes where multiple codes comprise a single industry. Commenters contended that in such instances, FPI's true impact would be severely understated.

FPI recognizes these concerns and agrees that in some instances, FSC categories *are* too broad to be accurate measure of an item's Federal market. However, the revised definitions make provisions for such cases. The new definitions state, ''FPI will announce in the CBD its intent to produce any item that could reasonably be construed to be a new product, regardless of the fact that such an item falls in the same 4-digit category as an item that FPI is currently making, or has made within the recent past, and is not considered by FPI to be sufficiently different from an existing item to be considered a new product. Moreover, borderline cases will be announced in the CBD in order to allow for the full public scrutiny.'' The new definitions also state, ''In some instances, an item may be considered separate from another product in the same 4-digit FSC category, if its function differs substantially.''

Regarding the combination of FSC codes, it is incumbent upon FPI to be as accurate as possible in determining its impact on the private sector. When an industry's operations encompass multiple FSC codes, FPI is obligated to combine the codes in the effort to measure the corporation's true impact. Further, FPI's authorizing legislation directs FPI to guard against placing an undue burden on any single *industry*, not individual companies.

FPI believes the industry involvement guidelines process addresses concerns

that the use of FSC codes would allow FPI to expand in a few limited items without seeming to have an impact on the industry as a whole. Under both the current and new definitions, the guidelines process provides ample opportunity for public comment and input, so that FPI's Board of Directors can be made aware of particular situations that may create undue impact on private industry.

Beyond the principal objections mentioned above, commenters raised other questions regarding the new definitions. One commenter stated they lack confidence in a system which, by FPI's admission, does not ''develop a simple, single principle that can be applied in every situation to determine when to delete unrelated items from a 4-digit FSC category and when to combine categories.'' FPI recognizes the desire for a ''one size fits all'' approach. However, in the absence of a viable alternative, we believe the revised guidelines offer a fair, reasonable and logical set of standards to examine FPI's growth.

A commenter questioned the use of 4-digit SIC codes as a secondary determinant for a specific product, in those instances where there are multiple items within a single FSC code. The commenter felt 4-digit SICs do not represent any substantial protection beyond the FSC codes. The commenter asserted that specific product distinctions are found at the 7-digit SIC level. As mentioned earlier in this section, limitations of the SIC system were one of many factors leading to the revision of the definitions. FPI's initial notice proposing the revised definitions discussed the difficulties FPI has experienced with SIC codes, the primary problem being the lack of available data. For this reason, the new definitions will not be based upon the SIC system. Instead, the 4-digit SIC code will be used as a secondary determinant for a specific product. In such cases, cross-referencing the 4-digit SIC codes against the FSC codes will allow FPI to more accurately separate items that should be considered a separate ''specific product.''

Several comments touched on the provision concerning FPI announcements in the *CBD* regarding the planned production of items that may reasonably be considered a new product. One commenter doubted that a heightened effort by FPI would provide any meaningful restraint. The new definitions have FPI make such announcements when an item may be reasonably construed to be a new product. In cases which are questionable, FPI will err on the side of announcing in the CBD in order to allow for full public scrutiny. In addition, the new rules would provide much greater visibility to these decisions and determinations than is afforded under the current guidelines.

A commenter questioned how the new rule helps FPI meet its mission of ''diversification so that no single industry shall be forced to bear an undue burden of competition?'' FPI believes the new definitions are a significant step forward in meeting this objective. Among the primary benefits of the revised definitions is that they are aimed toward measuring FPI's impact on an *industry*. The corporation's authorizing legislation states that FPI is to operate so that no single industry is forced to bear an undue burden of competition. Most private vendors competing for Federal business offer an array of different items across the industry in which they operate. Most producers of office furniture do not limit themselves to just credenzas. They offer tables, desks, bookcases, etc. Suppliers of shirts may also produce pants, coveralls, etc.

One commenter stated FPI's commitment to report in the *CBD* all items which could reasonably be construed to be a separate specific product will be the determinant of FPI's good faith. The commenter stated that if FPI faithfully observes this commitment by announcing its intent considerably more liberally than is required and treats comments objectively (i.e., acts in favor of both FPI and the private sector about 50 % of the time) industry will likely gain confidence in the process. FPI appreciates the commenter's trust in our ability to faithfully and accurately fulfill the requirements of this provision. Yet the fair treatment of comments received from the private sector does not automatically translate into a quota system whereby the finding will be in the private sector's favor 50% of the time. FPI commits that the Board of Directors will decide each case on its own merits, regardless of any other such decisions. FPI points out that the revised definitions will have FPI ''announce in the *CBD* its intent to produce any item that could reasonably be construed to be a new product.'' FPI's commitment to make such announcements considerably more often than is required is beyond the letter of the revised definitions. However, in seeking to build good faith with the private sector, FPI will attempt to fulfill this additional requirement.

Objections were raised to the provision reading ''Items that are essentially the same product, or those that are variations of an existing FPI product. * * * would not be subject to announcement of any kind.'' Commenters felt FPI is unable to make such definitions without industry's assistance. FPI respectfully disagrees with this suggestion. FPI has the technical and engineering knowledge to accurately determine when items are essentially the same or are variations of an existing FPI product. FPI currently makes these determinations under the existing expansion guidelines.

A commenter suggested ''new product'' be defined as a ''specific product which FPI has not produced within the last three years.'' FPI respectfully disagreed with this suggestion. The nature of some Federal purchases is cyclical, so that items bought in large amounts one year, may be purchased in very small quantities, if at all, for three or fours years thereafter. FPI believes defining a ''new product'' as a ''specific product FPI has not produced within the past three years'' is overly restrictive, and the five year figure is reasonable and more consistent with Federal buying patterns.

Commenters felt the revised ''significant expansion'' definition would greatly affect what FPI can do without initiating the guidelines process. One commenter expressed opposition to *any* planned expansion of FPI's production without significant industry input. FPI believes a primary benefit of the new ''significant expansion'' definition is that it clarifies exactly what is ''significant'' by changing the measure from capacity to actual sales. Under the old definitions, FPI could potentially increase sales by a higher margin without it being considered significant if FPI did not expand capacity. FPI opposes the suggestion that industry input is necessary before *any* planned FPI expansion. Rather, we defer to the statute, which cites ''significant'' expansion. The language does not say FPI can not have any expansion without industry input. Both the current and revised definitions allow for exactly the type of private industry input suggested. The process calls for FPI to notify known Federal vendors and relevant trade associations, requesting input and relevant data for use in the upcoming impact study. Following FPI's issuing of the preliminary study, interested parties may submit comments in reaction to it. Comments may also be submitted in response to the revised study, and private sector representatives have the opportunity to appear and speak before FPI's Board of Directors.

Commenters objected to the proposed market share levels limiting FPI's expansion. Commenters noted that new

definitions allow FPI to increase a product's market share up to 15% without initiating the industry involvement guidelines process. FPI believes this is reasonable. To provide some background, in both public testimony and private discussions with FPI, several industry representatives have stated their idea of what constitutes a ''reasonable share of the market'' for FPI. Almost uniformly, these officials state that a 15%–20% market share is reasonable for FPI. In legislation submitted by Rep. Collins, a 20% market share is referenced as the market share acceptable for FPI's production. Thus, allowing FPI to boost production of an existing product without initiating the guidelines process until its market share reaches 15% is not unreasonable.

Commenters objected to allowing FPI to increase its market share up to 15% of a specific product, since this may result in FPI providing 100% of certain items upon which small businesses may be dependent. FPI acknowledges that among the goods and services it provides are some items bought in relatively low quantities. For FPI to provide these items, as would be the case for any business, in a self-sustaining manner (as the corporation is mandated to operate), it must achieve certain economies of scale. In some instances, this may result in FPI supplying much, or even all, of a single Federal contract. There is no guarantee of further Federal demand for the exact same item. Thus, while buys of the ''specific product'' continue, a small buy for a single item may be supplied exclusively by FPI. FPI will monitor the potential for such situations as it has in the past.

A commenter noted the revised significant expansion sliding scale allows for a hypothetical situation in which FPI could boost its production of an item from $5 million and 10% of the Federal market (out of $50 million) to $7.5 million in sales and a 15% share without initiating the expansion process. the interpretation of the revised market share scale is correct. FPI believes this is a fair and reasonable formula. Under this hypothetical scenario, the value of Federal buys available to private vendors decreases only slightly from $45 million to $42.5 million. It should be noted that, in the scenario described, this would be the maximum impact FPI could have for a given year under the new rules.

Commenters objected to having market activities independent of FPI's activities irrelevant in determining what is FPI's reasonable share of the market. The new definitions do not change the factors used by the Board of Directors to determine what is a reasonable share of the market. As in the original rules, the proposal does not hold FPI responsible for a ''significant expansion'' when the corporation's market share increase is due to market dips outside of FPI's control.

Commenters expressed concern that the definitions have FPI's Board of Directors serve as the ultimate authority for decisions on issues related to FPI's expansion efforts. It was suggested an independent body would be a more appropriate body for such responsibilities. FPI notes such concerns, but does not agree. It was Congress' intent to have FPI's Presidentially-appointed Board of Directors oversee and direct FPI's operations, insuring the credibility of the industry involvement guidelines process. By statute, the Board is called upon to make such decisions, after balancing the often numerous and complex concerns of all parties involved. The Board's job is to review and analyze *all* information presented to them as part of each proposal, including data from FPI and private industry. The new definitions make no change from the current rules on this issue.

Several commenters expressed concern that the revised guidelines would allow FPI to ignore, nullify or modify previous new product or expansion decisions made by FPI's Board of Directors. FPI points out the revised definitions specifically state that prior decisions by FPI's Board would not be affected. Thus, recent Board decisions regarding FPI expansion proposals relating to shipping/storage containers, dormitory and quarters furniture, office case goods, etc., all still apply.

(III) Comments That Are More Relevant to Other Aspects of FPI's Operations

The following are ideas, recommendations or suggestions provided by commenters which, though often insightful and/or constructive, are more relevant to other aspects of FPI's operations, and do not directly address the merits of the revised expansion definitions. In the interest of being open to public scrutiny, FPI has included a brief response to each of the comments below.

A commenter noted that the revised definitions do not alter FPI's mandatory source status. FPI recognizes that its status as a mandatory source of supply for the Federal government is an important issue for many commenters. However, the mandatory source issue is more relevant to the discussions (mentioned in the previous section) that are planned by Rep. McCollum and other members in the Congress.

A commenter suggested FPI ought to consider the production of other mandatory source operations, such as NIB, NISH and 8A firms, when considering the ability of the Federal market to sustain FPI and private vendors. FPI appreciates the suggestion, which is more relevant to the manner in which the corporation prepares its actual impact studies. FPI agrees that data relating to production by sources such as NIB and NISH is an important piece of information.

A commenter argued FPI should not use comparisons of the Federal market and total domestic market as justification for production of a new product or a significant expansion of production for an existing product. FPI recognizes the importance of all factors involved in determining what constitutes a reasonable share of the Federal market. Under both the existing guidelines and the new definitions, it is up to FPI's Board of Directors to determine what is a reasonable share. The statute calls for consideration of several factors in the impact studies, including the size of the Federal market as well as the size of the total domestic market.

A commenter objected to FPI lumping together Federal purchases from civilian agencies and the Department of Defense (DoD). FPI's authorizing legislation restricts the corporation to selling its goods and services to the Federal government. There is no distinction made between DoD and any other Federal department or agency. On this issue, the revised definitions make no change from the current guidelines.

A commenter claimed the option of manufacturing for the commercial market has eroded for many products supplied by FPI. The commenter stated that when FPI produces an item previously supplied by private vendors, private sector jobs are almost certain to be lost. FPI notes that the ability of private vendors to find non-Federal markets for their goods is one of the factors FPI's Board of Directors assess when they consider the level of FPI's impact on the private sector. This responsibility is not changed from the existing definitions.

A commenter contended that much of the machinery used by private vendors to produce goods for the Federal government is specialty equipment not easily converted to manufacture other products. FPI recognizes some vendors buy equipment specifically to compete for Federal contracts and in some cases, such equipment is not easily converted to other uses. Such decisions are the

responsibility of each vendor. Removing FPI as a supplier of Federal goods would not eliminate all the competition and risk from competing for Federal contracts. Both the current and revised definitions are designed to help insure that FPI's operations do not place an undue burden on any one industry. When assessing FPI's impact, one of the many factors FPI's Board of Directors take into account is the ability of the affected vendors to produce similar items for non-Federal customers or make other items with the same machinery.

A commenter suggested that a consistent definition of ''reasonable share of the market'' must be established. The commenter stated that until then, expediting the expansion process would only allow FPI to take bigger bites of new or existing markets more quickly. FPI acknowledges the inability of interested parties to reach an agreement on what constitutes a reasonable share of the market for FPI. This is particularly frustrating in light of the fact that FPI has worked extensively with various private sector vendors, trade associations and public policy groups on this and related prison industry issues for the past seven years. This is why the Congress left the final decision of what constitutes a reasonable share to the FPI Board of Directors, upon weighing the issues and concerns of all parties.

(IV) Comments Which are Vague, Broad or General in Nature

The following are ideas, recommendations or suggestions provided by commenters which are vague, broad or general in nature. The comments do not always make a specific point and FPI is not in a position to appropriately address each of the comments. Nevertheless, the corporation has included a brief response to each comment.

A commenter suggested that the revised definitions threaten small businesses. Though respectfully disagreeing with this statement, FPI finds its vague in that it fails to explain how the revised definitions have a particular effect on small businesses that is different from how the rule would affect any other business.

Several commenters expressed their belief that FPI proposed the revised definition to allow FPI greater freedom to expand into new product areas. While disagreeing with this comment, FPI also finds it ironic. In the past, most of the vendors and trade associations with which FPI has worked have suggested that FPI make a greater effort to diversify its operations, so as to alleviate its impact on industries in which FPI already operates. This comment suggests these parties have changed their position, and do not wish further diversification by FPI.

One commenter stated that new definitions are especially disconcerting in light of FPI's ''public rhetoric about partnering and cooperation with industry.'' The commenter suggested the revised definitions signify that FPI ''is not truly interested in partnering and will continue to expand, absent a high-profile, bluntly adversarial campaign.'' It is FPI's belief that the new definitions are a step forward in the corporation's efforts toward greater cooperation and more partnerships with private industry. The new definitions help address the problems related to the availability of data, while also providing a number of safeguards for potentially affected industries.

A commenter stated the revised definitions are more arbitrary and less transparent than the current system. Other commenters suggested the revised definitions, if implemented, would only make it easier for FPI to arrive at the results it desires. While disagreeing with these sentiment, FPI finds them to be broad comments. FPI has spelled out the problems associated with the existing rules, the corporation's rationale for change, and the protections built into the process to safeguard the concerns of industry and enhance the opportunity for public comment. The revised definitions are a sincere attempt by FPI to rectify some of the existing problems, and we believe they will result in improvements to the process for all concerned. Since the rule will be published for implementation as an interim measure, allowing further comment during implementation, we believe FPI has maximized the chances for the process to work for all parties as intended.

As mentioned earlier, FPI is announcing implementation of these revised definitions on an interim basis. Until such time that FPI's Board of Directors determines that the definition should be made final, the corporation reserves the right to make further modifications based on input from any of the following sources:

(1) The ongoing independent audit of FPI's use of and compliance with the original expansion guidelines being conducted by the accounting firm of Urbach, Kahn and Werlin;

(2) The examination of FPI's methodology use to calculate the Federal market for goods and services supplied by FPI. This analysis is currently underway and is being conducted by a panel of independent Federal procurement experts;

(3) Comments relating to the revised definitions and procedures received by FPI from private industry or organized labor; and,

(4) FPI's own experience as the corporation works with the revised definitions.

Any further comments on these definitions may be submitted to FPI at the address listed above. Any such comments will be considered and noted, but will not necessarily receive a response in the Federal Register or *Commerce Business Daily*.

FPI now publishes the following definitions of ''specific product'', ''new product'', and ''significant expansion of an existing product''. These are interim definitions. The decision to further modify these definitions, and/or institute the definitions on a permanent basis is solely at the discretion of FPI's Board of Directors.

Revise Definitions

1. Specific Product

A specific product refers to the aggregate of items which are similar in function (e.g., bags and sacks), or which are frequently purchased for use in groupings (e.g., dormitory and quarters furniture) to the extent provided by the most current Federal Supply Classification (FSC) Code. There are currently 685 federal supply classes designated within the Federal Procurement Data System. FPI currently produces within 74 of these classes.

Specific products will equate to the most current 4-digit FSC Code, published by the General Services Administration, Federal Procurement Data Center (FPDC). As a general rule, products will be deemed to be different specific products if they are identified by a distinct 4-digit FSC code.

The following means will be used to determine how items should be treated:

—Items classified within the same 4-digit FSC code will be presumed to comprise a single specific product (unless otherwise determined by FPI, or with input from the relevant industry).

—The predominant material of manufacture (e.g., nylon vs. canvas) will not ordinarily be a factor in defining an item as a separate specific product. (Material will be considered as part of routine review.)

In certain instances, with approval of its Board of Directors, FPI may combine FSC codes where multiple FSC's comprise a particular industry. In requesting the Board to combine FSC's, FPI will give careful consideration, and

be especially sensitive to, companies that manufacture products (such as various items of apparel) in multiple FSC codes. Moreover, situations should be avoided by FPI where it would have to request Board approval of production and/or expansion in several ''specific products'' (e.g., office seating, case goods, and systems furniture), each of which often involves many of the same companies within a single potentially affected industry (e.g., office furniture).

The rationale for any proposed combining of FSC's will be published by FPI in the *Commerce Business Daily* to seek input from the potentially affected industry. In all cases, input received in its submission will be forwarded by FPI to the Board of Directors for consideration and final determination.

In some instances, an item may be considered separate from another product in the same 4-digit FSC category, if its function differs substantially. In such cases, the 4-digit Standard Industrial Classification (SIC) code may be used as a back-up measure to more accurately define the product.

SIC codes will continue to be used at the 4-digit level to determine the size of the domestic market for a particular product. For purposes of product definition in the domestic market, FPI will combine 4-digit SIC codes when the data suggests the product under examination may encompass several different 4-digit SIC codes, with no substantial difference in the product (e.g., men's vs. women's apparel).

2. New Product

A new product is a 'specific product' which FPI has not manufactured or produced within the past five years.

In cases where it has been determined that more than one specific product exists within a 4-digit FSC, the 4-digit SIC code will be used as a secondary indicator to determine whether the product is ''new''. In such cases, a new product will be defined as a 'specific product' in the four-digit SIC which FPI has not produced within the past five years.

''Good Faith'' CBD Announcements—Items not deemed by FPI to be a New Product.

Under current rules, management decisions as to whether production of an item constitutes a new product are made by FPI staff, based on the SIC classification system, without public involvement. Under the proposed new rules, there may be circumstances in which FPI plans to produce items that FPI does not consider to be a new product, but which an affected party may reasonably construe to be a new product. In these circumstances, the items will be announced for comment in the Commerce Business Daily. The purpose of this provision is to give private industry an added level of input into such decisions made by FPI, since it is not possible to anticipate every possible situation or question that could arise within the proposed definition.

The parameters for publishing such internal decisions that are made and announced subject to this provision will be as follows: items that a reasonable person could construe to be a product separate and distinct from another item which FPI is making or recently made would be subject to announcement even though their function is similar. As an example, the production of extreme cold weather trousers would be announced, although FPI already produces bullet resistant fragmentation vests, and both are items of protective clothing.

Items that are essentially the same product, or those that are variations of an existing FPI product (e.g., a new style of seating) would not be subject to announcement of any kind. However, FPI will resolve any question as to whether to announce in favor of announcement.

In submitting comments to FPI, the following guidelines will apply:

—Comments will be due within 21 days of the date of publication;

—Relevant comments will focus on and address why the item should be considered a new product, separate and distinct from a similar item currently being produced by FPI. Comments may include such factors as: The manufacture of the item involves substantially different material and processes; companies that produce this item specialize in manufacturing only that item; the manufacturing processes are unique and are not easily adaptable to produce other similar items;

—While the primary purpose of the comment provision will be to determine if an item should be defined as a new product, comments related to market share and/or the impact that such a production decision may have on the firm will also be considered as they are relevant;

—All comments received in response to these announcements will be considered by FPI. The commenter will be advised whether FPI decides to go through the guidelines process.

As always, any interested party has a right to raise any question at any time with the Board of Directors (see 28 CFR 301.2), and thus may appeal to FPI's Board of Directors any issue or decision relating to whether a product is a new product. However, pending such review, FPI may proceed with its plans in accordance with the decision as announced in this process described above, unless and until the decision is reversed.

3. Significant Expansion of an Existing Product

Proposed production increases by FPI which may increase its market share will be reviewed during the Corporation's annual planning cycle and be deemed a significant product expansion under the following circumstances:

(1) Sales (measured in constant dollars) for the specific product will increase by more than 10 percent, or $1 million, in any given year, whichever is greater; or

(2) In any case where FPI's market share is greater than 25%, any increase in FPI's market share resulting from an increase in FPI production would be deemed to be significant for purposes of triggering the guidelines process.

Discussion: When either criterion is met, an analysis of the federal government market for the specific product will be conducted and an estimate of FPI's current and projected market share will be developed. The production increase will be deemed ''significant'' when FPI's market share position changes in accordance with the following sliding scale. If FPI currently has a 15% or less share of the federal market, any increase in market share would be permissible, provided that the particular increase does not result in FPI exceeding a 15% market share. If FPI has a market share greater than 15%, but less than 20%, FPI could increase its market share to 20%, before the increase would be deemed to be significant. If FPI has a market share of greater than 20%, but less than 25%, FPI could increase its market share to 25%, before the increase would be deemed to be significant.

The allowable increase in market share from 15 to 20% in one year, should not allow FPI to (assuming its sales increases by more than 10%) increase its share again from 20 to 25% in a subsequent year without going through the guidelines process.

Market shares will be calculated on the basis of FSC's for planning purposes. If based on initial assessment, it is determined that a comprehensive impact study, and Board approval, is likely to be required, a detailed in depth analysis of market share will be undertaken to fully assess potential impact.

Situations where FPI production remains constant, but market share

increases as a result of other factors, including market changes, will not require FPI to initiate the guidelines process. The fact that 25% may ''trigger'' the guidelines does not necessarily mean the Board of Directors cannot approve an FPI production level resulting in a federal market share above 25%.

The prior three years' data will be used to determine the share of the federal government market, to ensure that annual fluctuations are taken into account and normalized.

FPI may produce at the rate of previously achieved annual sales levels, adjusted for inflation, without initiating the guidelines process.

In cases where FPI sales inadvertently or insubstantially exceed Board authorized levels, FPI will make every effort to adjust its production by a corresponding among the following year. If FPI plans call for continued growth, it will invoke the guidelines process without delay and seek Board approval of future production levels. Should the Board decide on a production level lower than that which FPI already achieved, FPI will adjust its future plans and, if necessary scale back, to comply with the Board's decision.

In cases of extreme public exigency, such as national disaster or national defense emergency, such as during Operation Desert Storm, FPI may exceed guidelines thresholds, provided FPI receives specific orders or requests from senior Department of Defense and/or Executive Branch officials. Increased sales resulting from national exigencies will not be considered a violation of guidelines ceilings in the year which they occurred. In such cases, the higher production levels achieved by FPI will be temporary, and will not be used as part of FPI's baseline for future calculations of significant expansion. Such exceptional events will be subject to approval by FPI's Chief Operating Officer, with concurrence of FPI's Board of Directors.

Subject to other provisions noted in this procedure, FPI's sales for the current fiscal year will be utilized as the based year for future application.

Prior decisions of FPI's Board of Directors will remain unaffected by these changes to the definitions.

These proposed rules have been reviewed by FPI's Growth Strategies Implementation Committee. The following officials are represented on the Committee:

Executive Vice President, Envelope Manufacturers Association of America
Vice President—Government Affairs, Screen Printing and Graphic Imaging Association International
Manager, Break-Out Procurement Center Representative Program, Small Business Administration
Former Senior Staff Member, Brookings Institution
Head of Office of Wages and Industrial Relations, AFL–CIO
President, State/Federal Correctional Vendors Association

Their comments and suggestions have been incorporated into this proposed procedure.[1]

All comments received in response to this proposed procedure have been provided to the FPI Board of Directors, which has approved these procedures for publication and implementation on an interim basis.

Robert Grieser,

Manager, Planning, Research and Activation Branch.

[FR Doc. 97–6143 Filed 3–11–97; 8:45 am]

BILLING CODE 4410–05–M

[1] Of course, these officials and these organizations are not precluded from making further comment at this time.

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Information Collection Under Review; Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program—''Aggregate Data Forms: Police and School.''

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments. Public comments are encouraged and will be accepted until April 11, 1997. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10. 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 Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: New collection.

(2) The title of the form/collection: Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program—''Aggregate Data Forms: Police and School.''

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Not-for-Profit Institutions. Other: State, Local, or Tribal Government. The study will obtain interview and test information on youth background, social adjustment, deviancy/crime activity, self-esteem, and depression/personality adjustment. It will determine the effectiveness of the program, comparing program subjects to non-program gang youth of the same

ages, approximately 13 to 20 years old, and their backgrounds.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 31 (11 police+20 schools@11.88 hrs. per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 368.28 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 6, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–6072 Filed 3–11–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers United States city Average

Pursuant to Section 604(c) of the Motor Vehicle Information and cost Savings Act, which was added to the Motor Vehicle Theft Law enforcement Act of 1984, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the Federal Highway Administration (49 CFR 501.2(f)), the Secretary of Labor has certified to the Administrator and published this notice in the Federal Register that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 51.0 percent from its 1984 base period annual average of 311.1 to its 1996 annual average of 469.9.

Signed at Washington, D.C., on the 19th day of February 1997.

Cynthia A. Metzler,

Acting Secretary of Labor.

[FR Doc. 97–6146 Filed 3–11–97; 8:45 am]

BILLING 4510–24–M

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,949; Barclay Home Products, Cherokee, NC

TA–W–32,950; Barclay Home Products, Robbinsville, NC

TA–W–33,045; Union City Body Co L.P., Union City Body Co., Union City Div., Union City, IN

TA–W–32,090; SGL Carbon Corp., St. Marys, PA

TA–W–33,014; Remington Arms Co., Inc., Ammunition Div., Lonoke, AR

TA–W–32,927; Lucent Custom Manufacturing Services, Whitsett, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,900; Pacificorp, Portland, OR

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,919; Ferris Industries, Inc., Vernon, NY

TA–W–32,992; Concast Metal Products Co., Dailey, WV

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–32,886; Practical Peripherals—A Hayes Div., Thousand Oaks, CA

TA–W–33,141; Xerox Corp., Oklahoma City, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,834; BP Exploration, Inc., Houston, TX & Operating at Various Locations in the Following States; A; TX, B; LA, C: MS, D; GA

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–32,994; Minnesota Mining and Manufacturing Co (3–M), St. Paul, MN

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA–W–32,939; Eaton Corp, Automotive Controls Div., Wauwatosa, WI

In early 1996, the parent company of the Automotive Control Div. of Eaton Corp made a corporate decision to transfer production to another domestic facility.

TA–W–33,039; Brunswick Marine, Nappene, IN

Production of fishing boats at the subject plant was transferred to a successor firm, which is located domestically.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–33,094; Amphenol Corp., Amphenol Aerospace Operations, Sidney, NY: February 23, 1997.

TA–W–33,019; Kenneth Fox Supply Co., Fox Packaging, McAllen, TX: November 25, 1995.

TA–W–33,028; Fun-Tees, Inc., Concord, NC: December 4, 1995.

TA–W–33,078; Westinghouse Electric Corp., Ft. Payne, AL: December 18, 1995.

TA–W–33,159; AMP, Inc., Roanoke, VA: January 17, 1996.

TA–W–33,048; Hamilton Beach-Proctor Silex, Inc., Washington, NC: November 27, 1995.

TA–W–33,085; Montana Power Co., Butte, MT: December 27, 1995.
TA–W–33,010; Sau Mee Sewing, San Francisco, CA: November 18, 1995.
TA–W–33,035; RHO Industries, Inc., Buffalo, NY: November 25, 1995.
TA–W–33,098; Rohm and Haas Co., Philadelphia, PA: December 26, 1995.
TA–W–33,106; Navistar International Transportation Corp., Foundry-Machining, Waukesha, WI: January 8, 1996.
TA–W–32,918; Osh Kosh B'Bosh, Liberty, KY: October 28, 1995.
TA–W–33,057; Modine Manufacturing Co., Modine Heat Transfer, Inc., Camdenton, MO: December 16, 1995.
TA–W–32,982; Delta Wood Products, Inc., Trumann, AR: November 7, 1995.
TA–W–33,056; Diana Manufacturing Co., Inc., Westville, NJ: December 12, 1995.
TA–W–33,043; United Techncologies Automotive, Inc., Zanesville, OH: December 6, 1995.
TA–W–33,084; Mallinckrodt Medical, Inc., Mallinckrodt Anesthesiology, Argyle, NY: March 10, 1997.
TA–W–32,921; T.J.F.C. Manufacturing Co., Inc., Cleveland, OH: November 4, 1995.
TA–W–33,073; Rugged Sportwear LLC, Lawrenceville, VA: December 12, 1995.
TA–W–33,091; Girls Will Be Girls, Inc., Athens, TN: January 2, 1996.
TA–W–33,052; Cesare's Apparel, Inc., Daneilsville, PA: December 11, 1995.
TA–W–33,115; Comfort Care Products, Inc., Div. of Smith & Nephew, Inc., Pontotoc, MS: January 17, 1996.
TA–W–32,999; Andover Togs, Inc., Springdale Fashions, Clinton, NC: November 19, 1995.
TA–W–33,062; U.A. Technologies, (Currently Operating as Texas-HAI LP), Brownsville, TX: December 12, 1995.
TA–W–33,037 & A; Blue Bird Corp., York, PA and New York, NY: December 4, 1995.
TA–W–32,998; Thomas Lighting-Accent Div., (formerly Thomas Industries-Capri Lighting), Los Angeles, CA: November 22, 1995.
TA–W–32,933; American Fashion Sportwear, Inc., Brooklyn, NY: November 6, 1995.
TA–W–33,072; Tetley USA, Morris Plains, NJ: December 9, 1995.
TA–W–33,051; Premium Manufacturing, Inc., Gilbert, AZ: December 16, 1995.
TA–W–33,042; Komatsu America International Co., Galion, OH: December 10, 1995.
TA–W–32,981; Dayco Products, Inc., Waynesville, NC: November 11, 1995.
TA–W–33,097; Will Knit, Inc., Clayton, NC: October 16, 1995.
TA–W–32,948; East Tennessee Undergarment, Elizabethton, TN: November 7, 1995.
TA–W–33,041; Roederstein Electronics, Inc., Statesville, NC: December 9, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivisions thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01398; Diana Manufacturing Co., Inc., Westville, NJ
NAFTA–TAA–001441; Webcraft Games, Inc., North Brunswick, NJ
NAFTA–TAA–01407; SGL Carbon Corp., St. Mary's, PA
NAFTA–TAA–01382; Union City Body Co., LP, Union City Body Co., Union City Div., Union City, IN
NAFTA–TAA–01464; Norandal USA, In., Scottsboro, AL

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NONE

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01401 & A; Blue Bird Fabrics Corp., York, PA and New York, NY: December 17, 1995.
NAFTA–TAA–01411; Mallinckrodt Medical Inc., Mallinckrodt. Anesthesiology, Argyle, NY: February 17, 1997.
NAFTA–TAA–01394; Vanity Fair Mills, Inc., Monroeville, AL: December 19, 1995.
NAFTA–TAA–01403; United Technologies Automotive, Inc., Zanesville, OH: December 6, 1995.
NAFTA–TAA–01309; J.H. Collectibles, Inc., Nevada, MO: October 21, 1995.
NAFTA–TAA–01442; AMP, Inc., Roanoke, VA: January 17, 1996.
NAFTA–TAA–01424; Amphenol Corp., Amphenol Aerospace Operations, Sidney, NY: January 9, 1996.
NAFTA–TAA–01448; R and S Dress Mfg Co., Shippensburg, PA: January 23, 1995.
NAFTA–TAA–01422; PAK 2000, Lancaster, NH: January 7, 1996.
NAFTA–TAA–01412; Montana Power Co., Butte, MT: December 27, 1995.
NAFTA–TAA–01418; Navistar International Transportation Corp., Foundry-Machining, Wakesha, WI: January 9, 1996.
NAFTA–TAA–01311; Spectro Knit Manufacturing Co., Mifflinburg, PA: October 10, 1995.
NAFTA–TAA–01397; Atlantic Steel Industries, Inc., Cartersville, GA: December 13, 1995.
NAFTA–TAA–01387; U.A. Technologies (Currently Operating as Texas—HAI LLP), Brownsville, TX: December 12, 1995.
NAFTA–TAA–01389; Komatsu America International Co., Galion, OH: December 10, 1995.

NAFTA–TAA–01381 & A; Homerville Textile, Homerville, GA and Hazelhurst Textile, Hazelhurst, GA: December 11, 1995.

NAFTA–TAA–01377; workers of Personnel Partners, employed at WCI/Domestic, Mishawaka, IN: December 5, 1995.

NAFTA–TAA–01370; J.H. Collectibles, Milwaukee, WI: November 22, 1995.

NAFTA–TAA–01373; Andover Togs, Inc., Springdale Fashions, Clinton, NC: November 19, 1995.

NAFTA–TAA–01429; Sara Lee Hosiery, Hartsville, SC: January 15, 1996.

I hereby certify that the aforementioned determinations were issued during the month of February, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 20, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–6151 Filed 3–11–97; 8:45 am]

BILLING CODE 4510–01–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 24, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 24, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of February, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

OTTA Institutions

[Petitions Instituted on 02/10/97; Contact: Regina Chapman (FTS) 219–5555]

Subject Firm (petitioners)	Location	Contact person	Telephone	TA–W No.	Date of petition
Contact Technologies (Co.)	St. Marys, PA	William Pichler	814–834–9000	33,162	01/24/97
ABB Air Preheater (Wkrs)	Enterprise, KS	Corey Guenter	716–596–2757	33,163	01/21/97
Frigidaire Home Products (UAW).	Greenville, MI	Larry French	616–754–7131	33,164	01/15/97
Sunbeam (Wkrs)	McMinnville, TN	Jerry Kulkowski	615–668–4121	33,165	01/22/97
Sanken USA (Wkrs)	Mukilleo, WA	Tina McPherson	206–259–5498	33,166	01/10/97
Ashworth Brothers, Inc. (Wkrs)	Salinas, CA	Tom Shelhamer	540–665–1360	33,167	01/06/97
R and S Dress Mfg Co. (CO.)	Shippensburg, PA	John Rhine	717–532–2178	33,168	01/23/97
Lorraine Linens (Wkrs)	Hialeah Gardens, FL	Kenneth Josephy	954–425–0800	33,169	01/17/97
A. Wimpfheimer and Bro. (Co.)	Stonington, CT	Fred Lidsky	860–535–1050	33,170	01/24/97
Axelrod and Axelrod Sales (Co.).	New York, NY	Dale Karlin	212–673–9325	33,171	01/24/97
National Apparel (Co.)	Boyertown, PA	Michael Rittenhouse	610–792–0520	33,172	01/20/97

OTAA Institutions

[Petitions Instituted on 02/10/97]

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
33,173	National Apparel (Wkrs)	Carbon Hill, AL	01/24/97	Camouflage Trousers.
33,174	Four Seasons Fabrics (Wkrs)	New York, NY	12/20/96	Swimwear Fabrics.
33,175	Medite Corporation (Wkrs)	White City, OR	01/24/97	Dimension Lumber.
33,176	Binks Sames Corp (Wkrs)	Franklin Park, IL	01/26/97	Paint Spray Equipment.
33,177	UNITE (UNITE)	Wilkes Barre, PA	01/28/97	Labor Union.
33,178	Sahara Sportswear (Wkrs)	El Paso, TX	01/28/97	Embroidered Golf Sportswear and Bags.
33,179	Joyce Sportswear Co. (Wkrs)	Gary, IN	01/30/97	Ladies' Clothing.
33,180	N.L.C., Inc. (Wkrs)	Trout Creek, MT	01/27/97	Right-of-Way Sawyers.
33,181	A and A Consultants (Wkrs)	El Paso, TX	01/23/97	Pants, Skirts, Overalls, Shorts.
33,182	Oxford Shirt Group (Co.)	Vidalia, GA	01/28/97	Men's Dress Shirts.
33,183	Niagara Mohawk Power (IBEW)	West Syracuse, NY	01/28/97	Electric Power Generation.
33,184	Northway Products (Wkrs)	Rensselaer, IN	01/14/97	Bathroom Furniture.

OTAA INSTITUTIONS—Continued

[Petitions Instituted on 02/10/97]

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
33,185	Montana Power Company (Co.)	Missoula, MT	01/21/97	Electric Power.
33,186	Quality Park Products (GCIU)	St. Paul, MN	01/24/97	Envelopes.
33,187	J and J Group (Wkrs)	Waynesboro, PA	01/28/97	Ladies' Apparel.
33,188	Carborundum Corporation (Co.)	Amherst, NY	01/04/97	Boron Nitride.
33,189	Carborundum Corporation (Co.)	Phoenix, AZ	01/24/97	Microelectronics.
33,190	Allied Signal Inc. (Wkrs)	Parsippany, NJ	01/27/97	Alloy Ribbon.
33,191	Alsea Veneer Inc. (Wkrs)	Newport, OR	01/23/97	Veneer.
33,192	Lamson and Sessions (Wkrs)	Aurora, OH	01/30/97	Pipes.
33,193	Valtex Industries (Co.)	Rio Piedras, PR	01/24/97	Bras and Panties.

[FR Doc. 97–6149 Filed 3–11–97; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than March 24, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 24, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of February 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 02/03/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,134	Cott Distributors USA (Wkrs)	Oakfield, NY	01/15/97	Soft Drink Beverages.
33,135	Townwear Garment (Comp)	Hiawassee, GA	01/20/97	Ladies' Sportswear.
33,136	Lenox Crystal, Inc (Wkrs)	Mt. Pleasant, PA	01/17/97	Crystal Glassware and Stemware.
33,137	C and A Wallcoverings (UPIU)	Plattsburgh, NY	01/21/97	Wallpaper.
33,138	Pollard Banknote Ltd (UPIU)	North Brunswick, NJ	01/13/97	Lottery Tickets, Magazine Inserts.
33,139	Random House Value Pub. (Wkrs)	Avenel, NJ	12/19/96	Distribution and Warehousing of Books.
33,140	Bristol Jeans, Inc (Wkrs)	Bristol, TN	01/17/97	Men's and Ladies' Jeans.
33,141	Xerox Corp (UNITE)	Oklahoma City, OK	01/13/97	AMAT Photoreceptors.
33,142	Simpson Industries (Wkrs)	Jackson, MI	01/13/97	Automobile Parts.
33,143	Arvin North American Auto (Wkrs)	Dexter, MO	01/11/97	Mufflers.
33,144	NNT, Inc (Wkrs)	Clinton, SC	01/15/97	Motors, Fans.
33,145	Milltown Manufacturing (Wkrs)	Red Boiling Spr, TN	01/17/97	Cutting and Sewing Contractors.
33,146	Federal Mogul Corp (Wkrs)	Leiters Ford, IN	01/15/97	Lighting Products.
33,147	Crystal Mills (Wkrs)	Charlotte, NC	01/13/97	Sweat Shirts and T-Shirts.
33,148	ITT Cannon—(Comp)	Santa Ana, CA	01/14/97	Connectors.
33,149	Rami Fashions (Wkrs)	Allentown, PA	01/17/97	Shirts, Dresses, Pants.
33,150	Cinch Connector Div. (Comp)	Lombard, IL	01/13/97	Electrical Connectors.
33,151	Bryan Industries, Inc (Wkrs)	Tulsa, OK	01/14/97	Childrens Clothing.
33,152	Sanyo Audio Mfg (USA) (Wkrs)	Milroy, PA	01/17/97	Speaker Systems.
33,153	Brownsville Manufacturing (Comp)	Brownsville, TX	01/13/97	Men's Pants.
33,154	West Plains Shoe Co (Wkrs)	West Plains, MO	01/22/97	Shoes.
33,155	Springlift (Wkrs)	Monticello, AR	12/31/96	Pedestals for Boats, & Brackets.
33,156	Dixie Kids, Inc (Comp)	Fayetteville, NC	01/23/97	Children's Clothing.
33,157	Envisions, Inc (Wkrs)	Harlinger, TX	12/03/96	Encoders, Data Entry for US Postal Serv.
33,158	Ansewn Shoe Co (Comp)	Bangor, ME	01/16/97	Handsewn Leather Shoes.

APPENDIX—PETITIONS INSTITUTED ON 02/03/97—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,159	AMP, Inc (Wkrs)	Roanoke, VA	01/17/97	Electrical Connectors.
33,160	Roffe, Inc (UFCW)	Seattle, WA	01/24/97	Recreational Clothing.
33,161	Pirelli Armstrong Tire (Wkrs)	Madison, TN	01/24/97	Tires.

[FR Doc. 97–6152 Filed 3–11–97; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions.

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume V

Texas:
TX970119 (Mar. 14, 1997)
TX970120 (Mar. 14, 1997)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA970001 (Feb. 14, 1997)
MA970002 (Feb. 14, 1997)
MA970003 (Feb. 14, 1997)
MA970007 (Feb. 14, 1997)
MA970009 (Feb. 14, 1997)
MA970017 (Feb. 14, 1997)
MA970018 (Feb. 14, 1997)
MA970019 (Feb. 14, 1997)
MA970020 (Feb. 14, 1997)
MA970021 (Feb. 14, 1997)

Maine:
ME970005 (Feb. 14, 1997)
ME970010 (Feb. 14, 1997)
ME970022 (Feb. 14, 1997)
ME970037 (Feb. 14, 1997)

New Jersey:
NJ970003 (Feb. 14, 1997)
NJ970007 (Feb. 14, 1997)

Volume II

None

Volume III

Florida: FL970018 (Feb. 14, 1997)

Kentucky:
KY970001 (Feb. 14, 1997)
KY970002 (Feb. 14, 1997)
KY970003 (Feb. 14, 1997)
KY970004 (Feb. 14, 1997)
KY970025 (Feb. 14, 1997)
KY970027 (Feb. 14, 1997)
KY970029 (Feb. 14, 1997)

Volume IV

Illinois:
IL970001 (Feb. 14, 1997)
IL970002 (Feb. 14, 1997)
IL970007 (Feb. 14, 1997)
IL970009 (Feb. 14, 1997)
IL970016 (Feb. 14, 1997)
IL970018 (Feb. 14, 1997)
IL970022 (Feb. 14, 1997)
IL970024 (Feb. 14, 1997)
IL970027 (Feb. 14, 1997)
IL970031 (Feb. 14, 1997)
IL970032 (Feb. 14, 1997)
IL970037 (Feb. 14, 1997)
IL970045 (Feb. 14, 1997)
IL970046 (Feb. 14, 1997)
IL970050 (Feb. 14, 1997)

IL970051 (Feb. 14, 1997)
IL970066 (Feb. 14, 1997)
IL970070 (Feb. 14, 1997)
Indiana:
IN970003 (Feb. 14, 1997)
IN970016 (Feb. 14, 1997)
IN970059 (Feb. 14, 1997)
Michigan:
MI970001 (Feb. 14, 1997)
MI970002 (Feb. 14, 1997)
MI970003 (Feb. 14, 1997)
MI970005 (Feb. 14, 1997)
MI970012 (Feb. 14, 1997)
MI970030 (Feb. 14, 1997)
MI970047 (Feb. 14, 1997)
MI970062 (Feb. 14, 1997)
MI970063 (Feb. 14, 1997)
Ohio:
OH970002 (Feb. 14, 1997)
OH970003 (Feb. 14, 1997)
OH970026 (Feb. 14, 1997)
OH970028 (Feb. 14, 1997)
OH970029 (Feb. 14, 1997)
OH970034 (Feb. 14, 1997)

Volume V

Louisiana: LA970005 (Feb. 14, 1997)
Missouri:
MO970001 (Feb. 14, 1997)
MO970003 (Feb. 14, 1997)
MO970006 (Feb. 14, 1997)
MO970007 (Feb. 14, 1997)
MO970008 (Feb. 14, 1997)
MO970009 (Feb. 14, 1997)
MO970010 (Feb. 14, 1997)
MO970013 (Feb. 14, 1997)
MO970014 (Feb. 14, 1997)
MO970015 (Feb. 14, 1997)
MO970017 (Feb. 14, 1997)
MO970041 (Feb. 14, 1997)
MO970042 (Feb. 14, 1997)
MO970043 (Feb. 14, 1997)
MO970047 (Feb. 14, 1997)
MO970049 (Feb. 14, 1997)
MO970051 (Feb. 14, 1997)
MO970054 (Feb. 14, 1997)
MO970055 (Feb. 14, 1997)
MO970056 (Feb. 14, 1997)
MO970057 (Feb. 14, 1997)
MO970058 (Feb. 14, 1997)
MO970059 (Feb. 14, 1997)
MO970060 (Feb. 14, 1997)
MO970062 (Feb. 14, 1997)
MO970063 (Feb. 14, 1997)
MO970064 (Feb. 14, 1997)
MO970065 (Feb. 14, 1997)
MO970067 (Feb. 14, 1997)
MO970068 (Feb. 14, 1997)
MO970072 (Feb. 14, 1997)
Nebraska: NE970007 (Feb. 14, 1997)
Texas:
TX970018 (Feb. 14, 1997)
TX970023 (Feb. 14, 1997)
TX970050 (Feb. 14, 1997)

Volume VI

None

Volume VII

California:
CA970055 (Feb. 14, 1997)
CA970059 (Feb. 14, 1997)
CA970095 (Feb. 14, 1997)
CA970097 (Feb. 14, 1999)
CA970102 (Feb. 14, 1997)
CA970106 (Feb. 14, 1997)
CA970112 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 7th Day of March 1997.

Margaret Washington,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–6154 Filed 3–11–97; 8:45 am]

BILLING CODE 4510–27–M

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''International Price Program—U.S. Export Price Indexes.''

A copy of the proposed information collection requests (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 11, 1997.

The Bureau of Labor Statistics is particularly interested in comments which:

—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;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Mr. Kurz can be reached on 202—606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The U.S. Export Price Indexes, produced continuously by the Bureau of Labor Statistics' International Price Program (IPP) since 1971, measure price change over time for all categories of exported products, as well as many services. The Office of Management and Budget has listed the Export Price Indexes as a major economic indicator since 1982.

The indexes are widely used in both the public and private sectors. The primary public sector use is the deflation of the U.S.Trade statistics and

the Gross Domestic Product; the indexes are also used in formulating U.S. trade policy and in trade negotiations with other countries. In the private sector, uses of the Export Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The IPP indexes are closely followed statistics which are viewed as sensitive indicators of the economic environment. The Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policy-makers in the Department of the Treasury, the Council of Economic Advisors, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy, and evaluation of the general business environment.

Current Actions

The IPP continues to modernize data collection and processing to permit more timely release of its indexes and to reduce reporting burden. The IPP is using the telephone rather than personal visits for initiation in limited situations. We believe that initiation by telephone reduces reporting burden with no loss in response. Other potential initiation techniques to reduce burden being reviewed include less frequent sampling of more stable item areas, use of broader item areas in certain cases, and retention of items initiated in previous samples which reporters still trade. To reduce the time required for processing new items, direct entry of initiation data from the field will be tested. Also, for repricing, the use of fax telephone lines to permit direct collection and entry into our database is being considered. In addition, use of the Internet for monthly repricing is being reviewed, contingent upon the resolution of questions relating to the security of the data.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: International Price Program—U.S. Export Price Indexes.

OMB Number: 1220–0025.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total annual responses	Average time per response (hrs.)	Estimated total burden (hrs.)
2894B	1613	Annually	1613	.75	1210
3008	1613	Annually	1613	.25	403.25
3007D	3235	Monthly	38540	.53	20426.2
		Quarterly			
Total	4848		41766		22039

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 6th day of March, 1997.

W. Stuart Rust, Jr.,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 97–6147 Filed 3–11–97; 8:45 am]

BILLING CODE 4510–24–M

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''International Price Program—U.S. Import Price Indexes.''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 12, 1997.

The Bureau of Labor Statistics is particularly interested in comments which:

—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;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSESS: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The U.S. Import Price Indexes, produced continuously by the Bureau of Labor Statistics' International Price Program (IPP) since 1971, measure price change over time for all categories of imported products, as well as many services. The Office of Management and Budget has listed the Import Price Indexes as a major economic indicator since 1982.

The indexes are widely used in both the public and private sectors. The primary public sector use is the

deflation of the U.S. Trade statistics and the Gross Domestic Product; the indexes are also used in formulating U.S. trade policy and in trade negotiations with other countries. In the private sector, uses of the Import Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The IPP indexes are closely followed statistics which are viewed as sensitive indicators of the economic environment. The Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policy-makers in the Department of the Treasury, the Council of Economic Advisors, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy, and evaluation of the general business environment.

Current Actions

The IPP continues to modernize data collection and processing to permit more timely release of its indexes and to reduce reporting burden. The IPP is using the telephone rather than personal visits for initiation in limited situations. We believe that initiation by telephone reduces reporting burden with no loss in response. Other potential initiation techniques to reduce burden being reviewed include less frequent sampling of more stable item areas, use of broader item areas in certain cases, and retention of items initiated in previous samples which reporters still trade. To reduce the time required for processing new items, direct entry of initiation data from the field will be tested. Also, for repricing, the use of fax telephone lines to permit direct collection and entry into our database is being considered. In addition, use of the Internet for monthly repricing is being reviewed, contingent upon the resolution of questions relating to the security of the data.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: International Price Program—U.S. Import Price Indexes.

OMB Number: 1220–0026.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total annual responses	Average time per response (hrs.)	Estimated total burden (hrs.)
3007B	1,725	Annually	1,725	1	1,725
3008	1,725	Annually	1,725	.334	576.15
3007D	3,235	Monthly/Quarterly	38,540	.56	21,582.4
Total	4,960		41,990		23,884

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 6th day of March, 1997.

W. Stuart Rust, Jr.,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 97–6148 Filed 3–11–97; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL SCIENCE FOUNDATION

Proposed Collection: Comment Request

Title of Collection: Public Understanding of and Attitudes Toward Science and Technology.

In compliance with the requirement of Section 3508(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) publishes periodic summaries of proposed projects. Such a notice was published at Federal Register 67350, dated December 20, 1996. No comments were received.

The materials are now being sent to OMB for review. Send any written comments to Desk Officer, OMB, 3145–033, OIRA, OMB, Washington, D.C. 20503. OMB should receive comments within 30 days after the date of this notice.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, (c) ways to enhance the quality, utility, and clarity of the information to be collected, and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated data collection techniques and other forms of information.

Proposed Project: Study of the Public Understanding of and Attitudes Toward Science and Technology—New—A telephone survey of approximately 2,000 adults aged 18 and over.

The proposed survey continues a series of national surveys of public understanding of and attitudes toward science and technology that began in 1972. It is used in the preparation of a chapter in the Science and Engineering Indicators reports by the National Science Board, as mandated by Section 4(j)(I) of the National Science Foundation Act of 1950, as amended. The Science and Engineering Indicators report and the chapter on public understanding and attitudes are widely used by planners and program development staff in: federal and state agencies, universities, research centers, and similar institutions, and by journalists and other individuals seeking to communicate with the public concerning science and technology. The average burden per respondent is estimated to be 22 minutes, producing a total burden of 733 hours for the complete study.

Dated: March 6, 1997.

Gail A. McHenry,

NSF Reports Clearance Officer.

[FR Doc. 97–6070 Filed 3–11–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis for Connections to the Internet Panel (#1207).

Date and Time: March 26–27, 1997; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1175, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Mark Luker, Program Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for the Connections to the Internet Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 7, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–6225 Filed 3–11–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Atlanta, Georgia: Aviation Accident

In connection with its investigation of the accident involving Delta Air Lines, Inc. Flight 1288, MD–88, N927DA, Pensacola Regional Airport, Pensacola, Florida, July 6, 1996, the National Transportation Safety Board will convene a public hearing at 9:00 a.m., (est.) on March 26, 1997, in Ballroom A, at the Atlanta Hilton and Towers Hotel, located at 255 Courtland Street, Atlanta, Georgia 30303. For more information, contact Shelly Hazle, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 314–6100.

Dated: March 7, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–6192 Filed 3–11–97; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Pilgrim Nuclear Power Station; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–35 issued to Boston Edison Company (BECo, the licensee) for operation of the Pilgrim Nuclear Power Station located in Plymouth County, Massachusetts.

The proposed amendment would review and approve the engineering analysis used to evaluate the effects of damping values in the seismic analysis of various Pilgrim Station piping systems. Following NRC approval, BECo would revise the Pilgrim Updated Final Safety Analysis Report (UFSAR) to make the above engineering analysis the design basis of record for the affected piping systems provided in the licensee's January 24, 1997, letter, as supplemented on February 13 and 27, 1997.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The engineering evaluation referenced above compared newly generated in-structure response spectra for the reactor building using an enhanced reactor building model and included the effects of soil/structure interaction. The results show the new spectra are enveloped by a comparable UFSAR design basis spectra and that piping stresses are less than design basis allowables. The new spectra differ from the current UFSAR response spectra in that the generic Regulatory Guide 1.60 spectral shape is used to characterize the 0.15g Safe Shutdown Earthquake control motion using a soil/structure interaction analysis with an upgraded structural model to evaluate building response and ASME Code Case N411 damping values for piping analyses.

The new piping stresses computed, as described above, result in less than design basis allowables. Since the stresses are acceptable and the methods to compute them used applicable Standard Review Plan (SRP) guidance, the proposed UFSAR revision does not significantly increase the probability of loss-of-coolant accidents (i.e., piping failures) nor significantly reduce the reliability of piping needed to mitigate the consequences of accidents. Therefore, the proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The revision relates to the method used to compute the response of structures and piping to seismic excitation and does not introduce a new type of failure mode. Since no new accident initiators are created, no new types of accidents can occur. Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The margin of safety for affected piping systems is reduced because the new response spectra results in a reduction of the computed seismic stresses compared to those computed using current UFSAR response spectra. However, this reduction in margin is not significant because the resulting piping stresses are less than design basis allowable values, and the methods used to compute response spectra associated with the 0.15 g Safe Shutdown Earthquake were determined using applicable NRC SRP guidance. Thus, although margin of safety for the affected piping is reduced, it is not a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that

failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 11, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 132 South Street, Plymouth, Massachusetts. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Patrick D. Milano: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to W.S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts, 02199, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a

balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 24, 1997, as supplemented February 13 and 27, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 132 South Street, Plymouth, Massachusetts.

Dated at Rockville, Maryland, this 6th day of March 1997.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–6176 Filed 3–11– 97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–313]

Entergy Operations, Inc.; Arkansas Nuclear One, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–51, issued to Entergy Operations, Inc. (the licensee), for operation of Arkansas Nuclear One, Unit 1 (ANO–1), located in Pope County, Arkansas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to utilize American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Case N–514, ''Low Temperature Overpressure Protection'' to determine its low temperature overpressure protection (LTOP) setpoints. By application dated November 26, 1996, the licensee requested an exemption from certain requirements of 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation.'' The exemption would allow application of an alternate methodology to determine the LTOP setpoints for ANO–1. The proposed alternate methodology is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, ''Low Temperature Overpressure Protection.'' Code Case N–514 has been approved by the ASME Code Committee and incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. However, 10 CFR 50.55a, ''Codes and Standards,'' and Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability,'' have not been updated to reflect the acceptability of Code Case N–514.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all lightwater nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. 10 CFR Part 50, Appendix G, defines pressure/temperature (P/T) limits during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in 10 CFR Part 50, Appendix G, may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce excursions exceeding the 10 CFR Part 50, Appendix G, P/T limits while the reactor is operating at low temperatures, the licensee installed the LTOP system. The LTOP system includes the electromatic relief valve (ERV) that is set to the LTOP mode when reactor pressure and temperature are reduced. The ERV prevents the pressure in the reactor vessel from exceeding the P/T limits of 10 CFR Part 50, Appendix G. However, to prevent ERV from lifting as a result of normal operating pressure surges, some margin is needed between the normal operating pressure and the ERV setpoint.

To meet the 10 CFR Part 50, Appendix G P/T limits, the ERV would be set to open at a pressure very close to the normal pressure inside the reactor. With the ERV setpoint close to the normal operating pressure, minor pressure perturbations that typically occur in the reactor could cause the ERV to open periodically. This is undesirable from the safety perspective because after every ERV opening there is some concern that the ERV may not reclose. A stuck open ERV would continue to discharge primary coolant and reduce rector pressure until the discharge pathway was closed by operator action.

Code Case N–514 would permit a slightly higher pressure inside the reactor during shutdown conditions. The ability to maintain a higher pressure in the reactor would allow a higher ERV setpoint and the likelihood for inadvertent opening of the ERV would be reduced.

Environmental Impacts of the Proposed Action

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the ANO–1 reactor vessel material.

Code Case N–514 guidelines are intended to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but to allow the pressure that may occur with activation of pressure relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This approach protects the pressure vessel from LTOP events, and maintains the Technical Specifications P/T limits applicable for normal heatup and cooldown in accordance with 10 CFR Part 50, Appendix G and Sections III and XI of the ASME Code.

In determining the ERV setpoint for LTOP events, the licensee proposed the use of safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel will not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

Use of Code Case N–514 safety margins will reduce operational challenges during low-pressure, low-temperature operations. In terms of overall safety, the safety benefits desired

from simplified operations and the reduced potential for undesirable opening of ERV will more than offset the reduction of the principal membrane safety factor. Reduced operational challenges will reduce the potential for undesirable impacts to the environment.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for ANO–1.

Agencies and Persons Consulted

In accordance with its stated policy, on January 28, 1996, the staff consulted with the Arkansas State official, Mr. David Snellings, Director of the Division of Radiation Control and Emergency Management, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 26, 1996, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Dated at Rockville, Maryland, this 7th day of March 1997.

For the Nuclear Regulatory Commission.

George Kalman,

Senior Project Manager, Project Directorate VI–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–6342 Filed 3–11–97; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 14, 1997, through February 28, 1997. The last biweekly notice was published on February 26, 1997.

Notice of Consideration of Issuance of Amendments to Facility Opeating Licenses, Proposed No Significant Harzards Consideration determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 11, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to *(Project Director)*: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment requests: December 4, 1996

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) to reflect a change in the method for detecting a reactivity anomaly described in TS 3.1.2 and TS Surveillance Requirement 4.1.2. Actual k_{eff} will be compared to predicted core k_{eff} instead of comparing actual and predicted control rod density to determine if a reactivity anomaly exists. Additionally, editorial changes to the Bases for TS 3/4.1.2 are proposed to support the TS amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed license amendments modify the method of detecting a reactivity anomaly. The proposed license amendments allow using core k_{eff} to detect a reactivity anomaly instead of control rod density. The correlation between core

reactivity and control rod density depends on predicting core k_{eff}. Core k_{eff} can be readily monitored with the new plant process computer program and core k_{eff} can more accurately detect a reactivity anomaly in the core (assumptions are minimized). A reactivity anomaly is not considered an initiator of any previously analyzed accident. As such, changing the method of detecting a reactivity anomaly will not increase the probability of any accident previously evaluated. Although, a reactivity anomaly could impact the consequences of a previously analyzed accident, the consequences of an event occurring using the proposed method of detecting a reactivity anomaly are the same as the consequences of an event occurring using the current method of detecting a reactivity anomaly. As a result, the proposed amendments do not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed license amendments do not involve a physical modification to the plant. The proposed license amendments also continue to verify that the reactivity difference between predicted and actual are such that a reactivity anomaly does not exist. In addition, core k_{eff} can more accurately detect a reactivity anomaly in the core (assumptions are minimized) and can be readily monitored with the new plant process computer program. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety. The proposed license amendments modify the method of detecting a reactivity anomaly. The proposed license amendments allow using core k_{eff} to detect a reactivity anomaly instead of control rod density. The correlation between core reactivity and control rod density depends on predicting core k_{eff}. Core k_{eff} can be readily monitored with the new plant process computer, and core k_{eff} can more accurately detect a reactivity anomaly in the core (assumptions are minimized). Therefore, the proposed license amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Mark Reinhart, Acting

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant (BSEP), Units 1 and 2, Brunswick County, North Carolina

Date of amendment requests: January 7, 1997.

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) to: (1) exchange the reactor pressure vessel pressure-temperature (P–T) limits curves currently located in the Unit 1 and 2 TS; and (2) delete the current 8, 10, and 12 effective full power year (EFPY) hydrostatic test P–T limits curves and incorporate new 14 and 16 EFPY hydrostatic test P–T limits curves for the Unit 1 and 2 reactor pressure vessels. As reported in Licensee Event Report (LER) 1–94–05 dated March 22, 1994, and LER supplements dated April 29, 1994, and September 23, 1994, the licensee, the Carolina Power & Light Co. (CP&L), determined that the Unit 1 and 2 P–T limits curves had been inadvertently transposed and evaluated the effects of the transposition. The proposed amendments correct this transposition error. The proposed changes to the hydrostatic test P–T limits curves are required because it is anticipated that both units will exceed 12 EFPY during 1997.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This Technical Specification Change Request makes the following changes:

1. Exchanges the pressure-temperature limits curves currently located in the Unit 1 and Unit 2 Technical Specifications. In Licensee Event Report 1–94–05, CP&L reported that the Unit 1 and Unit 2 pressure-temperature limits curves had been inadvertently transposed. This request is an administrative change to relocate the pressure-temperature limits curves to Technical Specifications of the unit to which they correctly correspond.

2. Deletes the current 8, 10 and 12 effective full power year (EFPY) hydrostatic test pressure-temperature limits curves and incorporates new 14 and 16 effective full power year (EFPY) hydrostatic test pressure-temperature limits curves for the Brunswick Unit 1 and 2 reactors. The current reactor vessel pressure-temperature limits curves contained in the technical specifications for hydrostatic pressure tests are suitable for up to 12 effective full power years (EFPY) of reactor operation. It is anticipated that both units will surpass this threshold during 1997. Based on this, new pressure-temperature limits curves for 14 and 16 EFPY were developed. Commensurate changes to the references in Technical Specification 3/4.4.6.1 and Bases 3/4.6 are also proposed to reflect the deletion of current Technical Specification Figure 3.4.6.1–3c.

3. Reformat[s] the pressure-temperature limits curves in Technical Specification Figures 3.4.6.1–1, 3.4.6.1–2, 3.4.6.1–3a, and 3.4.6.1–3b. The changes associated with reformatting the Figures are administrative in nature.

Items 1, 2, and 3 do not involve a significant increase in the probability or consequences of an accident previously evaluated because of the following reasons:

1. Item 1 will exchange the Unit 1 and Unit 2 pressure-temperature limits curves. This change is considered administrative in nature. The pressure-temperature limits curves were developed based on design and materials information for the reactor vessel; however, due to an administrative error during the development of the curves, the materials information for the Unit 1 and Unit 2 reactor vessels was inadvertently reversed. Proposed change 1 is being made to exchange the reactor coolant system pressure-temperature limits curves. Therefore, since this proposed change does not involve a change to the pressure-temperature limits curves nor a change to the configuration of the facility, the probability of an accident previously evaluated is not increased.

Item 2 deletes the current Technical Specification hydrostatic test pressure-temperature limits curves and replaces them with updated curves. The current hydrostatic test pressure-temperature limits curves, which are valid through 12 EFPY are expected to expire during 1997; therefore, new hydrostatic test pressure-temperature limits curves were developed through 16 EFPY. These new hydrostatic test pressure-temperature limits curves will ensure that the integrity of the Brunswick Units 1 and 2 reactor pressure vessels is maintained during hydrostatic and leak tests up to 16 effective full power years of operation. The calculations used to generate the new pressure-temperature limits curves were performed using Appendix G to Section XI of the ASME Boiler and Pressure Vessel Code, Welding Research Council Bulletin 175, and Appendix A to Section XI of the ASME Boiler and Pressure Vessel Code, and [incorporate] the requirements of 10 CFR 50, Appendix G, Section IV.A.2. For pressure-temperature limit curve development, the methods described in Appendix G to Section XI of the ASME Boiler and Pressure Vessel Code are equivalent to the methods described in Appendix G to Section III of the ASME Boiler and Pressure Vessel Code. The proposed pressure-temperature limits curves, for hydrostatic and leak tests, take into consideration the effects of neutron irradiation on reactor vessel materials and provide the necessary margin, as specified by Appendix G of 10 CFR 50, to assure the structural integrity of the reactor coolant pressure boundary. Based on the above, it is concluded that this change will not increase the probability of an accident previously evaluated.

Item 3 reformats each of the Technical Specification Figures containing the pressure-temperature limits curves. The changes associated with the reformatting of proposed Technical Specification Figures 3.4.6.1–1, 3.4.6.1–2, 3.4.6.1–3a, and 3.4.6.1–3b reflect presentation preferences and do not result in technical changes (either actual or interpretational) to the requirements of the pressure-temperature limits curves. Therefore, the changes associated with reformatting the Technical Specification Figures containing the pressure-temperature limits curves are considered to be administrative in nature. Based on the above, it is concluded that this change will not increase the probability of an accident previously evaluated.

The proposed license amendments do not alter Limiting Safety System Settings nor Safety Limits. The proposed license amendments do not revise the technical bases from which the pressure-temperature limits curves were derived, and do not affect stresses and fatigue for transients and design basis events for which the reactor vessels were designed. The operation of plant equipment is not significantly impacted by the proposed license amendments. The proposed pressure-temperature limits curves provide the necessary margin to ... assure the structural integrity of the reactor coolant pressure boundary is maintained. This margin is designed to preclude the probability of a reactor coolant pressure boundary failure. In addition, since the proposed pressure-temperature limits curves are based on current regulatory requirements and fluence data, the consequences of a reactor coolant pressure boundary failure are not impacted by the proposed license amendments. Therefore, the proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed license amendments will ensure that acceptable pressure-temperature limits are imposed on the reactor pressure vessels during all phases of plant operation, thereby ensuring the structural integrity of the reactor pressure vessels. The pressure-temperature limits curves are designed to provide fracture protection for the reactor coolant pressure boundary and do not create any new accident modes. Accident modes for the reactor coolant pressure boundary, due to nonductile failure, are well understood by the industry. The proposed pressure-temperature limits curves and the Technical Specifications continue to provide controls to preclude such a failure. In addition, the proposed license amendments do not result in physical changes to the facility, nor do the proposed license amendments alter safety-related equipment, or safety functions. Therefore, the proposed license amendments do not create a new or different kind of accident from any previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety. The pressure-temperature limits curves are designed to provide a specific margin of safety. This margin is required to be at least as great as that specified in Appendix G to Section III of the ASME Boiler and Pressure Vessel Code and Appendix G to 10 CFR 50. The proposed pressure-temperature limits curves were developed based on design and materials information for the reactor vessels, current regulatory requirements and fluence data. The proposed pressure-temperature limit curves are based on analyses that ensure that the fracture toughness margins of 10 CFR Part 50, Appendix G are not exceeded. Therefore, the proposed license amendments do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Mark Reinhart, Acting.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: April 29, 1996, as supplemented on January 21, 1997.

Description of amendment request: The proposed amendment would:

1. Revise Technical Specification (TS) 3.7.1.1, Action a., to require the unit to be in hot shutdown, rather than cold shutdown, for consistency with NUREG–1431, ''Standard Technical Specifications for Westinghouse Plants,'' and add a new Action b. to clarify the shutdown requirements when there are more than three inoperable main steam line Code safety valves on any one steam generator.

2. Revise TS Surveillance Requirement 4.7.1.1 to clarify that Specification 4.0.4 does not apply for entry into Mode 3 for Byron and Braidwood and, for Braidwood only, delete the one-time requirements for Unit 1, Cycle 5 and Unit 2 after outage A2F27.

3. Revise the maximum allowable power range neutron flux high trip setpoints in Table 3.7–1.

4. Revise Table 3.7–2 to increase the as-found main steam safety valve (MSSV) lift setpoint tolerance to plus/minus 3%, provide an as-left setpoint tolerance of plus/minus 1%, and change a table notation.

5. Delete the orifice size column from Table 3.7–2.

6. Revise the Bases for TS 3.7.1.1 to be consistent with the proposed changes to TS 3.7.1.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The text describing reactor coolant loops and steam generators is redundant. TS 3.4.1.1, ''Reactor Coolant Loops and Coolant Circulation—Startup and Power Operation,'' and 3.4.1.2, ''Reactor Coolant Loops and Coolant Circulation—Hot Standby,'' provide restrictions on the number of operating reactor coolant loops and steam generators. Therefore, deleting the text that requires having four reactor coolant loops and associated steam generators in operation from TS 3.7.1.1, Action a., has no impact on any analyzed accident.

The proposed change to TS 3.7.1.1, Action a., to require the final mode to be hot shutdown rather than cold shutdown is consistent with the Applicability section of the specification, which does not require the MSSVs to be operable in hot shutdown. There are no credible transients requiring the MSSVs in modes 4 and 5. The steam generators are not normally used for heat removal in modes 5 and 6, and thus cannot be overpressurized. The change also eliminates the unnecessary transient that had been imposed on the unit by forcing entry into cold shutdown.

The new Action b. for TS 3.7.1.1 and text changes to Action a. clarify the shutdown requirement times based on the number of inoperable valves. There are no changes to these times.

Changing TSSR 4.7.1.1 to delete the one-time requirements imposed by previous amendments and allow entry into Mode 3 prior to performing the requirements of TSSR 4.0.5 has no impact on any accident. The change permits testing the MSSVs in accordance with the applicable codes and allows a reasonable amount of time for completion of the surveillance. The conditions requiring the one-time requirements have been corrected, so the one-time requirements are no longer required.

The proposed setpoints in Table 3.7–1 are more limiting than those currently allowed in Specification 3.7.1.1. Westinghouse

determined that the current setpoints are non-conservative for some combinations of reduced MSSV availability and reactor power levels. By reducing the setpoints, the original design margins for safety will be met. Reduced reactor trip setpoints due to reduced availability of the MSSVs are not precursors to any accidents, but are used in the safety analysis to establish that plant response will be within required margins for accidents of concern.

Increasing the as-found valve setpoint tolerance from plus/minus 1% to plus/minus 3% does not have a significant impact on any accident. The peak primary and secondary pressures remain below 110% of design at all times. The departure from nucleate boiling ratio and peak cladding temperature values remain within the specified limits of the licensing basis. All of the applicable loss-of-coolant accident (LOCA) and non-LOCA design basis acceptance criteria remain valid.

The MSSVs are actuated after accident initiation to protect the secondary systems from overpressurization. Increasing the as-found setpoint tolerance will not result in any hardware modification to the MSSVs. Therefore, there is not an increase in the probability of the spurious opening of a MSSV. Sufficient margin exists between the normal steam system operating pressure and the valve setpoint with the increased tolerance to preclude an increase in the probability of actuating the valves. The MSSVs also remain capable of relieving any unlikely system overpressure during all applicable operating modes.

Although increasing the as-found valve setpoint tolerance may increase the steam release from the ruptured steam generator above the Updated Final Safety Analysis Review (UFSAR) value by approximately 2%, the steam generator tube rupture analysis indicates that the calculated break flow is still less than the value reported in the UFSAR. Therefore, the radiological analysis indicates that the slight increase in the steam release is offset by the decrease in the break flow such that the offsite radiation doses are less than those reported in the UFSAR. The evaluation also concluded that the existing mass releases used in the offsite dose calculation for the remaining transients (i.e., steam line break, rod ejection) are still applicable. Therefore, based on the above, there is no increase in the dose releases.

Neither the mass and energy release to the containment following a postulated LOCA, nor the analysis of containment response following the LOCA credit the MSSVs in mitigating the consequences of an accident. Therefore, changing the MSSV lift setpoint tolerances would have no impact on the containment integrity analysis. In addition, based on the conclusion of the transient analysis, the change to the MSSV tolerance will not affect the calculated steam line break mass and energy releases inside containment.

Deleting the orifice size column from Table 3.7.1–2 has no impact on previously evaluated accidents. There is no change to the orifice size, which is stated in the UFSAR and incorporated as needed in the accident analyses.

The proposed changes do not introduce any new equipment, equipment modifications, or any new or different modes of plant operation. The MSSVs are not precursors to any analyzed accident. The proposed changes will not affect the operational characteristics of any equipment or systems.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Deleting the text describing reactor coolant loops and steam generators from TS 3.7.1.1 Action a. has no impact on plant operation since the specific restrictions on the number of operating reactor coolant loops and steam generators are provided in TS 3.4.1.1 and 3.4.1.2.

The proposed change to TS 3.7.1.1, Action a., to require the final mode to be hot shutdown rather than cold shutdown is consistent with the Applicability section of the specification, which does not require the MSSVs to be operable in hot shutdown. There are no credible transients requiring the MSSVs in Modes 4 and 5. The steam generators are not normally used for heat removal in Modes 5 and 6, and thus cannot be overpressurized. NUREG–1431 does not include requirements for the MSSVs to be operable in these modes. The change will also eliminate the unnecessary transient that had been imposed on the unit by forcing entry into cold shutdown.

The new Action b. for TS 3.7.1.1 and text changes to Action a. clarify the shutdown requirement times based on the number of inoperable valves. There are no changes to the times.

The proposed change to TSSR 4.7.1.1 to clarify that TSSR 4.0.4 does not apply for entry into Mode 3 will allow ComEd to continue to perform MSSV testing at normal operating pressure and temperature as required by the applicable codes. The change precludes having to enter an action statement to perform the testing and eliminates severe time restrictions on the valve testing and conflicts with other plant startup requirements.

The proposed recalculated setpoints of Table 3.7–1 are more limiting than those currently allowed in the Specification and ensure that the original design margins for safety are met. The secondary system pressure remains within design limits.

Increasing the as-found tolerance on the MSSV setpoint to plus/minus 3% will not increase the challenge to the MSSVs or result in increased actuation of the valves. The changes to the Bases document the method for calculating the reduced reactor trip setpoints based on reduced availability of MSSVs.

Deleting the orifice size column from Table 3.7–2 and the obsolete one-time requirements in TSSR 4.7.1.1 are administrative changes only.

Increasing the lift setpoint tolerance on the MSSVs does not introduce a new accident initiator mechanism. The proposed change does not introduce any new equipment, equipment modifications, or any new or different modes of plant operation. No new failure modes have been defined for any system or component important to safety nor has any new limiting single failure been identified. This change will not affect the operational characteristics of any equipment or systems. Thus, there is no change in the margin for safety.

Therefore, these proposed changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

C. The proposed change does not involve a significant reduction in a margin of safety.

Deleting the text describing reactor coolant loops and steam generators has no impact on plant operation since the specific restrictions on the number of operating reactor coolant loops and steam generators are provided in TS 3.4.1.1 and 3.4.1.2.

The change requiring hot shutdown instead of cold shutdown entry is more appropriate than the existing specification since the action statement places the plant in a mode where operability of the MSSVs is not required. The Technical Specification is applicable in Modes 1, 2, and 3, therefore, entering Mode 4 places the plant in a condition where the MSSVs are not required to be operable. There are no credible transients requiring the MSSVs in Modes 4 and 5. The steam generators are not normally used for heat removal in Modes 5 and 6, and thus cannot be overpressurized. NUREG–1431 does not include requirements for the MSSVs to be operable in these modes.

Changing the mode in which the MSSVs are tested will not change the operational characteristics of the MSSVs. ComEd will continue to test the MSSVs at normal operating pressure and temperature as required by the applicable codes.

The proposed reactor trip setpoints in Table 3.7–1 are more limiting than the current setpoints in the Specification. Reactor trip settings were calculated using a revised methodology to account for the non-linear relationship of reactor trip setpoints and reduced MSSV availability. The revised setpoints ensure the original design margin of safety is maintained. The proposed changes to the Bases include the revised equation used to calculate the reduced reactor trip setpoints.

Increasing the as-found lift setpoint tolerance on the MSSVs will not adversely affect the operation of the reactor protection system, any of the protection setpoints, or any other device required for accident mitigation. The proposed increase in the setpoint tolerance does not invalidate the LOCA and non-LOCA conclusions presented in the UFSAR accident analyses. In letter CAE–91–209/CAE 91–219, Westinghouse concluded that the new loss of load/turbine trip analysis satisfied all applicable acceptance criteria and demonstrated that the conclusion presented in the UFSAR remains valid. For all the UFSAR non-LOCA transients, the departure from nucleate boiling design basis, primary and secondary pressure limits, and dose release limits continue to be met. Peak cladding temperatures remain well below the limits specified in the 10 CFR 50.46.

Deleting the orifice size column from Table 3.7–2 and the obsolete one-time requirements in TSSR 4.7.1.1 are administrative changes.

The proposed changes do not introduce any new equipment, equipment modifications, or any new or different modes of plant operation. These changes will not affect the operational characteristics of any equipment or systems. Therefore, no reduction in the margin of safety will occur as a result of changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: August 23, 1996.

Description of amendment request: The proposed amendment would revise the technical specifications to reflect the design lineup for the Non-Accessible Area Exhaust Filter Plenum Ventilation System, and to make provisions for the performance of maintenance and testing on the system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Non-Accessible Area Exhaust Filter Plenum Ventilation (VA) System lineups are not considered as the precursors to any accident. The additional provisions added to the action statement for TS 3.7.7 accommodates required maintenance and surveillance activities. No new equipment is being installed and no existing equipment is being modified. Thus, these proposed changes will not result in an increase in the probability of occurrence of an accident previously evaluated.

On the postulated Loss Of Coolant Accident (LOCA) with Loss Of Offsite Power (LOOP), the operating plenum will either realign immediately or following the re-energization of its ESF bus which will occur within 10 seconds. Thus, there will always be at least one plenum operating immediately during an accident. The emergency procedures direct the realignment of the standby plenum. This direction is contained in the Byron and Braidwood Emergency Procedures (BEP/BwEP)–0, ''Reactor Trip or Safety Injection,'' and is performed prior to conducting event diagnostic steps.

Filtration of the air from the Emergency Core Cooling System (ECCS) equipment cubicles becomes critical when the ECCS pumps begin pumping accident water from the containment recirculation sumps. Prior to this the water flowing in these pumps is Refueling Water Storage Tank (RWST) water. This swap over from the RWST to the containment recirculation sump is expected to occur, at the earliest, 11 minutes following accident initiation leaving time to open the inlet damper on the standby VA plenum. Thus, since the standby plenum can be realigned before filtration of the ECCS equipment cubicle air is required, the Updated Final Safety Analysis Report (UFSAR) assumptions, and offsite dose calculation assumptions remain valid. There will be no significant change in the types or significant increase in the amounts of any effluent that may be released offsite, and there will be no significant increase in individual or cumulative occupational radiation exposure. Observations conducted on licensed operators undergoing simulator training verified that the VA system is realigned well before the swap-over to the containment recirculation sump under these conditions. Therefore, these proposed changes will not result in a significant increase in the consequences of an accident previously evaluated.

A review of the Byron and Braidwood Probabilistic Risk Assessment (PRA) shows that these proposed changes will have no effect on either Core Damage Frequency (CDF) or Uncontrolled Release Frequency (URF).

Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These proposed changes continue to ensure that, following a LOCA, the air being exhausted from the ECCS equipment rooms is properly filtered before being released to the environment.

These changes will not result in the installation of any new equipment or the modification of any existing equipment. No new operating modes or system interfaces will be created. The VA system will continue to operate as designed during normal and post accident conditions. All of the accident analysis assumptions and conditions will remain satisfied.

Thus this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

These proposed changes reflect the design lineup for the VA system and provide action requirements to accommodate required maintenance and surveillance testing. The VA system will continue to ensure that following a LOCA, the air being exhausted from the ECCS equipment rooms is properly filtered before being released to the environment.

Filtration of the ECCS equipment cubicle air does not become critical until the suction of the ECCS pumps is switched from the RWST to the containment recirculation sumps. This is postulated to occur, at the earliest, 11 minutes following accident initiation. On the postulated LOCA with LOOP, at lease one VA plenum will be in operation immediately and the emergency procedures direct the realignment of the standby plenum well before the ECCS pump suction swap-over. Observations conducted on licensed operators undergoing simulator training have verified this fact. Therefore, these proposed changes do not alter or affect any UFSAR or off-site dose calculation assumptions, and the margin of safety is not reduced.

A review of the Byron and Braidwood PRA shows that these proposed changes will have no effect on either CDF or URF.

No new equipment is being installed, and no existing equipment is being modified. The VA system will continue to operate as designed during normal and post accident conditions. All of the accident analysis assumptions remain satisfied.

Therefore this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: January 20, 1997.

Description of amendment request: The proposed amendment would change Technical Specification Table 3.6–1 to reflect planned changes in the plant configuration. As a result of the planned replacement of the Westinghouse D4 steam generators at Byron, Unit 1, and Braidwood, Unit 1, changes will be made to the containment isolation piping arrangements at the penetrations associated with the Feedwater (FW) and Auxiliary Feedwater (AF) systems. As a result of these changes, there will be no split FW flow with the replacement steam generators. AF flow will be fed into the main FW piping outside of containment and the existing FW tempering penetration will be used for a new steam generator recirculation system to be used during periods of extended shutdown. Additionally, since the replacement steam generators use a feedring design rather than a preheater design, the FW Isolation Bypass line and associated containment isolation valves will no longer be required. Table 3.6–1 of the Technical Specifications (TS) must be updated to reflect these changes. These changes do not affect the containment isolation capability originally designed to the criteria in 10 CFR 50, Appendix A, General Design Criteria (GDC) 54 through 57 as reflected in the Byron/Braidwood Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3/4.6.3 establishes the operability requirements for containment isolation valves as required by the Byron and Braidwood Operating Licenses in compliance with General Design Criteria 54 through 57 of Appendix A to 10 CFR 50. The operability of the containment isolation valves ensure that the containment atmosphere will be isolated from the outside environment in the event of a release of radioactive material to the containment atmosphere. Table 3.6–1 identifies these isolation valves and captures relevant information to ensure these valves remain operable under required conditions.

These proposed changes result in the elimination of the FW Isolation Bypass isolation valves. These isolation valves are not required with the replacement steam generator design. The remaining isolation valves have not been altered in any way, only the piping associated with them has been altered to the revised configuration. These changes do not result in alteration of any containment penetrations.

Failure of the piping between the isolation valve and the containment penetration is considered as an accident initiator. However, all piping changes between the isolation valve and the containment penetrations meet the requirements of the original design.

Therefore, since all original piping design criteria are met and the actual number of containment isolation valves is reduced, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Each penetration identified in the proposed change is associated with a closed system inside containment and, as such, is provided containment isolation in accordance with the applicable requirements of GDC 54 through 57. There are four analyzed transients which take credit for feedwater isolation and are, therefore, relevant to this proposed change. These accidents are: (1) feedwater system malfunctions that result in an increase in FW flow, (2) inadvertent opening of a steam generator relief or safety valve, (3) steam system piping failure, and (4) FW system pipe break. All operability requirements for the affected containment isolation valves are unaffected by this proposed change.

The containment isolation valves' functions, system operating conditions, and accident responses are unchanged as a result of the new configuration. Therefore, since all original design criteria are met and each remaining isolation valve continues to provide the same degree of containment isolation as the original design, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

All modifications associated with the proposed changes will be outside of containment and can be characterized as the rearrangement of piping systems. All piping changes will comply with the original design of the plant and will retain required containment isolation capabilities per the requirements of GDC 54 through 57 as required by the current design basis. Piping configurations within the area of the containment penetration and the containment isolation valves are required to minimize branch connections per guidance in the Standard Review Plan (SRP) Section 3.6.2.

Therefore, since there are no unique configurations or reductions in design requirements, this proposed change does not create the possibility of any new or different kinds of accidents from those previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes to the containment isolation arrangement are being made consistent with the same codes, standards, and isolation criteria as are currently in use at Byron and Braidwood. The containment isolation valves remaining in place following the steam generator replacement are unchanged with regard to their function, capability, reliability, or physical requirements. Containment isolation capability in accordance with GDC 54 through 57 is maintained at current levels of protection for the health and safety of the general public. Therefore, this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: January 31, 1997.

Description of amendment request: The proposed amendments would revise the maximum allowable value in the Byron, Unit 1, Technical Specifications (TS), of the dose equivalent (DE) iodine-131 concentration in the primary coolant from the present value of 0.35 microcuries per gram of coolant to a maximum allowable of 0.20 microcuries per gram. This reduction in the DE iodine-131 concentration would be applicable only for the remainder of the present Byron, Unit 1, operating cycle (i.e., fuel cycle 8) which the licensee has previously stated will end in December 1997. The subject amendments are proposed by the licensee in order to provide additional margin with respect to the maximum Byron Station site allowable primary-to-secondary leakage limit from the Byron, Unit 1, steam generators (SG). This proposed Byron, Unit 1, TS revision to increase this margin is being proposed in conjunction

with the proposed operating interval of 540 days above a T_{hot} temperature of 500 degrees Fahrenheit, between eddy current inspections (ECI) of the Byron 1 SGs. The last Byron, Unit 1, ECI was initiated in November 1995. This margin increase is being sought by the licensee to address staff concerns regarding potential SG tube leakage under postulated accident conditions due to SG tube circumferential cracking at the top of the tubesheet in the roll transition zone.

While the proposed revision to the DE iodine-131 is applicable only to Byron, Unit 1, the pending request for license amendments involves both Byron, Units 1 and 2, in that both units have a common set of TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Generic Letter 95–05, ''Voltage Based Repair Criteria For Westinghouse Steam Generator Tubes Affected By Outside Diameter Stress Corrosion Cracking,'' allows lowering of the RCS DE I–131 activity as a means for accepting higher projected leak rates if justification for equivalent I–131 below 0.35 microcuries/gm is provided. Four methods for determining the impact of a release of activity to the public were reviewed to provide the justification.

They are as follows:

Method 1: NRC NUREG 0800, Standard Review Plan (SRP) Methodology

Method 2: Methodology described in a report by J.P. Adams and C.L. Atwood, ''The Iodine Spike Release Rate During a Steam Generator Tube Rupture,'' Nuclear Technology, Vol. 94 p. 361 (1991), using Byron Station reactor trip data.

Method 3: Methodology described in Adams and Atwood report, using normalized industry reactor trip data.

Method 4: Methodology described in draft EPRI Report TR–103680, Revision 1, November 1995, ''Empirical Study of Iodine Spiking in PWR Plants''.

The effect of reducing the RCS DE I–131 limit on the amount of activity released to the environment remains unchanged when the maximum site allowable primary-to-secondary leakage limit is proportionately increased. With a DE I–131 limit of 1.0 microcuries/gm, the maximum site allowable leakage limit was calculated in accordance with the NRC SRP methodology to be 12.8 gpm. The corresponding calculated activity released during a MSLB is 15.8 Ci. ComEd has evaluated the reduction of the DE I–131 to 0.20 microcuries/gm along with the increase of the allowable leakage to 64 gpm and has concluded:

—The maximum activity released is not changed, and

—The offsite dose including the iodine spiking factor is bounded by method 1.

Therefore, the offsite dose assessment and conclusions previously reached remain valid and continue to meet the requirements of 10 CFR 100.

An evaluation of Control Room dose attributed to a MSLB concurrent with steam generator primary-to-secondary leakage at the site allowable leakage limit was performed in support of a license amendment request for application of 1.0 volt Interim Plugging Criteria. This evaluation concluded that Control Room dose due to the MSLB scenario is bounded by the existing loss of coolant accident analysis. Therefore, the maximum site allowable primary-to-secondary leakage limit continues to be based on offsite dose at the Exclusion Area boundary due to MSLB leakage. This conclusion was previously submitted to the Staff in a September 22, 1994, transmittal in support of the 1.0 volt Interim Plugging Criteria license amendment request.

Based on the NRC SRP methodology for dose assessments, the Control Room dose, the Low Population Zone dose, and the dose at the Exclusion Area Boundary continue to satisfy the appropriate fraction of the 10CFR100 dose limits.

The Adams and Atwood report concluded that the NRC SRP methodology, which specifies a release rate spike factor of 500 for iodine activity from the fuel rod to the RCS, is conservative. In order to justify that a release rate spike factor of 500 is conservative, actual operating data from the previous reactor trips of Byron Unit 1 and Unit 2, with and without fuel failures, were reviewed and analyzed using the methodology presented Section II.C of the Adams and Atwood report (Method 2). The same five data screening criteria described in the Adams and Atwood report were applied to the Byron data to ensure consistency and validity when comparing the Byron results to the data in the Adams and Atwood report. Of the twenty-eight (28) reactor trip events at Byron Units 1 and 2, twelve (12) met the five data screening criteria.

Three of the Byron trips occurred during cycles with no failed fuel. In all three of these instances, the calculated spike factor was less than the spike factor of 500 assumed in the NRC SRP methodology. Byron, Unit 1, Cycle 8 is currently operating with no failed fuel and a DE I–131 activity of approximately 6E–4 microcuries/gm. The three previous trips with no fuel failures had steady-state iodine values that are relatively close to current operating conditions. It is therefore reasonable to conclude that the calculated spike factors from those trips would reflect the spike factor expected from an actual trip during the current cycle.

Based on the data in the Adams and Atwood report, the NRC SRP release rate spike factor of 500 may seem non-conservative since the Adams and Atwood factor was typically greater than 500 when initial concentrations were less than 0.3 microcuries/gm. The primary reason for these high ratios (up to 12,000) is not because the absolute post-trip release rate is high (factor numerator), but rather because the steady-state release rate (factor denominator) is low. The Byron specific data only resulted in one trip with a calculated release rate spike factor greater than 500, a value of 603.9. The trip occurred during the first operating cycle of Unit 2 which experienced failed fuel and a very low steady-state release rate. It is not expected based upon the current fuel cycle conditions that a spiking factor of greater than 500 would occur.

In order to compare the Byron specific data to the NRC SRP methodology, the release rate for a steady-state RCS DE I–131 activity of 1.0 microcuries/gm was calculated. Using the Byron specific data, the steady-state release rate is 17.6 Ci/hr. Using a release rate factor of 500 for the accident initiated spike, the post-trip maximum release rate would be 8797 Ci/hr. This is significantly higher than the largest iodine release rate of 127 Ci/hr from the Byron data. This demonstrates that, although a data point shows an iodine spike factor greater than 500, the resulting post-trip RCS DE I–131 fuel rod iodine release rate is less than the fuel rod iodine release rate from the NRC SRP methodology.

In the fourth method, the results from Draft EPRI Report TR–103680, Rev. 1, November 1995, ''Empirical Study of Iodine Spiking In PWR Power Plants'' were applied. The objective of the EPRI study was to quantify the iodine spiking in postulated Main Steam Line Break/Steam Generator Tube Rupture (MSLB/SGTR) sequences. In the EPRI report, an iodine spike factor between 40 and 150 was determined to match data from existing plant trips. The maximum iodine spike factor value of 150 was applied to a steady-state equilibrium RCS DE I–131 activity of 0.33 microcuries/gm. The resulting 2-hour average iodine concentration for a postulated MSLB/SGTR sequence was determined to be 3.1 microcuries/gm. Since the EPRI report is based on industry data and the EPRI method predicted a post-accident iodine activity which is a small fraction of the activity predicted by the NRC SRP methodology, it can be expected that, for the proposed 0.2 microcuries/gm limit under a MSLB/SGTR sequence, the post-accident iodine activity would be a small fraction of the RCS DE I–131 activity predicted by the NRC SRP methodology.

Lowering the Unit 1 RCS DE I–131 activity limit is conservative and remains bounded by the NRC SRP methodology. Thus, all offsite and control room dose assessment conclusions satisfy the appropriate limits of 10 CFR 100 and GDC 19. These proposed changes do not result in a significant increase in the consequences of an accident previously analyzed.

The RCS DE I–131 activity limit is not considered as a precursor to any accident. Therefore, this proposed change does not result in a significant increase in the probability of an accident previously analyzed.

The correction of the typographical error is administrative in nature and has no impact on either the probability or consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes proposed in this amendment request conservatively reduce the Unit 1 DE I–131 limit at which action needs to be taken and correct a typographical error. The changes do not directly affect plant operation. These changes will not result in the installation of any new equipment or systems or the modification of any existing equipment or systems. No new operating procedures, conditions or modes will be created by this proposed amendment.

Thus, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

NRC Generic Letter 95–05 allows lowering of the dose equivalent iodine as a means for accepting higher projected leakage rates provided justification for equivalent I–131 below 0.35 microcuries/gm is provided. Four methods for determining the fuel rod iodine release rates and spike factors during an accident were reviewed. Each of these methods utilized actual industry data, including Byron, Unit 1 and Unit 2, for pre- and post-reactor trip DE I–131 activities. Each of the methods demonstrated that the actual fuel rod iodine release rates are a small fraction of the release rate as calculated using the NRC SRP methodology. All design basis and off-site dose calculation assumptions remain satisfied. This proposed change will not result in a reduction in a margin of safety.

Correction of the typographical error is administrative in nature and does not impact the margin of safety. Therefore, the proposed changes do not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: February 18, 1997.

Description of amendment request: The proposed amendment would revise Byron and Braidwood Technical Specification (TS) Table 2.2–1 (functional unit 13.a), ''Reactor Trip System Instrumentation Trip Setpoint: Steam Generator Water Level Low-Low'; TS Table 3.3–4 (functional unit 5.b.1), ''Engineered Safety Features Actuation System Instrumentation Trip Setpoints: Steam Generator Water Level-High-High'; TS Table 3.3–4 (6.c.1), ''Engineered Safety Features Actuation System Instrumentation Trip Setpoints: Steam Generator Water Level-Low-Low Start Motor-Driven Pump and Diesel-Driven Pump'; TS Surveillance Requirement (TSSR) 4.4.1.2.2, required steam generator inventory during hot standby; TSSR 4.4.1.3.2, required steam generator inventory during hot shutdown; and TS Section 3.4.1.4.1.b, limiting condition for operation during cold shutdown with loops filled.

The installation of Babcock and Wilcox International (BWI), replacement steam generators (RSGs) at Byron, Unit 1, and Braidwood, Unit 1, necessitates an increase to the operating range of the steam generators due to the decrease in narrow range span from 233 inches for the original Westinghouse Model D4 steam generators (OSGs) to 180 inches for the BWI RSGs. The increase in operating range will minimize the possibility of inadvertent plant trips following load changes and feedwater transients.

ComEd also proposes to eliminate notations from page 2–5 for both Braidwood and Byron and pages 3/4 3–25 and 3/4 3–26 (for Braidwood only) since they are related to cycles already completed and, therefore, are no longer valid.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change includes changing the low-low and high-high SG level setpoints. The setpoints are being changed to increase the SG level operating range. The change in acceptable operating range will decrease the possibility of inadvertent plant trips following load changes and feedwater transients. Therefore, the probability of inadvertent plant trips will decrease with this change.

The minimum setpoint change proposed in this request establishes controls to ensure that an adequate heat sink is maintained by providing an adequate secondary liquid mass to remove primary system sensible heat and core decay heat shortly after reactor trip and initiating auxiliary feedwater flow for long-term cooling. The accidents evaluated for this requirement are the Loss of Normal Feedwater and Feedwater Line Break transients.

The maximum setpoint ensures the steam lines and turbine remain undamaged from the introduction of low quality, two-phase flow from the steam generators into the steam lines. The accident evaluated for this requirement is the Feedwater System Malfunction that results in an increase in feedwater to one or more steam generators.

The steam generator water level setpoints are not considered a precursor to any of the analayzed accidents, and, therefore, these proposed changes do not result in an increase in the probability of occurrence of any accident previously analyzed.

The accidents evaluated for the low-low setpoint are the Loss of Normal Feedwater and Feedwater Line Break transients. These accidents were both analyzed using approved methodologies. All acceptance criteria were shown to be met for both these events. In addition, it was demonstrated that the Feedwater System Pipe Break response with the RSGs and the proposed low-low setpoint were bounded by the response with the original Model D4 steam generators. Therefore, the proposed low-low level setpoint change is demonstrated not to result in an increase in the consequences for these accidents.

The accident evaluated for the high-high setpoint is the Feedwater System Malfunction that results in an increase in feedwater to one or more Steam Generators. All acceptance criteria were shown to be met. In addition, it was shown that the RSGs do not completely fill with liquid. This assures that the steam lines and turbine remain undamaged with no introduction of low quality, two-phase flow from the steam generators into the steam lines during the transient. With all acceptance criteria met, the proposed high-high level setpoint change is demonstrated not to result in an increase in the consequences for these accidents.

TSSR 4.4.1.2.2, TSSR 4.4.1.3.2, and TS 3.4.1.4.1.b assure a minimum inventory (i.e., level) to provide decay heat removal. The requirement for a minimum inventory to remove decay heat is met with assurance that the tube bundle is completely covered. The steam generator operating water level during shutdown conditions are not considered a precursor to any accident, and, therefore, these proposed changes do not result in an increase in the probability of occurrence of any accident previously analyzed.

The elimination of outdated cycle specific notations from page 2–5 for both Braidwood and Byron and pages 3/4 3–25 and 3/4 3–26 (Braidwood only) are only administrative and does not impact the probability or consequences of any accidents previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed setpoint changes do not create any new operating conditions or modes. The proposed change only revises the setpoints for the Reactor Trip System and Engineered Safety Features Actuation System. The actions of these systems will continue to be performed in accordance with

existing requirements which are sufficient to ensure plant safety is maintained.

Shutdown conditions steam generator water level is necessary to assure adequate decay heat removal capacity. Assurance that the tube bundle is completely covered along with existing technical specification controls on the Auxiliary Feedwater System and on the Condensate Storage Tank ensure adequate heat removal capacity is maintained and that plant safety is maintained.

Thus, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The elimination of outdated cycle specific notations from page 2–5 for both Braidwood and Byron and pages 3/4 3–25 and 3/4 3–26 (Braidwood only) are only administrative and does not create the possibility of a new or different accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

A safety evaluation was performed to determine the effect of the RSGs with the revised setpoints.

The accidents potentially affected by the change in the Reactor Trip Steam Generator Water Level low-low setpoint (TS 2.2.1, Table 2.2–1, functional unit 13.a) and Engineered Safety Features Actuation System low-low AFW start setpoint (TS 3.3.2, Table 3.3–4, functional unit 6.c.1) are the Loss of Normal Feedwater and Feedwater Line Break transients. These accidents were both analyzed using approved methodologies. All acceptance criteria were shown to be met for both these events.

In addition, it was demonstrated that the Feedwater System Pipe Break response with the RSGs with the proposed low-low setpoint were bounded by the response with the OSGs. Therefore, the proposed low-low level setpoint change is demonstrated not to result in an reduction in the margin of safety for these accidents.

The accident potentially affected by the change in the Engineered Safety Features Actuation System high-high SG level trip (TS 3.3.2, Table 3.3–4, functional unit 5.b.1) is a Feedwater System Malfunction that results in an increase in feedwater to one or more steam generators. This accident was analyzed using an approved methodology. In the evaluation of the Feedwater System Malfunction, all acceptance criteria were shown to be met. In addition, it was shown that the RSGs do not completely fill with liquid. This assures that the steam lines and turbine remain undamaged with no introduction of low quality, two-phase flow from the steam generators into the steam lines during the transient. With all acceptance criteria met, the proposed high-high level setpoint change is demonstrated not to result in a reduction in the margin of safety.

There are no design basis accidents involving shutdown condition steam generator water level. Existing TS controls on the Auxiliary Feedwater System and on the Condensate Storage Tank ensure adequate heat removal capacity is maintained and that plant safety is maintained during shutdown conditions. Therefore, a change to the shutdown condition steam generator water level does not result in a reduction in the margin of safety.

The elimination of outdated cycle specific notations from page 2–5 for both Braidwood and Byron and pages 3/4 3–25 and 3/4 3–26 (for Braidwood only) are only administrative and does not result in a reduction in the margin of safety for any analyzed event.

Therefore, this amendment request does not result in a significant decrease in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company,

Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: January 31, 1997.

Description of amendment request: The proposed amendment will insert, by general reference, in the Perry Nuclear Power Plant Technical Specifications, the implementation document that the licensee will use to implement Option B, ''Performance-Based Requirements,'' to 10 CFR 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' Option B to 10 CFR 50 Appendix J is an option that became effective on October 26, 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes involved in this license amendment request revise the criteria for determining the Containment leak rate testing interval based upon past component performance. The revised criteria are based on the guidance contained in Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.'' When the containment or containment penetrations have performed satisfactorily on a historical basis, this guidance permits the use of extended testing frequencies.

Since the allowable leakage rates are not being affected, the performance of the primary containment and systems and components penetrating the primary containment remains within acceptable limits. The functions and operation of these components will remain unchanged. Since the components are utilized to mitigate the consequences of accidents that require containment isolation, they are not considered to be accident initiators. Additionally, there are no accidents associated with implementation of a performance-based testing frequency for the primary containment and systems and components penetrating the primary containment.

As discussed previously, the components are utilized to mitigate the consequences of accident scenarios which rely upon the primary containment and systems and components penetrating the primary containment, to prevent the release of radioactive effluents. The implementation of Option B to 10 CFR 50 Appendix J is not intended to provide relief from the leakage criteria. The components will still be required to meet the leakage requirements as discussed in USAR Section 6.2.6 and Technical Specifications 3.6.1.1, 3.6.1.2, and 3.6.1.3. The primary containment isolation system is designed to limit leakage to L_a, which is defined by the Perry Technical Specifications to be 0.20 percent of primary containment air weight per day at the calculated peak containment pressure (P_a) for the design basis loss of coolant accident. The limitation on the rate of primary containment leakage is designed to ensure that the total leakage volume will not exceed the value assumed in the accident analyses at P_a. The L_a value is not being modified by this proposed change. Based on this, the primary containment and system and components penetrating the primary containment will remain capable of maintaining radioactive effluent releases within the limits of 10 CFR 100.

Because the proposed change does not alter the plant design, including the primary containment and primary containment penetrations, the proposed change does not directly result in an increase in primary containment leakage. Since the frequency will be based on the performance of the subject components, only those components that have satisfactorily maintained the actual leakage less than the allowable leakage will be tested less frequently. The testing frequency for components which have not satisfactorily limited leakage, or have not performed satisfactorily in the past, will not be altered. Other programs are also in place to ensure that proper maintenance and repairs are performed during the service life of the primary containment and systems and components penetrating the primary containment.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of previously evaluated accidents.

Several administrative/editorial changes have been incorporated (e.g., the clarification of the ''less than'' and ''less than or equal to'' signs on the Technical Specification acceptance criteria, and the retention of the standard frequency for the Drywell visual inspections). Such administrative/editorial changes do not impact initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes also do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve a change to the plant design or operation, or new system interfaces. Consequently, the proposed change does not affect the parameters or conditions that could contribute to initiation of accidents. This change involves adopting a performance-based method for determining Type A, B, and C test frequencies. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed. No new accident modes would be created by extending testing intervals. No safety related equipment or safety functions are altered as a result of this change. The change in testing frequency will not create any different types of accidents since the primary containment and systems and components penetrating the primary containment will continue to operate within their design bases. Therefore, reducing the test frequency would have no influence on, nor contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed.

Based on the above discussions, the proposed change would not create the possibility of a new or different kind of accident than those previously evaluated.

The proposed administrative/editorial changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. Thus, these changes also do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

This request does not involve a significant reduction in a margin of safety. The proposed change adopts a performance-based method for determining frequency of Type A, B, and C testing.

Except for the method of defining test frequency, no change in the method of testing is proposed. Since the frequency will be based on the performance of the subject components, only those components that have satisfactorily maintained actual leakage less than the allowable leakage will be tested less frequently. Other programs are also in place to ensure that proper maintenance and repairs are performed during the service life of the primary containment and systems and components penetrating the primary containment.

The margin of safety associated with the proposed change involves the offsite dose consequences of postulated accidents, which are directly related to the rate of primary containment leakage. The primary containment isolation system is designed to limit leakage to L_a, which is defined by the Perry Technical Specifications to be 0.20 percent of primary containment air weight per day at the calculated peak containment pressure (P_a) for the design basis loss of coolant accident. The limitation on the rate of primary containment leakage is designed to ensure that the total leakage volume will not exceed the value assumed in the accident analyses at P_a. The margin of safety for the offsite dose consequences of postulated accidents directly related to the primary containment leakage rate is maintained by continuing to meet L_a. The L_a value is not being modified by this proposed change. Based on this, the primary containment and systems and components penetrating the primary containment will remain capable of maintaining radioactive effluent releases within the limits of 10 CFR 100.

Therefore, the changes associated with this license amendment request do not involve a significant reduction in the margin of safety.

The proposed administrative/editorial changes will not reduce the margin of safety because they have no impact on safety analysis assumptions. These changes do not involve questions regarding safety issues, and therefore also do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Dairyland Power Cooperative (DPC), Docket No. 50–409, LaCrosse Boiling Water Reactor (LACBWR), Vernon County, Wisconsin

Date of amendment request: April 10, 1996.

Description of amendment request: This is a corrected notice that was first issued on August 1, 1996. The proposed amendment would update the facility Possession Only License and Technical Specifications to reflect the permanently shutdown and defueled condition of the plant. The amendment would also serve to remove the fire protection requirements, radiological effluent controls, quality assurance program controls and administrative controls for the emergency and security plans from the Technical Specifications to other inspectable and enforceable documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

DPC proposes to modify the LACBWR Technical Specifications to more accurately reflect the permanently shutdown, defueled, possession-only status of the facility.

Analysis of no significant hazards consideration:

1. The proposed changes do not create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes delete system requirements that are no longer necessary to prevent, or mitigate the consequences of, a credible SAFSTOR accident as described in our current SAFSTOR Accident Analysis.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are either administrative in nature or were made based on the analysis of previously evaluated accident scenarios. In no other way do they change the design or operation of the facility and therefore do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not result in a significant reduction in the margin of safety.

The changes incorporate into the proposed Technical Specifications the margin of safety associated with the current SAFSTOR accident analysis and thus don't involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Attorney for licensee: Wheeler, Van Sickle and Anderson, Suite 801, 25 West Main Street, Madison, Wisconsin 53703–3398.

NRC Project Director: Seymour H. Weiss.

Duke Power Company, Docket Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: February 10, 1997 (TSC 95–04).

Description of amendment request: The proposed changes would revise the

Technical Specifications (TS) to reduce the allowable reactor building volume leakage rate per-day limit to permit removal of consideration of the penetration room contribution to the limit and the requirement to maintain the penetration room at a negative pressure with respect to all adjacent areas. Also, the penetration room ventilation system would be removed from the description of the containment in TS 5.2, and a surveillance requirement to perform a refueling outage test of the penetration room ventilation system would be added to TS 4.5.4. In addition, related changes would be made to the appropriate Bases sections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The following requirements are being removed from Technical Specifications regarding the PRVS [Penetration Room Ventilation System]:

(1) The requirement to measure reactor building leakage in excess of 50% of the total allowed containment leakage to the penetration room.

(2) The requirement, as specified in the design features, for the PRVS to maintain the penetration room at a negative pressure with respect to all adjacent areas. In addition, the design features description for the PRVS will be completely removed from Technical Specification 5.2 and replaced with a surveillance requirement in Technical Specification 4.5.4.

To demonstrate the inconsequential effects of the removal of the above requirements, a dose analysis was performed to conservatively demonstrate that PRVS adds margin, but is not necessary to meet 10CFR100 limits. The analysis assumes that the PRVS is completely unavailable for offsite dose reduction. However, the PRVS will be available, and all of the relevant operability and surveillance requirements for the PRVS will be retained in the Technical Specifications. Therefore, it is highly unlikely that the actual dose consequences would increase from 167 Rem thyroid to 240 Rem thyroid, since all surveillance and operability requirements for PRVS, other than the two requirements specified above, will be retained in Technical Specifications.

The specified Technical Specification requirements for PRVS are not accident initiators, nor will these requirements impact the probability of an accident. The purpose of these requirements is to ensure that the PRVS can reduce offsite dose to the public in the event of an accident which results in radioactive effluents leaking from the Reactor Building (RB) into the Penetration Room (PR).

In the initial ONS [Oconee Nuclear Station] design basis, the PRVS was credited to reduce offsite dose to the public in the event of certain accidents, such as a loss of coolant accident (LOCA) or Maximum Hypothetical Accident (MHA), where there is airborne leakage of radioactivity from the RB into the PR. The PRVS was credited to reduce the MHA two-hour Exclusion Area Boundary (EAB) dose to less than the 10CFR100 limit of 300 Rem thyroid. The current ONS dose analysis, which takes credit for the PRVS, calculates the MHA two-hour EAB dose to be 167 Rem thyroid. With a reduction in the allowable leakage from the Reactor Building (L_a) from 0.25 w%/day to 0.20 w%/day, while taking no credit for the PRVS, the two hour EAB MHA dose is calculated to be 240 Rem thyroid. This new dose analysis result meets the acceptance criterion of 10CFR100.

In addition to conducting a detailed dose analysis without taking credit for PRVS, a detailed review of PRA [probabilistic risk analysis] risk significance of the PRVS was conducted. The PRVS was determined to have virtually no PRA risk significance and no significant impact on consequences.

A review of the impact on control room habitability due to the proposed Technical Specification changes was conducted for credible UFSAR [Updated Final Safety Analysis Report] Chapter 15 accident scenarios. The operability requirements of the PRVS which are being retained in the Technical Specifications will ensure operability requirements are met to support the Control Room Ventilation System (CRVS). Therefore, removal of the identified statements pertaining to PRVS operability from Technical Specifications will not significantly impact control room habitability.

Based on the above information, the removal of the specified requirements for PRVS from Technical Specifications will not significantly increase the probability or consequences of an accident previously evaluated. The original design basis for offsite dose will still be met without any credit taken for the PRVS.

A change has been proposed to the Technical Specifications to reduce the allowable leakage from the Reactor Building (L_a) from 0.25 w%/day to 0.20 w%/day. This proposed change is conservative in nature since it will result in a potential reduction in the consequences of any accidents previously evaluated. Past integrated leak rate tests (ILRTs) for all three Oconee units have been reviewed by engineering and it has been concluded that this reduction in allowable leakage will have no impact on future station operation. This reduction is possible since the actual leakage of the ONS reactor buildings is far less than the original allowable design leakage.

B. Create the possibility of a new or different kind of accident from the accident previously evaluated?

No.

As stated previously, the proposed Technical Specification changes for the PRVS are not accident initiators, nor will these changes create the possibility of new or different kinds of accidents. The purpose of the PRVS is to reduce offsite dose to the public in the event of an accident which results in leakage from the RB into the PR.

Therefore, the proposed changes to the Technical Specifications will not create the possibility of a new or different kind of accident from the accidents previously evaluated.

C. Involve a significant reduction in a margin of safety?

No.

By reducing the allowable L_a to 0.20 w%/day, ONS meets 10CFR100 limits for off-site dose without taking any credit for the PRVS.

Although the margin to 10CFR100 limits is reduced by not taking credit for PRVS, it is concluded that the reduction in margin of safety is insignificant because:

(1) PRVS operability and surveillance requirements are being retained in Technical Specifications with the exception of two items which do not significantly degrade the ability of PRVS to perform its function.

(2) The reduction in the margin of safety is being offset by a reduction in L_a.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

GPU Nuclear, Inc. and Saxton Nuclear Experimental Corporation, Docket No. 50–146, Saxton Nuclear Experimental Facility (SNEF), Bedford County, Pennsylvania

Date of amendment request: November 25, 1996.

Description of amendment request: The proposed amendment would allow decommissioning of the SNEF. The proposed changes to the license and technical specifications (TSs) would (1) accommodate decommissioning activities at the SNEF, (2) establish specific TS controls such as administrative controls and inspection requirements over decommissioning activities, (3) establish limiting conditions for performing decommissioning activities, (4) extend exclusion area controls to include the SNEF Decommissioning Support Building, (5) establish requirements for a Radiological Environmental Monitoring Program, an Off-Site Dose Calculation Manual and a Process Control Program, and (6) establish requirements for Technical and Independent Safety Reviews. In addition, the licensees have proposed other administrative and editorial

changes to the TSs associated with the changes proposed above.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Accidents which might occur during the active decommissioning phase of the SNEF are bounded by the twelve accidents addressed in section 3.0 of the Updated Safety Analysis Report (USAR). The accident analyses addressed in the USAR demonstrate that no adverse public health and safety impacts are expected from accidents that might occur during decommissioning operations at the SNEF. The highest calculated dose to an individual located at the site boundary is less than 1.5 mrem to the whole body during a postulated materials handling accident. The dose to an individual located at the site boundary for other on-site accidents is at or below this value. The limiting accident case represents less than 0.15% of the EPA lower whole body dose limit for radiological accidents. Based on the analyses of postulated credible accidents that might occur during the planned decommissioning operations at the SNEF, it is concluded that no significant increase in the probability or consequences of an accident previously evaluated would be involved.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

There are three general categories of accidents. These scenarios evaluate different methods of dispersing radioactive material to the environment which include a loss of support systems and external events. The first includes accident scenarios associated with decommissioning tasks. These were identified and evaluated as described in Section 3.0 of the USAR. The radiological effects of these accident scenarios are discussed in item 1 above. They do not, therefore, reflect a new or different kind of accident previously evaluated. The second category, loss of support systems, does not directly lead to an accident situation. Therefore, this category of event does not create the possibility of a new or different kind of accident. The final category of accidents involves external events.

Since these types of events can occur whether the SNEF is being decommissioned or not, the act of decommissioning does not create the possibility of a new or different kind of external event. Any potential radiological hazard that may occur as a result of an external event is addressed in item 1 above.

3. Involve a significant reduction in a margin of safety.

The TSs currently in place at the SNEF were developed to maintain a shutdown facility in a secured condition with occasional monitoring. These specifications were designed to ensure that the approximately 4 megacuries of radioactive material left on site following shutdown in 1972 as identified in the Saxton Decommissioning Plan and Safety Analysis Report dated April 1972, would remain safely contained. In the ensuing years, natural decay of these radioactive materials has resulted in a remainder of approximately 1500 curies of radioactive material at the facility (93% of which is activation contained within the steel structures of the reactor vessel). These proposed decommissioning TSs were developed in order to ensure this remaining radioactive material is safely contained and disposed of and that the environment surrounding the facility is monitored. These actions will assure that there is no reduction in the margin of safety during the active decommissioning of the facility. The final result of these efforts will be the removal of any potential radiological hazard from the site and the release of the site for unrestricted use.

The NRC staff has reviewed the analysis of the licensees and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Saxton Community Library, Front Street, Saxton, Pennsylvania 16678.

Attorney for the Licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: Seymour H. Weiss.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 28, 1997.

Description of amendment request: The proposed amendment would relocate the details of Technical Specification (TS) Section 6.2.3 on the Independent Safety Engineering Group (ISEG) from the Administration Controls section of the TSs and place these details in the Updated Final Safety Analysis Report (UFSAR) for South Texas Project, Units 1 and 2. This relocation is administrative only, and would not render any changes to the existing plant philosophy toward the ISEG or any safety analysis. Section 6.2.3 would be deleted from the TSs and removed from the table of contents for Administrative Controls. Currently UFSAR Section 13.4.2.2 describes the ISEG, but not in the detail as the current TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes move details from the Technical Specifications [TSs] to the Updated Final Safety Analysis Report (UFSAR). The changes do not result in any hardware or operating procedure changes. The details being removed from the Technical Specifications [TSs] are not assumed to be an initiator of any analyzed event. The UFSAR, which will contain the removed Technical Specification [TS] details, will be maintained using the provisions of 10 CFR 50.59 and is subject to the change control process in the Administrative Controls Section of the Technical Specifications [TSs]. [In addition] any changes to the UFSAR will be evaluated per 10 CFR 50.59, no increase in the probability or consequences of an accident previously evaluated will be allowed without prior NRC [Nuclear Regulatory Commission] approval. Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes move details from the technical Specifications [TSs] to the Updated Final Safety Analysis Report (UFSAR). The changes will not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing plant operation. The changes will not impose different requirements, and adequate control of information will be maintained. The changes will not alter assumptions made in the safety analysis and licensing basis. Therefore, the changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes move detail from the Technical Specifications [TSs] to the Updated Final Safety Analysis Report (UFSAR). The changes do not reduce the margin of safety since the relocation of details [is an administrative action and] has no impact on any safety analysis assumptions. In addition, the detail transposed from the Technical Specifications [TSs] to the UFSAR are the same as the existing Technical Specification [TS] [6.2.3]. [In addition] any future changes to the FSAR will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety will be allowed without prior NRC approval. [Therefore, the licensee concluded that the

changes will not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869.

NRC Project Director: William D. Beckner.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 18, 1997.

Description of amendment request: The proposed amendment would change the reactor core fuel assembly design features requirements contained in Technical Specification 5.3.1, Fuel Assemblies. The proposed change would allow for the limited replacement of failed or damaged fuel rods in fuel assemblies with solid stainless steel or zirconium alloy filler rods in accordance with NRC-approved applications of fuel rod configurations. Reconstituted fuel assemblies would be limited to those fuel designs that have been analyzed with applicable NRC-staff-approved codes and methods and shown by tests or analyses to comply with all fuel safety design bases. A limited number of lead test assemblies that have not completed representative testing would be allowed to be placed in nonlimiting core regions.

The proposed change would be in accordance with the guidance provided in NRC Generic Letter 90–02, Supplement 1, issued July 31, 1992.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the fuel assemblies would continue to meet the same fuel assembly and fuel rod design bases as the current fuel assemblies, the acceptance criteria for emergency core cooling systems would continue to be satisfied for all fuel assemblies, there would be no changes to reload design and safety analysis limits, and the radiological consequences of accidents previously evaluated would remain valid.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the fuel assemblies would continue to satisfy the same design bases previously used. Since the original design criteria would be met, no new accident initiators would be introduced. All design and performance criteria would continue to be met for the use of reconstituted assemblies containing the approved filler rods. Furthermore, the use of reconstituted fuel assemblies does not affect the manner by which the facility is operated.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the core reload design and safety analysis limits would be unchanged by the use of fuel assemblies containing approved filler rods. The use of all fuel assemblies would continue to be limited by the normal core operating conditions defined in the Technical Specifications. Reconstituted fuel assemblies would be evaluated specifically for each cycle reload core using approved reload design methods and approved fuel rod design models and methods.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esquire, Northeast Utilities Service Company, Post Office Box 270, Hartford CT 06141–0270.

NRC Project Director: Patrick D. Milano.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: March 4, 1996.

Description of amendment request: The proposed amendment would modify Surveillance Requirements 4.8.1.1.2.a.6, 4.8.1.1.2.b, and 4.8.1.1.2.g.7 by specifying load bands in loading the diesel generator (DG) in lieu of the present requirement to load the DG greater than or equal to a given value. A footnote is being added to the three surveillance requirements to indicate that a momentary transient outside the load range shall not invalidate the test. The associated Bases sections have been revised to reflect the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the proposed changes to Surveillance Requirements 4.8.1.1.2.a.6, 4.8.1.1.2.b, and 4.8.1.1.2.g.7 is to provide the load bands for loading the DG during the monthly, 184 days and 18-month surveillances. Specifically, for monthly (Surveillance 4.8.1.1.2.a.6) and once per 184 days (Surveillance 4.8.1.1.2.b) surveillances, the load band is between 4800–5000 kW. For the 18-month surveillance (Surveillance 4.8.1.1.2.g.7), the load band is between 5400–5500 kW during the first 2 hours and between 4800–5000 kW during the remaining 22 hours. The specified load bands account for instrumentation inaccuracies using the plant computer and for the operational control capabilities and human factor characteristics. The proposed changes will keep the actual upper load limit of the DG below the manufacturer's recommended limit and the actual lower limit enveloping the accident load requirements. The proposed changes will reduce unnecessary engine stress and wear, while potentially improving overall diesel generator reliability and availability. The changes to the Bases section reflect the changes made to the surveillance requirements and, therefore, have no adverse impact on plant safety. Since the proposed changes serve to enhance overall safety, these changes do not increase the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes regarding the load band for the DGs do not affect the operation or response of any plant equipment, including the DG, or introduce any new failure mechanism. The proposed changes will reduce unnecessary engine stress and wear, while potentially improving overall DG reliability and availability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes specifying the load bands for diesel testing will keep the actual upper load limit of the DG below the manufacturer's recommended limit, and the actual lower limit enveloping the accident load requirements. Therefore, the proposed changes do not affect the capability of the diesel to perform its intended function. The purpose of these changes is to increase the overall DG reliability. The proposed changes do not impact the consequences of any design basis accidents. There is no direct impact on any of the protective boundaries. For these reasons, the changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Deputy Director: Phillip F. McKee.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: January 31, 1997.

Description of amendment request: The amendments would revise Technical Specification 3/4.6.1.5, and its associated Bases section, to ensure that a representative average containment air temperature is measured.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Limitations on containment average air temperature ensure that the overall containment average air temperature does not exceed the initial temperature condition assumed in the accident analysis for a Loss of Coolant Accident or Steamline Break inside Containment. The resulting DBA temperature limits are used to established the environmental qualification envelope for safety-related electrical equipment inside containment.

The measurement of Containment average air temperature is a means to ensure that the design temperature normal operating limit is not exceeded. The probability of an accident is not impacted by the surveillance of normal temperature as it is a measurement which involves permanently installed, static equipment. The consequences of an accident are not impacted since the method of measurement ensures that the design basis temperatures are maintained and the intent of the existing surveillance specification is not changed. The proposed change does not impact the actual containment temperature, but specifies an acceptably accurate method for its determination.

Therefore, the probability of and consequences of an accident previously evaluated are not significantly increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any modifications to existing plant equipment, do not alter the function of any plant systems within Containment, do not introduce any new operating configurations or new modes of plant operation, nor change the safety analyses. The proposed change is consistent with NUREG–1431 and provides a methodology to ensure that calculated temperature is accurately determined.

The proposed changes will, therefore, not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change results in an acceptably accurate determination of the containment average air temperature, therefore, compliance with the TS surveillance and its associated basis is assured. The present margin of safety is not affected since operating parameters and conditions are unchanged.

All changes are consistent with the intent of Salem's current TS and with the surveillance specified in NUREG–1431, Revision 1.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: February 11, 1997.

Description of amendment request: The amendments would add a new Technical Specification 3/4.7.10, ''Chilled Water System'' to address the support function this system provides to other necessary safety systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Chilled Water System is a support system providing cooling to the Relay Rooms, the Control Room, and the affected Electrical Equipment Rooms. The Chilled Water System is not an accident initiator of any accident evaluated in the Safety Analysis Report. No physical changes to the Chilled Water System result from the proposed TS. The specified Allowed Outage Times in the TS are commensurate with the safety significance of the Chilled Water System as demonstrated by the PSA analysis.

Therefore, the proposed TS does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any modifications to the Chilled Water System or mode of operation of the system. The proposed TS specifies the minimum operable number of chillers and chilled water pumps to assure that the system performs its design function. It does not change the basic way in which the Chilled Water System is operated. The loads that are isolated are non-safety loads. By maintaining the minimum operable number of chillers and chilled water pumps, adequate cooling is assured to the Relay Rooms, the Control Room, the affected Electrical Equipment Rooms.

Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The Chilled Water System is a support system which provides cooling to the Relay Rooms, the Control Room, and the affected Electrical Equipment Rooms. The proposed changes do not involve any modifications to the Chilled Water System or changes to the mode of operation of the system. The proposed TS establishes controls to better ensure that the Chilled Water System will be able to perform its intended design function

and ensures that the safety functions of supported systems are maintained.

The proposed changes establish Allowed Outage Times and do not affect the operation of the Chilled Water System, and thus do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 20, 1997.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 3/4.5.2, ''Emergency Core Cooling Systems, ECCS Subsystems—$T_{avg} \geq 280$ °F,'' TS Section 3/4.5.3, ''Emergency Core Cooling Systems, ECCS Subsystems—$T^{avg} < 280$°F,'' and TS Section 3/4.7, ''Plant Systems.'' Several surveillance intervals would be changed from 18 months to once each refueling interval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed revisions to increase the surveillance test intervals from 18 to 24 months for the ECCS Subsystems (Surveillance Requirements 4.5.2.d.2.a, 4.5.2.e, 4.5.2.g.2, and 4.5.3), Auxiliary Feedwater System (Surveillance Requirement 4.7.1.2.1.c), Motor Driven Feedwater Pump System (Surveillance Requirement 4.7.1.7.d), Component Cooling Water System (Surveillance Requirement 4.7.3.1.b) and Service Water System (Surveillance Requirement 4.7.4.1.b). Initiating conditions and assumptions remain as previously analyzed for accidents in the DBNPS Updated Safety Analysis Report.

These revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of an affected system or component was identified during these reviews.

These proposed revisions are consistent with the NRC guidance on evaluating and proposing such revisions as provided in Generic Letter 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle,'' dated April 2, 1991.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the source term, containment isolation or radiological releases are not being changed by these proposed revisions. Existing system and component redundancy is not being changed by these proposed changes. Existing system and component operation is not being changed by these proposed changes. The assumptions used in evaluating the radiological consequences in the DBNPS Updated Safety Analysis Report are not invalidated.

A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of an affected system or component was identified during these reviews.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because these revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated. A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of a system or component was identified during these reviews. No changes are being proposed to the type of testing currently being performed, only to the length of the surveillance test interval.

3. Not involve a significant reduction in a margin of safety because a review of the historical 18 month surveillance data and maintenance records identified no potential for a significant increase in a failure rate of a system or component due to increasing the surveillance test interval to 24 months. Existing system and component redundancy is not being changed by these proposed changes.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences, therefore, there are no significant reductions in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 30, 1997.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 2.2, ''Limiting Safety System Settings,'' and applicable bases, TS Section 3/4.3, ''Instrumentation,'' and applicable bases, TS Section 3/4.4, ''Reactor Coolant System,'' and TS Section 3/4.7, ''Plant Systems.'' Several surveillance intervals would be changed from 18 months to once each refueling interval. In addition, several setpoints would be revised based on an instrument drift study, and trip setpoints would be revised based on new calculations. Administrative revisions are also proposed consistent with these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed revisions to increase the surveillance test intervals from 18 to 24 months for the subject Technical Specifications (TS): TS 2.2 Limiting Safety System Settings; TS 3/4.3.1.1, Reactor Protection System Instrumentation; TS 3/4.3.2.2, Steam and Feedwater Rupture Control System Instrumentation; TS 3/4.3.3.5.1, Remote Shutdown Instrumentation;

TS 3/4.3.3.6, Post-Accident Monitoring Instrumentation; TS 3/4.4.3, Safety Valves and Pilot Operated Relief Valve—Operating; TS 3/4.4.6.1, Reactor Coolant System Leakage Detection Systems; TS 3/4.7.1.2 and Auxiliary Feedwater System. Initiating conditions and assumptions remain as previously analyzed for accidents in the DBNPS Updated Safety Analysis Report.

Results of the instrument drift study analysis and review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because: the projected instrument errors caused by drift are bounded by the existing setpoint analysis or either a new analysis has been performed incorporating a more conservative setpoint or the calculations excess margin was reduced; projected instrument errors caused by drift are acceptable for control of plant parameters to effect a safe shutdown with the associated instrumentation or an engineering evaluation has been performed to justify continued use of the instrument string and revisions will be made to DBNPS calculations and controlling procedures where appropriate, to offset any adverse effect; and no potential for a significant increase in a failure rate of a system or component was identified during surveillance data and maintenance records reviews.

These proposed revisions are consistent with the NRC guidance on evaluating and proposing such revisions as provided in Generic Letter 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle,'' dated April 2, 1991.

The proposed revisions to Allowable Values for Steam and Feedwater Rupture Control System Steam Generator Level—Low are conservative with respect to the current Allowable Values and therefore, do not adversely affect previously analyzed accidents.

The application of the Allowable Value to the Channel Functional Test only, the proposed deletion of the Trip Setpoint, and revision of the Limiting Condition for Operation and Action Statement A for TS 3.3.2.2, SFRCS Instrumentation, associated with the proposed revision of the Allowable Values for SFRCS Steam Generator Level—Low are consistent with NUREG–1430, Revision 1, ''Standard Technical Specifications, Babcock and Wilcox Plants,'' dated April, 1995. The proposed revisions will have no adverse effect on any previously analyzed accident.

The proposed revision to the Reactor Protection System High Flux Allowable Value was determined in accordance with the approved setpoint methodology described in Babcock and Wilcox document BAW–10179P, Safety Criteria for Acceptable Cycle Reload Analyses, and is bounded by the High Flux trip of 112% rated power assumed in the DBNPS accident analysis.

The proposed deletion of the Trip Setpoints, deletion of the Allowable Values applicable to the Channel Calibration for RC low pressure, and RC high pressure functional units, application of Allowable Values to the Channel Functional Test as opposed to the Channel Calibration, and deletion of the ''**'' and ''#'' footnotes for Technical Specification Table 2.2–1, Reactor Protection System Instrumentation Trip Setpoints, and the proposed revision to TS 2.2, Limiting Safety System Settings, are consistent with NUREG–1430, Revision 1, ''Standard Technical Specifications, Babcock and Wilcox Plants,'' dated April, 1995. The proposed revisions have no adverse effect on any previously analyzed accident.

The proposed revision to Technical Specification Table 4.3–10, Post-Accident Monitoring Instrumentation Surveillance Requirements, Instrument 6, Containment Vessel Post-Accident Radiation separates the radiation monitors to reflect the revision to 24 month surveillance intervals for the High Range Radiation Monitors and that the Containment Wide Range Noble Gas monitors will remain on a 18 month surveillance frequency is an administrative change and does not affect previously analyzed accidents.

The proposed revision to the Technical Specification Bases 2.2.1, Reactor Protection System Instrumentation Setpoints, and Bases 3/4.3.1 and 3/4.3.2, Reactor Protection System and Safety System Instrumentation, are administrative and do not affect previously analyzed accidents.

Initiating conditions and assumptions remain as previously analyzed for accidents in the DBNPS Updated Safety Analysis Report.

These revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the source term, containment isolation or radiological releases are not being changed by these proposed revisions. Existing system and component redundancy is not being changed by these proposed changes. Existing system and component operation is not being changed by these proposed changes and the assumptions used in evaluating the radiological consequences in the DBNPS Updated Safety Analysis Report are not invalidated.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because these proposed revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

No changes are being proposed to the type of testing currently being performed, only to the length of the surveillance test interval.

Results of the instrument drift study analysis and review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because: the projected instrument errors caused by drift are bounded by the existing setpoint analysis or either a new analysis has been performed incorporating a more conservative setpoint or the calculations excess margin was reduced; projected instrument errors caused by drift are acceptable for control of plant parameters to effect a safe shutdown with the associated instrumentation or an engineering evaluation has been performed to justify continued use of the instrument string and revisions will be made to DBNPS calculations and controlling procedures where appropriate, to offset any adverse effect; and no potential for a significant increase in a failure rate of a system or component was identified during surveillance data and maintenance records reviews.

The proposed revisions to Allowable Values for Steam and Feedwater Rupture Control System Steam Generator Level—Low are conservative with respect to the current Allowable Values and do not alter any testing currently being performed.

The application of the Allowable Value to the Channel Functional Test only, the proposed deletion of the Trip Setpoint, and revision of the Limiting Condition for Operation and Action Statement A for TS 3.3.2.2, SFRCS Instrumentation, associated with the proposed revision to the Allowable Values for SFRCS Steam Generator Level—Low are consistent with NUREG–1430, Revision 1, ''Standard Technical Specifications, Babcock and Wilcox Plants,'' dated April, 1995. The proposed revisions do not alter any testing currently being performed.

The proposed deletion of the Trip Setpoints, deletion of the Allowable Values applicable to the Channel Calibration for RC lowpressure, and RC high pressure functional units, application of Allowable Values to the Channel Functional Test as opposed to the Channel Calibration, and deletion of the ''**'' and ''ι'' footnotes for Technical Specification Table 2.2–1, Reactor Protection System Instrumentation Trip Setpoints, and the proposed revision to TS 2.2, Limiting Safety System Settings, are consistent with NUREG–1430, Revision 1, ''Standard Technical Specifications, Babcock and Wilcox Plants,'' dated April, 1995. The proposed revisions do not alter any testing currently being performed.

The proposed revision to the Reactor Protection System High Flux Allowable Value was determined in accordance with the approved setpoint methodology described in Babcock and Wilcox document BAW–10179P, Safety Criteria for Acceptable Cycle Reload Analyses, and is bounded by the High Flux trip of 112% rated power assumed in the DBNPS accident analysis and does not alter any testing currently being performed.

The proposed revision to Technical Specification Table 4.3–10, Post-Accident Monitoring Instrumentation Surveillance Requirements, Instrument 6, Containment Vessel Post-Accident Radiation separates the radiation monitors to reflect the revision to 24 month surveillance intervals for the High Range Radiation Monitors and that the Containment Wide Range Noble Gas monitors will remain on a 18 month surveillance frequency is an administrative change and does not alter any testing currently being performed.

The proposed revision to the Technical Specification Bases 2.2.1, Reactor Protection System Instrumentation Setpoints, and Bases 3/4.3.1 and 3/4.3.2, Reactor Protection System and Safety System Instrumentation,

are administrative and do not alter any testing currently being performed.

3. Not involve a significant reduction in a margin of safety because The results of the instrument drift study analysis and review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because: the projected instrument errors caused by drift are bounded by the existing setpoint analysis or either a new analysis has been performed incorporating a more conservative setpoint or the calculations excess margin was reduced; projected instrument errors caused by drift are acceptable for control of plant parameters to effect a safe shutdown with the associated instrumentation or an engineering evaluation has been performed to justify continued use of the instrument string and revisions will be made to DBNPS calculations and controlling procedures where appropriate, to offset any adverse effect; and no potential for a significant increase in a failure rate of a system or component was identified during surveillance data and maintenance records reviews. Existing system and component redundancy is not being changed by these proposed changes.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences, consequently there are no significant reductions in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: December 21, 1995, as supplemented on October 24, 1996.

Description of amendment request: The proposed amendments would relocate certain cycle-specific parameter limits from the Technical Specifications to the Operating Limits Report (ORL).

Date of publication of individual notice in Federal Register: February 20, 1997 (62 FR 7804).

Expiration date of individual notice: March 24, 1997.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: November 5, 1996.

Description of amendment request: The proposed amendments would revise the technical specifications to allow ComEd to take credit, on a temporary basis, for soluble boron in the spent fuel storage water in maintaining an acceptable margin of subcriticality.

Date of publication of individual notice in Federal Register: February 10, 1997 (62 FR 6016).

Expiration date of individual notice: March 12, 1997.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 1 and 2, Grundy County, Illinois

Date of amendment request: February 17, 1997.

Description of amendment request: The amendments would increase the maximum allowable water temperature for the Containment Cooling Service Water inlet and the Suppression Pool.

Date of publication of individual notice in Federal Register: February 27, 1997 (62 FR 8998).

Expiration date of individual notice: March 31, 1997.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

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 these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document

Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: October 3, 1996.

Brief description of amendment: The amendment concerns the provisions at Calvert Cliffs Unit 1 for receiving, possessing, and using byproduct, source, and special nuclear material. The amendment changed the Unit 1 license, which previously contained restrictions on the possession and use of byproduct, source, or special nuclear material, to be consistent with the Unit 2 license, which has no such restrictions. The staff found this license amendment to be acceptable since both units share the same radiation protection staff, and the training and procedures used to control the acceptance and use of radioactive material at Unit 2 are sufficient to control the radioactive material at Unit 1, as well.

Date of issuance: February 19, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 220.

Facility Operating License No. DPR–53: Amendment revised the Operating License.

Date of initial notice in Federal Register: November 6, 1996 (61 FR 57482). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Duke Power Company, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: February 20, 1996 as supplemented October 16, 1996.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.1.5, TS 3.1.10 and TS 4.1 to: (1) reduce the surveillance frequency for the boron concentration in the concentrated boric acid storage tank; (2) delete the surveillance requirements for Sr^{89} and Sr^{90}, gross beta activity, gross alpha activity and dissolved gas concentration in the reactor coolant, and gross beta activity in the steam generator feedwater; (3) relocate the surveillance requirements for tritium, chloride, fluoride, and oxygen in the reactor coolant to the Selected Licensee Commitment (SLC) manual; and (4) delete TS 3.1.10 related to temperature and pressure requirements to avoid gas bubble formation on depressurization.

Date of issuance: February 19, 1997.

Effective date: As of the date of issuance to be implemented within 30 days. Implementation shall include concurrent revision of the Selected Licensee Commitment Manual in accordance with the application of this amendment.

Amendment Nos.: 221, 221, 218.

Facility Operating License Nos. DPR–38, DPR–47 and DPR–55: Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: March 27, 1996 (61 FR 13523). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1997.

No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: February 26, 1996.

Brief description of amendments: The amendments revise the TS to allow an increased limit for the nominal enrichment of new (unirradiated) Westinghouse-fabricated fuel stored in the new fuel storage racks.

Date of issuance: February 27, 1997.

Effective date: February 27, 1997, with full implementation within 45 days.

Amendment Nos.: 213 and 198.

Facility Operating License Nos. DPR–58 and DPR–74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 24, 1996 (61 FR 18172) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 27, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 4, 1996 as supplemented by letter dated January 8, 1997.

Description of amendment request: The amendment revises Seabrook Appendix A Technical Specifications (TS) 1.7, ''Containment Integrity'', 3/4.6.1, ''Primary Containment'', and 3/4.6.5, ''Containment Enclosure Building'', to incorporate the provisions of Option B to 10 CFR Part 50, Appendix J. TS Section 6.15, ''Containment Leakage Rate Testing Program'', has been added to establish a Containment Leakage Rate Testing Program, as specified in Regulatory Guide 1.163, dated September 1995, to support these changes. In addition to the changes to incorporate the provisions of Option B, TS 3.6.1.7 and 4.6.1.7.1 have been revised to incorporate an increased leak testing interval and to include reference to the Containment Leakage Rate Testing Program.

Date of issuance: February 24, 1997.

Effective date: February 24, 1997.

Amendment No.: 49.

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 28, 1996 (61 FR 44359). The licensee's letter dated January 8, 1997, which provided additional information relating to containment purge supply and exhaust valve testing and maintenance, does not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 18, 1995.

Brief description of amendment: The amendment revises the Technical Specifications (TS) to extend the surveillance schedule from 18 months to each refueling interval (nominally 24 months) for TS 3/4.4.4, ''Relief Valves;'' TS 3/4.4.6.1, ''Reactor Coolant System

Leakage;'' TS 3/4.4.6.2, ''Operational Leakage;'' TS 3/4.4.9.3, ''Overpressure Protection Systems;'' and TS 3/4.4.11, ''Reactor Coolant System Vents.''

Date of issuance: February 19, 1997.

Effective date: As of the date of issuance, to be implemented within 90 days.

Amendment No.: 133.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 27, 1995 (60 FR 58402).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: October 25, 1996.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) to incorporate the requirements of 10 CFR Part 50, Appendix J, Option B, for containment leakage tests. In addition, the amendments add a new section to the TSs, which establishes the requirements of the containment leakage rate testing program, consistent with the Improved Standard Technical Specifications.

Date of issuance: February 19, 1997.

Effective date: February 19, 1997, with full implementation within 30 days.

Amendment Nos.: 126 and 118.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 15, 1997 (62 FR 2191) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 19, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 16, 1995, as supplemented by letter dated August 8, 1996.

Brief description of amendment: The amendment revises the technical specifications to add a limiting condition for operation and surveillance test for safety related inverters and deletes the nonsafety related instrument buses.

Date of issuance: February 13, 1997.

Effective date: February 13, 1997, to be implemented within 60 days from the date of issuance.

Amendment No.: 180.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 13, 1996 (61 FR 10395)

The August 8, 1996, supplemental letter provided additional clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 27, 1996.

Brief description of amendments: The proposed amendments change the minimum allowable charging water header pressure from a value of 955 psig to a value of 940 psig in Technical Specification 3.10.8, ''Shutdown Margin (SDM) Test-Refueling.''

Date of issuance: February 19, 1997.

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendments Nos.: 218 and 221.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 23, 1996 (61 FR 55036)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 19, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 2, 1996, as supplemented September 23, 1996.

Brief description of amendments: These amendments change Technical Specification 3.6.1.2 for each unit to permit primary containment leakage testing of the main steamline isolation valves at either 22.5 psig or 45 psig according to the type of test to be conducted.

Date of issuance: February 25, 1997.

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 163 and 134.

Facility Operating License Nos. NPF–14 and NPF–22. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1996 (61 FR 42282). The September 23, 1996, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 25, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Southern California Edison Company, et al., Docket No. 50–362, San Onofre Nuclear Generating Station, Unit No. 3, San Diego County, California

Date of application for amendment: January 14, 1997.

Brief description of amendment: The amendment revises Surveillance Requirements (SRs) 3.8.1.14 and 3.8.1.15 to temporarily restore provisions of the emergency diesel generator surveillance requirements as they were prior to their revision as part of NRC Amendment No. 116 (conversion to the Improved Technical Specifications).

Date of issuance: February 10, 1997.

Effective date: February 10, 1997.

Amendment Nos.: 125.

Facility Operating License Nos. NPF–15: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (62 FR 3536 dated January 23, 1997). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by February 24, 1997, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1997.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: September 19, 1996, supplemented on November 18, 1996, revised on January 13, 1997, and supplemented on January 27, 1997.

Brief description of amendments: These amendments revise the reactor coolant system temperature below which the low temperature overpressure protection (LTOP) system and pressurizer power-operated relief valves (PORVs) shall be operable, modify the requirement to limit operation of the high pressure safety injection pump from reactor coolant system cold leg temperature of less than or equal to 275 °F to whenever the LTOP is required to be operable, change the name of the system from the overpressure mitigation system to the LTOP system, and revise the PORV setpoint from 425 psig to 440 psig.

Date of issuance: February 20, 1997, with full implementation within 45 days.

Effective date: February 20, 1997.

Amendment Nos.: 172 and 176.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (62 FR 5256, dated February 4, 1997) The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 6, 1997, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendments. The Commission's related evaluation of the amendments, finding of exigent circumstances, and final determination of no significant hazards considerations are contained in a Safety Evaluation dated February 20, 1997.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 13, 1995, as supplemented by letter dated October 10, 1996.

Brief description of amendment: The amendment revises the 125-volt D.C. Sources (3.8.2.1 and 3.8.2.2) and Onsite Power Distribution (3.8.3.1 and 3.8.3.2) Technical Specifications to include provisions for installed spare battery chargers, which will be added to the plant design before startup from the ninth refueling outage.

Date of issuance: February 10, 1997.

Effective date: February 10, 1997, to be implemented before startup from the ninth refueling outage, currently scheduled to begin in September 1997.

Amendment No.: 104.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 22, 1996 (61 FR 1639) The October 10, 1996, supplemental letter provided additional clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Notice of Issuance of Amendment to Facility Operating License and Final No Significant Hazards Consideration Determination

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of

Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 11, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Goodhue County, Minnesota

Date of application for amendments: February 6, 1997, as supplemented February 12, 1997.

Brief description of amendments: The amendments revise Technical Specification 3.3.A to allow safety injection pump testing and evolutions during low-temperature shutdown conditions provided controls for reactor coolant system conditions are in place to provide low temperature overpressurization protection.

Date of issuance: February 20, 1997.

Effective date: February 20, 1997, with full implementation within 30 days.

Amendment Nos.: 127 and 119.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications and Bases.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. NRC published a public notice of the proposed amendments, issued a proposed finding of no significant hazards consideration, and requested that any comments on the proposed finding be provided to the staff by close of business on February 14, 1997. The notice was published in the Red Wing Republican Eagle on February 12, 1997, the Minneapolis Star Tribune on February 9, 1997, and the St. Paul Pioneer Press on February 10, 1997. No comments have been received.

The Commission's related evaluation of the amendments, finding of exigent circumstances, consultation with the State of Minnesota, and final determination of NSHC are contained in a Safety Evaluation dated February 20, 1997.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 5th day of March 1997.

For The Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 97–5999 Filed 3–11–97; 8:45 am]

BILLING CODE 7500–01–P

OFFICE OF MANAGEMENT AND BUDGET

Interpretation Numbers 1 and 2 Related to Statement of Federal Financial Accounting Standards Numbers 4, 5, and 7

AGENCY: Office of Management and Budget.

ACTION: Notice of interpretations.

SUMMARY: This notice includes two interpretations of Statements of Federal Financial Accounting Standards (SFFAS), adopted by the Office of Management and Budget (OMB). These interpretations were recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in their entirety by OMB.

FOR FURTHER INFORMATION CONTACT: Norwood J. Jackson, Jr. (telephone: 202–395–3993), Office of Federal Financial Management, Office of Management and Budget.

SUPPLEMENTARY INFORMATION: This Notice includes two interpretations of Statements of Federal Financial Accounting Standards (SFFAS), adopted by the Office of Management and Budget (OMB). These interpretations were recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in their entirety by OMB.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB (the Principals) decide upon standards and concepts after considering the recommendations of FASAB. After agreement to specific standards and concepts, they are published in the Federal Register and distributed throughout the Federal Government.

An Interpretation is a document, originally developed by FASAB, of narrow scope which provides clarification of the meaning of a standard, concept or other related guidance. Once approved by the designated representatives of the Principals, they are published in the Federal Register.

This Notice, including the first two interpretations of SFFAS, is available on the OMB home page on the internet which is currently located at http://www.whitehouse.gov/WH/EOP/OMB/html/ombhome.html, under the caption ''Federal Register Submissions.''

G. Edward DeSeve,

Controller, Office of Federal Financial Management, Office of Management and Budget.

Interpretation Number 1 of Statement of Federal Financial Accounting Standards Number 7

Reporting on Indian Trust Funds in General Purpose Financial Reports of the Department of the Interior (DOI) and in the Consolidated Financial Statements of the United States Government: An Interpretation of SFFAS No. 7

Introduction

1. The DOI requested guidance about how to report information on Indian trust funds in the general purpose financial report of the Department. The Indian trust funds are managed by DOI's Office of Special Trustee, Office of the Secretary. (Prior to FY 1996, the trust funds were managed by the Bureau of Indian Affairs.) Some of the funds belong to individual Indians, others belong to tribes. The funds are managed by the Federal Government in a trust arrangement. While the government's responsibility for all of these funds is of a fiduciary nature, some portion of the annual flows for some of the funds have

been included in the *Budget of the United States Government.* (Further discussion regarding types of funds involved is provided in paragraphs 7 and 8.)

2. According to Statement of Federal Financial Accounting Concepts (SFFAC) No. 2, ''Entity and Display,'' inclusion of a program in the section of the Federal Budget, currently entitled ''Federal Programs by Agency and Account,'' is conclusive evidence that the program should be part of the reporting entity. The question thus arises whether the assets and activities of the Indian trust funds should be reported in DOI's general purpose financial statements. Also, Statement of Federal Financial Accounting Standards (SFFAS) No. 7, ''Accounting for Revenue and Other Financing Sources,'' requires certain disclosures regarding ''dedicated collections,'' including fiduciary funds. During discussion of this issue at the Federal Accounting Standards Advisory Board (FASAB), questions arose about what type of disclosures should be provided regarding the Indian trust funds.

Interpretation

3. The assets, liabilities and operating transactions of the Indian trust funds are not part of DOI and should not be included in the balance sheet, statement of net cost, and statement of changes in financial position of the Department or of the United States Government. However, the Department does have a fiduciary responsibility for these funds and is required to report on them in footnotes to the financial statements by SFFAS No. 7, paragraphs 83–87.

Scope of Interpretation

4. This Interpretation deals with what information about Indian trust funds should be included in the general purpose financial report of DOI and the consolidated financial statements of the United States Government. It does not address issues regarding: (1) reporting formats for the footnote disclosure required by SFFAS No. 7, (2) inclusion or exclusion of other fiduciary funds as components of the Federal reporting entity, (3) inclusion or exclusion of any funds or entities in the *Budget of the United States Government,* or (4) reporting on other funds labeled ''trust funds'' in the Federal Budget, reporting for trust funds, or reporting on deposit funds generally.[1]

[1] This restriction on the scope of this interpretation does not imply that this treatment would be inappropriate for the other fiduciary funds. Other funds were not included in the research supporting this Interpretation and are, therefore, excluded.

Effective Date

5. The interpretation is effective upon implementation of SFFAS No. 7, which is effective for reporting periods that begin after September 30, 1997. Earlier application of SFFAS No. 7 is encouraged.

Appendix: Basis For Conclusions

Entity Criteria

6. In its discussion of the budgetary perspective, SFFAC No. 2 notes:

> 18. Care must be taken in determining the nature of all trust funds and their relationship to the entity responsible for them. A few trust funds are truly fiduciary in nature. Most trust funds included in the Federal Budget are not of a fiduciary nature and are used in Federal financing in a way that differs from the common understanding of trust funds outside the Federal Government. In many ways, these trust funds can be similar to revolving or special funds in that their spending is financed by earmarked collections.
>
> 19. In customary usage, the term ''trust fund'' refers to money belonging to one party and held ''in trust'' by another party operating as a fiduciary. The money in a trust must be used in accordance with the trust's terms, which the trustee cannot unilaterally modify, and is maintained separately and not commingled with the trustee's own funds. This is not the case for most Federal funds that are included in the Federal Budget—the fiduciary relationship usually does not exist. The beneficiaries do not own the funds and the terms in the law that created the trust fund can be unilaterally altered by Congress.

7. Indian trust funds are ''true'' trust funds in the customary sense, in which there is a legal fiduciary relationship between the Federal Government as trustee and the Indians as trustor. The Federal Government does not own the assets of the funds. In some cases, the Federal Government's trustee relationship is with individuals, in other cases with tribes. For many of the funds involved, a tribe or individual can use the funds or dissolve the trust at any time; however, there is a restriction on the use of funds that have been received through legal judgments. Those funds are generally not available until the beneficiaries agree how the funds are to be distributed among them.

8. The Federal Budget treats the two types of Indian trust funds differently. Tribal funds are included in the Federal Budget. Individuals' funds are not in the Federal Budget; they are treated as deposit funds. The Indian tribal trust funds appear to meet SFFAC No. 2's conclusive criterion because of their budgetary treatment. The question regarding these funds is whether this implies that these funds should be reported on the face of DOI's financial statements, with the assets, liabilities, revenues and expenses of the Department.

9. Another question arises regarding the Indian trust funds that do not appear to meet the conclusive criterion: would they meet the indicative criteria? DOI interprets the indicative criteria in paragraph 44 of SFFAC No. 2 to mean that the Indian trust funds do not possess any of these characteristics.

10. Some people believe that the sixth indicative criterion does, in fact, apply: ''* * * a fiduciary relationship with a reporting entity * * *'' However, they believe that meeting any single indicative criterion is not necessarily sufficient to define the Indian trust funds as part of a reporting entity. SFFAC No. 2 cautioned expressly that ''no single indicative criterion is a conclusive criterion.''

11. Other people do not believe that even this indicative criterion applies. They believe that, notwithstanding the use of this terminology, the relationship discussed in the sixth indicative criterion concerns factors relating to committing the component entity financially, controlling the collection and disbursement of funds, or having financial interdependence. They believe that this type of financial control and interdependence does not exist between the Indian trust funds and the Federal Government.

12. While the Indian tribal funds might appear to meet the criteria for inclusion as a component of the Federal reporting entity (by virtue of the budgetary criterion, if no other), the sovereignty of the Indian tribes as entities outside the Federal Government, and the fiduciary relationship between the Federal Government and the Indians, indicate that the criteria stated in SFFAC No. 2 should not be interpreted to suggest that the assets, liabilities, revenues and expenses of these fiduciary funds should be reported on the face of DOI's financial statements.

13. SFFAC No. 2's discussion of the budget perspective cautions that, when defining a reporting entity, care must be taken in determining the nature of all trust funds and their relationship to the entity responsible for them (SFFAC No. 2, paragraph 18). This provides some common sense advice relevant to the Indian trust funds.

Disclosures for Dedicated Collections

14. As noted, the disclosure requirements for dedicated collections in SFFAS No. 7, paragraphs 83–87, are applicable to the Indian trust funds. DOI should include this information in footnotes to its basic financial statements. In addressing the comments

received on the exposure draft leading to SFFAS No. 7, the Board specifically noted that:

226.1 The proposed standard did not cover funds administered by a Federal entity in a fiduciary relationship with beneficiaries that were not included in the entity's financial statement. In addition, it did not cover other funds which are of the same nature as many trust funds. The standard now requires disclosures for these funds also.

Interpretation Number 2 of Statement of Federal Financial Accounting Standards Numbers 4 and 5

Accounting for Treasury Judgment Fund Transactions: An Interpretation of SFFAS No. 4 and SFFAS No. 5

Introduction

1. The Federal Accounting Standards Advisory Board (FASAB) was asked to clarify Federal accounting standards as they relate to the Treasury Judgment Fund. The Treasury Judgment Fund was established by Congress in the 1950's to pay in whole or in part the court judgments and settlement agreements negotiated by the Department of Justice (DOJ) on behalf of agencies, as well as certain types of administrative awards. The Congress established the Judgment Fund as a permanent, indefinite appropriation.

2. The clarification addresses (1) how Federal entities should report the costs and liabilities arising from claims to be paid by the Treasury Judgment Fund and (2) how the Judgment Fund should account for the amounts that it is required to pay on behalf of Federal entities. This interpretation has been prepared on the basis of the following three accounting Standards:

—Statement of Federal Financial Accounting Standards (SFFAS) No. 4, ''Managerial Cost Accounting Concepts and Standards for the Federal Government''

—SFFAS No. 5, ''Accounting for Liabilities of the Federal Government''

—SFFAS No. 7, ''Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting.''

The provisions of this interpretation need not be applied to immaterial items.

Interpretation

Accounting by the Federal Entity

3. SFFAS No. 5 states that a contingent liability should be recognized when a past event or exchange transaction has occurred; a future outflow or other sacrifice of resources is probable; and the future outflow or sacrifice of resources is measurable. The Federal entity's management, as advised by DOJ, must determine whether it is probable that a legal claim will end in a loss for the Federal entity and the loss is estimable. If the loss is probable and estimable, the entity would recognize an expense and liability for the full amount of the expected loss.[1] The expense and liability would be adjusted periodically, as necessary, based on any changes in the estimated loss. The Federal entity involved in the litigations shall discuss in a footnote to the financial statements the Judgment Fund's role in the payment of a possible loss.

4. Once the claim is either settled or a court judgment is assessed against the Federal entity and the Judgment Fund is determined to be the appropriate source for the payment of the claim, the liability should be removed from the financial statements of the entity that incurred the liability and an ''other financing source''[2] amount (which represents the amount to be paid by the Judgment Fund) would be recognized. If the Judgment Fund is responsible for only a portion of the claim or settlement, the imputed financing source amount would reflect only that amount to be paid by the Judgment Fund on behalf of the Federal entity.

Accounting by the Treasury Judgment Fund

5. Once the claim is either settled or a court judgment is assessed and the Judgment Fund is determined to be the appropriate source for payment of the claim, the Judgment Fund would recognize an expense and an accounts payable or a cash outlay for the full cost of the loss. According to SFFAS No. 4, the imputed financing source amount recognized by the Federal entity and the expense recognized by the Judgment Fund would be eliminated at the Federal consolidated financial report level.

Effective Date

6. This interpretation is effective upon implementation of SFFAS No. 4 and SFFAS No. 5, which become effective for fiscal periods beginning after September 30, 1996.

Appendix A: Basis For Conclusions

7. This interpretation is primarily based on the principles of SFFAS No. 5 and SFFAS No. 4. The following brief discussion explains the basis for the interpretation in terms of those standards which are the foundation for the interpretation.

8. In accordance with the general principles of the liability standard (SFFAS No. 5), once a legal claim is filed against a Federal entity, the entity's management should determine the likelihood that the Federal entity will incur a loss related to the claim,[3] regardless of the fact that the payment may be paid in full or in part by the Judgment Fund. The contingencies[4] section of SFFAS No. 5 states that, if the likelihood of the contingent loss is remote, no reporting is necessary; if the likelihood of the loss is reasonably possible and the amount is measurable, the estimated loss should be disclosed; and, if the likelihood of loss is probable (more likely than not which is a greater than 50 percent chance of occurrence) and estimable, the estimated loss must be recognized as a liability. If the probability of the loss is changed at any time prior to payment of the claim, the proper adjustments should be recognized (e.g., from disclosure (reasonably possible) to recognition (probable)). If at any time the estimated loss amount changes, the liability and expense should be adjusted to reflect the change.[5]

9. In accordance with the principles of SFFAS No. 4,[6] a Federal entity incurring a loss or expense must recognize the full cost of the loss (claim), regardless of who is actually paying the (settlement or judgment) amount. The standard requires the Federal entity incurring a loss or expense to use an estimate of the cost if the actual cost information is not provided. The estimate must be reasonable and should be aimed at determining realistic losses expected.

Appendix B: Illustrative Journal Entries

Based on the above noted accounting standards and the generalized events described below, the conceptual journal entries[7] should be as follows:

Federal entity entries:

The Federal entity's management, through the advisement of DOJ, has

[1] See paragraph 39 in SFFAS No. 5 for the complete discussion on ''Estimating Contingent Liabilities.''

[2] See paragraph 73 in SFFAS No. 7 for the complete discussion on ''Financing Imputed for Cost Subsidies.''

[3] In most cases this determination involves DOJ.

[4] A contingency is an existing condition, situation or set of circumstances involving uncertainty as to possible gain or loss to an entity. The uncertainty will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm a gain or loss.

[5] See paragraphs 35–42 in SFFAS No. 5 for the complete discussion on ''Contingencies.''

[6] See paragraphs 89–104 and 105–115 in SFFAS No. 4 for the complete discussion on ''Full Cost'' and ''Inter-entity Costs,'' respectively.

[7] Actual journal entries are under the authority of the Standard General Ledger.

determined that the probability of the legal claim ending in a loss against the Federal entity is probable and the loss is estimable. The entity would recognize an expense and liability for the full amount of the expected loss. The expense and liability would be adjusted as necessary based on any changes in the estimated loss.

Entry #1:

Debit Expense
Credit Liability—Legal claims

Once the claim is either settled or a court judgment is assessed against the Federal entity and the Judgment Fund is determined to be the appropriate source for payment of the claim, the liability should be removed and an other financing source recognized. If the Judgment Fund is responsible for only a portion of the claim or settlement, the imputed financing source amount would only reflect that amount paid by the Judgment Fund on behalf of the Federal entity.

Entry #2:

Debit Liability—Legal claims
Credit Imputed Financing Source—Expenses Paid by Other Entities [8]

Treasury Judgment Fund entries:

The claim is either settled or a court judgment is assessed and the Judgment Fund is determined to be the appropriate source for payment.

Entry #3:

Debit Expenses Paid for Other Entities [8]
Credit Cash or Fund Balance with Treasury

[FR Doc. 97–6134 Filed 3–11–97; 8:45 am]

BILLING CODE 3110–01–P

[8] According to SFFAS No. 4, the imputed financing source and expenses paid for other entities amounts would be eliminated at the consolidation level.

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Investigation of Claim for Possible Days of Employment or State Benefits Received; OMB 3220–0049. Under Section 1(k) of the Railroad Unemployment Insurance Act (RUIA), unemployment and sickness benefits are not payable for any day with respect to which remuneration is payable or accrues to the claimant. Also Section 4(a–1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulations, 20 CFR 322.4(a), a claimant's certification or statement on an RRB provided claim form that he or she did not work on any day claimed and did not receive inform such as vacation pay or pay for time lost shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, investigation shall be made with a view to obtaining information sufficient for a finding. The RRB utilizes the following four forms, to obtain information from railroad employers, nonrailroad employers and claimants, that are needed to determne whether a claimed days or days of unemployment or sickness were improperly or fraudulently claimed: Form ID–5I, Letter to Non-Railroad Employers on Employment and Earnings of a Claimant; Form ID–5R(SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service; Form ID–49R, Letter to Railroad Employee for Payroll Information; and Form UI–48, Claimant's Statement Regarding Benefit Claim for Days of Employment. Completion is voluntary. One response is requested of each respondent.

All of the forms are being revised to include language required by the Paperwork Reduction Act of 1995. The RRB also proposes the addition of an item to Form ID–51 to request the employee's occupation. No other changes are proposed.

The RRB burden estimates for forms associated with the collection follow:

Form No.	Annual responses	Time (min)	Burden (hours)
ID–5I	4,500	15	1,125
ID–5R (SUP)	900	10	150
ID–49R	250	15	63
UI–48	250	12	50
Total	5,900		1,388

Additional Information or Comments: to request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (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. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–6139 Filed 3–11–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22548; 811–3667]

PaineWebber/Kidder, Peabody Tax Exempt Money Fund, Inc.

March 6, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: PaineWebber/Kidder, Peabody Tax Exempt Money Fund, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 23, 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 March 31, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1285 Avenue of the Americas, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a Maryland corporation. On February 14, 1983, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under the Act and the Securities Act of 1933. The registration statement became effective on June 30, 1983, and the initial public offering commenced thereafter.

2. On July 20, 1995, applicant's board of directors approved an Agreement and Plan of Reorganization and Dissolution (the ''Plan'') whereby applicant would exchange its assets for shares of common stock in PaineWebber RMA Tax-Free Fund, Inc. (''PW Fund''), a registered investment company. Pursuant to rule 17a–8 under the Act,[1] applicant's board of directors determined that the proposed reorganization was in the best interest of applicant and that the interests of the existing shareholders would not be diluted as a result of the proposed reorganization.

3. In approving the Plan, the directors were advised of certain benefits which were likely to result from the reorganization. The directors were advised that the investment advisory and administration fee schedule applicable to PW Fund would be equal or lower than that currently in effect for applicant. Further, the directors were advised that, because PW Fund has greater net assets than applicant, combining the two funds would reduce the expenses borne by the shareholders of applicant as a percentage of net assets. The boards also were advised that following the reorganization, the expense ratio for the PW Fund was likely to decrease because the investment advisory and administration fee paid by that fund decreases as the size of the fund increases.

4. On September 13, 1995, applicant filed a registration statement on Form N–14 with the SEC, which included a prospectus for the shares of the PW Fund to be issued in the reorganization and related proxy materials. The registration statement was declared effective on October 6, 1995. Applicant's shareholders approved the Plan on November 10, 1995.

5. As of November 20, 1995 (the ''Closing Date''), there were 395,167,695.07 shares outstanding of applicant's stock, having an aggregate net asset value of $395,038,835.11 and a per share net asset value of $1.00. Pursuant to the Plan, on the Closing Date, applicant transferred all of its assets in exchange for shares of common stock of PW Fund and the assumption of applicant's liabilities. The number of shares of PW Fund issued to applicant were determined by dividing the net asset value of a share of applicant by the net asset value of a share of PW Fund, in each case as of the close of regular trading on the New York Stock Exchange, Inc. on the Closing Date. Following this exchange, applicant distributed the shares of PW Fund to its shareholders on a *pro rata* basis.

6. Expenses incurred in connection with the reorganization include legal expenses, printing and mailing expenses, administrative expenses, and registration fees. These expenses totalled approximately $275,000 and were borne by applicant and PW Fund in proportion to their respective net assets.

7. Applicant has no securityholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to promptly file Articles of Dissolution with the Maryland State Department of Assessments and Taxation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–6196 Filed 3–11–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides an exemption from section 17(a) of the Act for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release No. 34–38369; File No. SR–NASD–96–39]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Amending the Requirements for the Use in Advertisements and Sales Literature of Investment Company Rankings

March 5, 1997.

I. Introduction

On October 17, 1996,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend the requirements for the use in advertisements and sales literature of investment company rankings.

Notice of the proposed rule change as amended, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 37987 (November 25, 1996), 61 FR 64185 (December 3, 1996) (''Notice''). Four comment letters were received on the proposal. This order approves the proposed rule change.

II. Description

In 1994, the Commission approved what is now IM–2210–3 of the NASD Conduct Rules, which provides guidelines for the use of rankings in investment companies' advertisements and sales literature (''Guidelines'').[4] Among other things, the Guidelines require that all rankings used in advertising and sales literature by member firms to promote non-money market mutual fund performance include rankings over one, and, if available, five and ten year periods. Prior to the guidelines, there were no specific standards for the use of rankings. Members generally had selected rankings for whatever time period produced the most favorable rankings for an investment company.

Since the approval of the Rankings Guidelines, the staff of NASD Regulation, Inc. (''NASDR'') has considered whether to allow for greater flexibility in the use of time periods other than those prescribed by the Guidelines. The staff noted that some rankings, which are based on adjusted total return to reflect criteria and methodologies established and imposed by the ranking entities, use time periods that do not meet the three specifically prescribed time periods contained within the Guidelines.[5] NASDR staff determined that the Guidelines, as originally approved, should be revised consistent with the original goal that would prevent selectivity of time periods. The NASD filed a proposed rule change to IM–2210–3[6] of the NASD's Conduct Rules to allow for the use in advertisements and sales literature of investment company rankings that represent short, medium and long term performance.

The rule change revises subparagraphs (2) (B) and (C) to paragraph (d) of IM–2210–3. The rule change clarifies that the use of one, five and ten year time periods is required if such time periods are published by the ranking entity.[7] If rankings for the required time periods are not published by the ranking entity, the rule change provides that rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods.[8]

The rule change also replaces the phrase ''in the category'' in subparagraphs (2) (B) and (C) with the phrase ''relating to the same investment category,'' to clarify that when members provide rankings for advertisements and sales literature, rankings for the prescribed time periods must be for the same investment category or subcategory as the total return ranking that is being accompanied by the prescribed ranking.

III. Summary of Comments

The Commission received four comment letters, three of which supported the proposed rule change, and one that did not, and a response to the comment letters.[9] The comment letter from Lipper Analytical Services, Incorporated (''Lipper'') divides its criticisms into several different areas. Lipper stresses the importance of having one, five and ten year performance periods as a way to stop ranking companies from ''cherry picking'' performance periods in order to maximize attractiveness of the funds. Lipper believes that the fact that some funds do not have one, five or ten year histories is sometimes very important to investors and that lowering the ''barriers'' will not alert the investor to the potential of an unseasoned mutual fund.

Lipper next addresses the validity of the categories of funds that are ranked. Lipper says that funds with similar investment characteristics should be compared to each other but that comparing dissimilar funds could be misleading. In addition, Lipper argues that the one year measure is important to investors who may want to know the short term performance of a fund and to different mutual fund participants who may have different time requirements. Lipper adds that all performance based advertising, including returns, rankings and ratings, should be on the same basis. Lipper also argues against the use of a single number that represents risk for an investment company, saying that investors do not believe there can be a useful single measure of risk. Any measure that involves the use of the word ''risk'' should have an explanation of the calculation procedures. Lipper says that any measure that compares funds with securities indices and other indices risks comparing unlike entities. Last, Lipper agrees that there should be some improvement in the disclosure of fund advertising to investors, and suggests that performance of funds should be measured in rising and falling market conditions.

The comment letter from the Investment Company Institute (''ICI''),

[1] On November 21, 1996, the NASD filed Amendment No. 1 with the Commission. The amendment clarified that rankings based on yield may be based on periods of less than one year. The amendment also made technical amendments to the text of the rule. *See* Letter from John Ramsay, Deputy General Counsel, NASD Regulation, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 20, 1996.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 34354 (July 12, 1994), 59 FR 36461 (July 18, 1994).

[5] For example, one ranking entity has developed a ranking system that summarizes an investment company's risk/reward profile for three, five, and ten year periods. This system provides a composite ranking that seeks to measure how well an investment company has balanced return and risk in the past.

[6] NASD Manual, Conduct Rules, Interpretative Material of the Rules of the Association (CCH), IM–2210–3.

[7] The Guidelines define ''Ranking Entity'' as ''* * * any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking.''

[8] In its discussions of how the terms ''short,'' ''medium'' and ''long term'' might be interpreted, NASDR staff considered time frames of 1–4 years, 5–9 years and 10 years or more, respectively, as an acceptable interpretation.

[9] *See* letters to Jonathan G. Katz, Secretary, SEC, from Banc One Corporation, Investment Company Institute, and Morningstar, Incorporated, dated December 24, 1996, December 24,1996, and December 20, 1996 respectively; letter to Margaret H. McFarland, Deputy Secretary, SEC, from Lipper Analytical Services, Incorporated, dated December 23, 1996; and letter to Katherine A. England, Assistant Director, Market Regulation, SEC, from John Ramsay, Deputy General Counsel, NASDR, dated January 23, 1997 (''NASDR letter'').

although in support of the proposed rule change, has two comments on the content of the filing. The ICI states that is does not believe that the NASDR's suggestions of 1–4 years, 5–9 years and 10 years or more [10] are intended as definitions of short, medium and long, but rather as an interpretation by the NASDR staff of the relative lengths of time for each period. In addition, ICI states that the rule change does not explicitly address whether a NASD member could use a short or medium term ranking for a fund that has been in existence for at least one or at least five years and for which rankings for the specified time periods are not published by the ranking entity, but it supports that result.

IV. Discussion

The Commission finds that the proposed rule change is consistent with Section 15A(b) of the Act and the rules and regulations thereunder, and, in particular, with the requirements of Section 15A(b)(6)[11] that the rules of an association be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. The rule change provides a flexible framework within which ranking entities using different methodologies can provide useful information to investors in a way that is not harmful or misleading and that still prevents selectivity of time periods. The Commission believes that performance-adjusted rankings which use different time periods than those prescribed by the Guidelines can help investment company investors make informed investment decisions if presented in a way that is not misleading.

The Commission believes that a concern about selectivity of time periods is adequately addressed by the rule change. The Commission notes that under the proposed rule change, short, medium and long-term rankings can only be used if one, five and ten year rankings are not available. The Commission also notes that short, medium and long term rankings are still uniform in nature and do not allow Ranking Entities to randomly choose any time periods they want.

Lipper raises a valid concern about only comparing similar funds, but the Commission believes that concern is addressed by the proposed rule change. The rule change clarifies language in the rule by stating that rankings for prescribed time periods must be "* * * by the same Ranking Entity, relating to the same investment category, and based on the same time period." The NASD, further clarifying the "relating to the same investment category" language, stated that rankings for the prescribed time period must be for the same investment category or subcategory as the total return ranking that is being accompanied by the prescribed ranking.[12]

The Commission notes Lipper's concern that a one year performance ranking is important to investors who want to know the short-term performance of a fund. The Commission believes that this concern is adequately addressed by the requirement that one, five and ten year time periods must be used if they are published by the ranking entity.[13] The Commission also believes that Lipper's concern that different mutual fund participants have different time requirements is addressed by the proposed rule change in that it now permits the use of time periods other than one, five and ten years in certain instances.[14]

The Commission also realizes that there may be instances where non-disclosure of certain factors could cause the use of a ranking to be misleading, notwithstanding that the ranking is in technical compliance with the Ranking Guidelines.[15] NASD recognized these concerns and stressed that NASD rules governing communications with the public require that all advertising and sales literature submitted for review not be misleading,[16] and that those rules give the NASDR broad authority to prohibit the use of the misleading ranking.[17]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–96–39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–6197 Filed 3–11–97; 8:45 am]

BILLING CODE 8010–01–M

[10] The Commission notes that the correct time period suggested by the NASD was 5–9 years for he medium time period and that a mistake was made in the Notice, which reads "5–5 years."

[11] 15 U.S.C. 78*o*–3

[12] *See* Notice and NASDR letter.

[13] *See* NASDR letter.

[14] The Commission believes that the concern about risk-based rankings is not relevant to this proposed rule change because this filing does not deal with the method of calculating the performance-based rankings themselves, other than the length of time over which the rankings must be calculated. The Commission also believes that the suggestion that performance should be measured over rising and falling market conditions is not relevant to this proposed rule filing because this filing is concerned with the length of the time period for measuring performance.

[15] For example, if a one-year ranking is used that coincides with the tenure at the firm of a particular fund manager, the fact that the fund manager has changed could be relevant. Similarly, if a three-year ranking is used that encompasses a change in fund managers at the firm, the fact that the ranking covers a period with more than one fund manager could be relevant.

[16] NASD Conduct Rule 2210(d)(1)(A) states that "[a]ll member communications with the public should provide a sound basis for evaluating the facts in regard to any particular security * * *. No material fact or qualification may be omitted if the omission * * * would cause the advertising or sales literature to be misleading." NASD Conduct Rule 2210(d)(1)(B) further states that "[e]xaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members."

[17] *See* Amendment #1, filed November 21, 1996 and NASDR letter.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2516]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic documentation will meet in the Department of State, March 18–19, 1997 in Conference Rooms 1205 and 1406.

The Committee will meet in open session from 1:00 p.m. on the afternoon of Tuesday, March 18, 1997, until 5:00 p.m. The remainder of the Committee's sessions from 9:00 a.m.—5:00 p.m. on March 19, 1997, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (P.L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail histoff@ix.netcom.com).

Dated: February 20, 1997.

William Z. Slany,

Executive Secretary.

[FR Doc. 97–6228 Filed 3–11–97; 8:45 am]

BILLING CODE 4710–22–M

[Public Notice No. 2515]

Notice of Briefing

The Department of State announces this year's first briefing on U.S. foreign policy economic sanctions programs to be held on Friday, April 25, 1997, from 2:00 p.m. until 3:30 p.m., in the State Department Dean Acheson auditorium, 2201 C Street NW, Washington, DC.

This briefing is a follow-on session to the series of briefings held last year in March, July and December. As in the earlier briefings, Deputy Assistant Secretary for Energy Sanctions and Commodities Bill Ramsay will present an overview of the foreign policy economic sanctions regimes overseen by the State Department's Bureau of Economic and Business Affairs. State Department desk officers will be on hand to discuss country-specific sanctions issues following Ambassador Ramsay's briefing.

Please Note: Persons intending to attend the April 25 briefing must announce this not later than 48 hours before the briefing, and preferably further in advance, to the Department of State by sending a fax to 202–647–3953 (Office of the Coordinator for Business Affairs). The announcement must include name, affiliation, Social Security or passport number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the 23rd Street entrance.

Dated: March 5, 1997.

Christopher Szymanski,

Deputy Coordinator for Business Affairs.

[FR Doc. 97–6227 Filed 3–11–97; 8:45 am]

BILLING CODE 4710–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 2/28/97

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2151.
Date filed: February 24, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC3 Telex Mail Vote 858
Special Passenger Amending Reso from Japan
Intended effective date: April 1, 1997.

Docket Number: OST–97–2157.
Date filed: February 26, 1997.
Parties: Members of the International Air Transport Association.
Subject:
COMP Mail Vote 857 (as amended)
Zimbabwe-Middle East/TC3 Reso 010i
Intended effective date: April 1, 1997.

Docket Number: OST–97–2158.
Date filed: February 26, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 AFR 0007 dated February 14, 1997.
Within Africa Resos r1–24
Minutes—PTC2 AFR 0008 dated February 21, 1997
Tables—PTC2 AFR Fares 0004 dated February 25, 1997
Intended effective date: April 1, 1997.

Docket Number: OST–97–2163.
Date filed: February 28, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC1 Telex Mail Vote 860
Argentina-Bolivia Fares
r–1—041d r–3—061d
r–2—051d r–4—070j
Intended effective date: March 16, 1997.

Docket Number: OST–97–2164.
Date filed: February 28, 1997.
Parties: Members of the International Air Transport Association.
Subject:
COMP Cargo Telex Reso 033f
Local Currency Rate Changes-Hungary
Intended effective date: April 1, 1997.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–6044 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 28, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2147.
Date filed: February 24, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 24, 1997.
Description: Application of Alaska Seaplane Service, pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled, interstate air transportation of persons, property and mail.

Docket Number: OST–97–2148.
Date filed: February 24, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 24, 1997.
Description: Application of American International Airways, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Department's Procedural Rules, applies for certificate authority authorizing it to provide scheduled foreign air transportation of property and mail between a point or points in the United States and a point or points in Belize, El Salvador, Guatemala,Honduras, Nicaragua and Panama.

Docket Number: OST–97–2149.
Date filed: February 24, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 24, 1997.
Description: Application of Alaska Airlines, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing Alaska to engage in the scheduled foreign air transportation of persons, property and mail between any point in the territory of the United States, on the one hand, and any point in the territory of Canada, on the other hand.

Docket Number: OST–97–2156.
Date filed: February 25, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 25, 1997.
Description: Supplement No. 1 to the Application of Federal Express Corporation (as successor in interest to The Flying Tiger Line, Inc.), pursuant to 49 U.S.C. Section 41102 and Subpart Q, furnishing updated information and requesting an extention of the existing U.S.-Venezuela certificate authority for a period of five years, through March 15, 2002.

Docket Number: OST–97–2166.
Date filed: February 28, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 28, 1997.
Description: Application of Premiair A/S, pursuant to 49 U.S.C. Section 41302, and Subpart Q of the

Regulations, applies for a foreign air carrier permit authorizing charter air transportation of persons, property and mail between a point or points in Denmark, Norway, and Sweden, on the one hand, and a point or points in the United States, on the other hand, and other charters subject to Part 212 of the Department of Transportation's Regulations.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–6043 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 95–20; Notice 4]

Child Safety Seats; Settlement Agreement Between General Motors and U.S. Department of Transportation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice; request for certifications.

SUMMARY: This notice, the fourth and final of its kind, describes a settlement agreement between General Motors (GM) and the U.S. Department of Transportation (DOT), under which GM agreed to donate funds to one or more qualified national organizations for the purchase and distribution of child safety seats. Organizations that wish to receive such funds are required to certify in writing that they are qualified, in accordance with criteria established in the agreement. To qualify, organizations must demonstrate that they are national in scope, and they must submit a plan showing they are prepared to purchase and distribute child safety seats within 120 days of their receipt of the funds. They must also meet other requirements. Organizations are strongly encouraged to form partnerships and work collaboratively for the purpose of applying for funds. If organizations plan to work collaboratively, they should submit a single combined certification.

This notice requests that organizations submit certifications and it describes the criteria they must meet and the information they must submit with their certifications to be eligible to receive these funds. Similar notices were published in the Federal Register on March 31 and June 29, 1995, and on March 29, 1996. As a result of the March 1995 notice, six organizations were determined by NHTSA to be qualified and were selected by GM to receive a total of $2 million for the purchase and distribution of child safety seats. As a result of the June 1995 notice, six organizations were determined by NHTSA to be qualified and three were selected by GM to receive a total of $2 million for the purchase and distribution of child safety seats. As a result of the March 1996 notice, four organizations were determined by NHTSA to be qualified and were selected by GM to receive a total of $2 million for the purchase and distribution of child safety seats.

As a result of today's notice, one or more organizations will be determined by NHTSA to be qualified and will be selected by GM to receive the final $2 million in donations for the purchase and distribution of child safety seats under the settlement agreement.

DATE: Certifications must be received no later than May 12, 1997.

ADDRESS: Certifications should be submitted to: Office of Communication and Outreach, NTS–22, Room 5118, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Neverman, National Outreach Division, NTS–22, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone (202) 366–2683.

SUPPLEMENTARY INFORMATION:

DOT/GM Settlement Agreement

On December 2, 1994, then Secretary of Transportation Federico Peña announced that DOT and GM had agreed in principle to a resolution of the investigation by the National Highway Traffic Safety Administration (NHTSA) into an alleged defect related to motor vehicle safety in certain 1970–1991 GM C/K pickup trucks. The terms of the resolution were finalized in a separate agreement that was executed between GM and DOT on March 7, 1995.

Under the terms of the agreement, GM agreed to provide funds over a period of five years to support highway safety research and programs that will prevent motor vehicle deaths and injuries.

In the area of child safety, GM agreed to donate $8,000,000 to qualified organizations for the purchase and distribution of child safety seats. The agreement provided that, of this amount, $4,000,000 will be donated during the first year after the date of the agreement (approximately $1,000,000 each quarter) and $4,000,000 will be donated over the next four years (at approximately the rate at which DOT expends funds for the development and support of child safety seat loaner and give-away programs during that period). The seats will be directed to underserved low income and special needs populations.

The agreement between GM and DOT provides:

> DOT shall identify, on an ongoing basis so as to facilitate timely GM donations, qualified organizations which DOT in its sole discretion deems appropriate to receive donations from GM for the purchase and distribution of child safety seats. GM, in its sole discretion, shall select from the list of qualified organizations provided by DOT, the organization(s) to which it will donate funds, and shall decide the exact amount of funds that each such organization will receive.

The agreement provides further that any organization that is interested in being identified as a ''qualified organization'' must certify to DOT in writing that it will meet a number of criteria set forth in the agreement.

NHTSA estimates that these funds will allow for the purchase and distribution of between 125,000 and 200,000 child safety seats for needy families which, in turn, will save at least 50 lives and prevent approximately 6,000 injuries.

Child Safety

There are approximately 25 million young children under the age of eight years old who need the protection of child safety seats. One fourth of these children come from families that are below the poverty level.

As many as 3 million children in low-income families do not have access to adequate child safety seats. An additional 3 million children or more have access to child safety seats but, for a variety of reasons, are not being secured in these seats properly. Additionally, children with special transportation needs, such as children with disabilities, often require uniquely designed child safety seats that are too expensive for most families of low or average income to afford.

For these and other reasons, millions of children ride each day either unprotected or inadequately protected by child safety seats. A disproportionate number of these children are from low income or rural families or from culturally diverse populations.

To increase child safety seat usage, child safety seats must be made more readily available, particularly to underserved low income and special needs families. These families must also be motivated to use child safety seats and educated about their proper usage.

An effective child safety seat program can reach, and have a major positive impact on, large numbers of children as well as their families. To be most effective, however, the program must ensure that seats are distributed primarily to the populations most at risk, including underserved low income

and special needs families. If programs do not target these populations, the seats could be provided instead to families that could otherwise afford to purchase them, with little net benefit.

Previous Notices

On March 31 and June 29, 1995, and on March 29, 1996, NHTSA published notices in the Federal Register describing the agreement between GM and DOT and requesting that organizations interested in receiving funds certify in writing that they are qualified. NHTSA received over 20 certifications in response to the March 1995 notice, 8 certifications in response to the June 1995 notice and 4 certifications in response to the March 1996 notice.

Copies of these previous notices and the certifications received in response to them have been placed in NHTSA's Technical Reference Division (TRD), Docket Section, under Docket Number 95–20; Notices 1, 2 and 3. Individuals that wish to order a copy of these materials may do so by calling or writing to the TRD at Room 5108, 400 Seventh St., SW, Washington, D.C. 20590 (telephone number 202–366–2768) and referencing these docket numbers. A fee may be charged, based on the volume of material that is requested.

The certifications that NHTSA received in response to the notices were reviewed by evaluation panels of experienced NHTSA personnel, who determined whether the certifications met each of the required criteria and evaluated the certifications based on the evaluation factors specified in the notice.

The panel that reviewed the certifications responsive to the March 1995 notice determined that six organizations were qualified to receive donations from GM: National SAFE KIDS Campaign; National Safety Council (NSC); International Association of Chiefs of Police (IACP); National Easter Seal Society; Safe America Foundation/Operation Baby Buckle; and the State and Territorial Injury Prevention Directors Association (STIPDA).

GM decided that each of these organizations would receive donations for the purchase and distribution of child safety seats under the settlement agreement. GM donated $1.5 million to SAFE KIDS to coordinate a major child safety seat program with three other qualified organizations (NSC, IACP and STIPDA), and specified that half of the child safety seats purchased by SAFE KIDS would be divided equally among NSC, IACP and STIPDA, to be distributed through their channels. GM also donated $400,000 to the National Easter Seal Society for its ''unique program that reaches 'special needs' infants and children'' and $100,000 to Operation Baby Buckle for ''the distribution of seats and its active public education and car safety seat awareness programs.''

The panel that reviewed the certifications responsive to the June 1995 notice determined that six organizations were qualified to receive donations from GM.

GM decided that three of these organizations would receive donations for the purchase and distribution of child safety seats under the settlement agreement. GM donated $800,000 to National SAFE KIDS Campaign, which formed a coalition with National Head Start Association and the National Association of Community Health Centers, ''to reach a group that was more diverse than during the first phase of the program.'' GM donated $800,000 to SAFE TEAM, USA, which forged an alliance that included the Safe America Foundation, the National Safety Council, the Native American Injury Prevention Network, the National Association of Community Action Agencies, the National Coalition of Hispanic Health and Human Services Organizations and the International Association of Chiefs of Police. GM stated that it expected this alliance ''to reach deep into many communities.'' The alliance also proposed ''a unique fund-raising activity to provide more child safety seats than could ordinarily be purchased with these funds.'' GM also donated $400,000 to the National Easter Seal Society, which added the National Shriners Hospitals to its distribution plan for ''an even greater distribution program during the second phase.'' GM stated that this organization ''has demonstrated its capability to deliver child safety seats in a timely manner to ''special needs'' infants and children.'

The panel that reviewed the certifications responsive to the March 1996 notice determined that four organizations were qualified to receive donations from GM: the National Easter Seal Society; the National Association of Children's Hospitals and Related Institutions (NACHRI), in association with the American Academy of Pediatrics (AAP), the National Association of Public Hospitals, and the Council of Women's and Infant's Specialty Hospitals (C–WISH); the Safe Team, which is comprised of the Safe America Foundation, the National Safety Council, the Native American Injury Prevention Coalition, the National Association of Community Action Agencies, the National Coalition of Hispanic Health and Human Services Organizations, and the International Association of Chiefs of Police; and the National SAFE KIDS Campaign, in association with the National Head Start Association and the National Association of Community Health Centers.

GM decided to donate funds to each of these organizations for the purchase and distribution of child safety seats under the settlement agreement. GM decided to donate $400,000 to the National Easter Seal Society, $600,000 to NACHRI and its associates, $500,000 to the Safe Team, and $500,000 to the National SAFE KIDS Campaign and its associates.

Today's Notice

Today's notice describes the criteria that an organization must meet, and the information it must submit with its certification, to be identified by DOT as a ''qualified organization.'' Certifications must be received no later than 60 days after the date of publication of today's notice in the Federal Register.

NHTSA will again convene a panel of experienced agency personnel to evaluate the certifications submitted. The members of the panel will determine whether the certifications meet each of the required criteria and will evaluate the certifications based on the evaluation factors specified in this notice. When the panel completes its review of the certifications, it will prepare a list of organizations it has determined to be qualified to receive donations for the purchase and distribution of child safety seats. NHTSA will provide the list to GM and place the list in the public docket.

This list of organizations will be used by GM to select the recipients of the final $2 million for the purchase and distribution of child safety seats under the settlement agreement.

Any organization that wishes to be included on this fourth (and final) list, whether or not the organization was included on a previous list, must submit a certification.

Certification Criteria Established in Settlement Agreement

As explained earlier in this notice, the settlement agreement between GM and DOT provided that DOT would identify, on an ongoing basis, qualified organizations to be considered to receive GM donations, and GM would select recipients of donations from DOT's list of qualified organizations. In order to be considered for inclusion on

the list as a ''qualified organization,'' the agreement provided that an organization must certify in writing that it shall meet eleven separate criteria. Listed below are descriptions of these criteria and the information that organizations must submit in their certifications to demonstrate compliance with them. (Following this section of the notice, in a section entitled ''Certification Procedure,'' this notice describes the procedure organizations must follow to be considered for inclusion on the list as a ''qualified organization'' and includes a summary of the documents and additional information organizations must submit.)

(1) Work Through Affiliates

The organization must certify in writing that it shall:

work, through its state or local affiliates, with agencies such as children's hospitals and health agencies to identify families who could not otherwise afford seats or who have special needs

Organizations must be national in scope and have established and effective affiliate relationships at the state or local level capable of carrying out the effort. Organizations can satisfy this criterion by showing that they will work through their own state or local affiliates (e.g., units or chapters specifically organized to carry out the organization's mission) or with other affiliates (e.g., state or locally-based child safety-related agencies or organizations, such as children's hospitals or fire and rescue agencies), and by showing that they have commitments from these state or local affiliates.

Organizations that wish to participate in this program, and are state or locally-based rather than national in scope, are encouraged to affiliate with a national organization that plans to submit a certification or to encourage a national organization with which they are already affiliated to submit a certification.

Through these affiliates, organizations must have a network that will enable them to identify families of target populations who have not been reached through traditional channels, including families who could not otherwise afford seats or who have special needs, and to distribute seats and provide education to these families.

Organizations must submit information regarding their structure and a designation of geographic locations of state and local affiliates that are expected to be involved in the effort. Organizations must also submit information regarding the organizations and agencies with which they will be affiliated for purposes of this program. In addition, organizations must describe their relationships with affiliates, including the role that affiliates will play, and they must demonstrate that they have commitments from affiliates (such as by submitting letters of commitment).

(2) Existing Program or Trained Staff

The organization must certify in writing that it shall:

have an existing loaner or give-away child safety seat program or have staff trained in child passenger safety issues

Organizations must have experience, either directly or through their affiliates, with a loaner or give-away program or staff trained in child passenger safety issues. Alternatively, organizations may collaborate with organizations that have such experience or trained staff, either directly or through their affiliates. National organizations that have the ability to reach underserved populations, but do not have experience with a child safety seat program or trained staff, for example, are strongly encouraged to collaborate with one or more national organizations that do. The experience or training is necessary to ensure that organizations, and their affiliates, are able to operate child safety seat programs, and to meet the deadlines and requirements established in the agreement for distributing seats and providing education to the recipients of the seats.

Organizations must describe their existing loaner or give-away child safety seat programs and their experience in providing education on the use of child safety seats. They must also describe existing loaner or give-away programs and experience in providing education of agencies or organizations that are affiliated with them or with which they have collaborative relationships.

Organizations must identify the number of current trained staff (of the organization, its affiliates and its collaborators) and provide a description of training conducted or taken by the staff and the dates of last training. If organizations have staff who have not been trained, but who are capable of being trained in child passenger safety issues, the organizations should describe their plans for training the staff.

If organizations plan to work collaboratively, they should submit a single combined certification. The certification must include letters of commitment from all collaborators.

Organizations are advised that NHTSA has trained hundreds of individuals throughout the country in child passenger safety issues. If organizations are interested in receiving assistance from individuals who have received NHTSA training, they should contact one of NHTSA's ten regional offices, or the Governor's Highway Safety Representative in their State. Organizations must keep in mind, however, that they must be prepared to purchase and distribute child safety seats within 120 days of their receipt of the funds. Accordingly, their staff must be trained within the 120-day period.

(3) Low-income or special needs across broad geographic area

The organization must certify in writing that it shall:

distribute the seats to low-income families and/or families with special needs across a broad geographical area throughout the United States

The intent of this provision is to assure that underserved children from culturally diverse populations throughout the United States receive the benefits of the program. Qualified organizations need not distribute seats in every state. However, as stated previously, they must have a program that is national in scope and reaches their target populations throughout the United States.

Organizations must submit their mission statements, a description of the method they will use to identify underserved low income or special needs families, and a list of the geographic locations that would be targeted for receipt of the seats. They must demonstrate the ability to identify underserved low income and special needs families, and the ability to distribute seats to these families at the community level throughout the United States.

(4) Mix of Child Safety Seats

The organization must certify in writing that it shall:

comply with NHTSA guidelines with respect to the approximate mix of child safety seats (e.g., infant, toddler, booster, special needs)

Children of differing ages and transportation needs require different types of child safety seats. The intent of this provision is to assure that the children who are recipients under this program receive seats that meet their needs. The provision is also intended to assure that organizations purchase the correct mix of seats for their target population.

Organizations will need to identify the ages and transportation needs of the intended recipients and the types of seats needed to properly fit the target group. For example, an organization

targeting special needs children may need very specialized seats, while a program targeting older children may need convertible toddler and booster child restraint devices.

Organizations must specify the maximum number of seats they are capable of distributing to local agencies (their affiliates) within 120 days of their receipt of the funds and the amount of funding they are requesting from GM to purchase and distribute this number of seats. Organizations must specify the proposed mix and types of seats needed to serve the age and needs of the populations to be targeted (i.e., 25% booster seats, 50% toddler seats, 20% infant seats and 5% special needs seats), and must describe the method used to derive the mix. They should indicate whether the mix would change if they receive less funding than the full amount requested.

Organizations should also indicate whether they plan to operate a loaner or a give-away program and what fees, if any, they intend to charge. Both types of programs are acceptable. Any fees charged to recipients must be nominal, and any income from these fees must be used for the purchase and distribution of additional child safety seats under the agreement.

(5) Within 120 Days

The organization must certify in writing that it shall:

distribute all of the seats purchased with the funds provided by GM to the local agencies within 120 days of the receipt of the funds

Organizations are required, under the agreement, to purchase and distribute all of the seats to local agencies (their affiliates) within 120 days of receipt of the funds. To satisfy this criterion, organizations must clearly demonstrate the ability to meet this requirement.

As stated previously, organizations must submit a plan describing how they will accomplish the purchase and distribution of seats to local agencies (their affiliates) within the 120-day period. The plan must describe how the organization will reach a broad geographical area, how it will identify the low income and special needs families to be served by this program, and it must include a proposed schedule for the purchase and distribution of seats. The plan must clearly demonstrate that the organization is able and prepared to purchase and distribute child safety seats to local agencies (their affiliates) within 120 days of their receipt of the funds and that, if their staff is not already experienced or trained, that they will be trained within the 120-day period.

Organizations that were selected by GM to receive donations for the purchase and distribution of child safety seats under the settlement agreement as a result of the Federal Register notices published in March or June 1995, or in March 1996, must also describe the progress they have made, including the schedule they have followed, the number of seats they have distributed to local agencies (their affiliates) and the number of seats that have been provided to recipients, by geographic location.

Organizations must also demonstrate that the distribution and education efforts funded under this program will either create new initiatives or complement (rather than duplicate) existing initiatives, in the geographic areas to be served. In other words, these distribution and education efforts should take place in communities that have either been underserved or not been reached. In addition, organizations must ensure that their efforts do not conflict with activities already planned or underway. This may be demonstrated by including in the plan, a description of new or complementary initiatives that are planned and either letters of support from the organizations that are (or would be) responsible for child safety seat programs in the geographic areas to be served (such as state highway safety offices and state public health agencies) or a description of the organization's plans to coordinate with these responsible organizations.

(6) Educate Recipients

The organization must certify in writing that it shall:

educate recipients of the seats as to methods of proper installation and use

While the distribution of child safety seats is vitally important, and can save many children's lives, the effectiveness of those seats in preventing injury and death increases significantly when recipients are trained in and follow proper use and installation instructions. Organizations are required, under the agreement, to provide education to the recipients of the seats regarding the proper installation and use of child safety seats. Education is most effective if it is provided at the time that the seats are being distributed to recipients, and if it includes a number of components, such as conducting a hands-on demonstration, showing a video and having recipients demonstrate that they understand how to properly install and use their child safety seats.

Organizations must describe the specific means they, their affiliates or their collaborators will use to educate families about the proper installation and use of child safety seats.

To assist in this effort, NHTSA will make resources, including materials and technical assistance, available to the selected organizations.

(7) Administrative Expenses

The organization must certify in writing that it shall:

not use more than 10 percent of the funds provided by GM for administrative expenses related to distribution of the seats

Organizations shall use no more than 10 percent of the funds provided by GM for administrative expenses related to the distribution of the seats. Examples of administrative expenses include operational overhead such as secretarial support, telephone expenses, and time of paid staff to help develop the plans for these efforts.

As stated previously, organizations are strongly encouraged to work collaboratively for the purpose of applying for funds. If organizations plan to work collaboratively, they should submit a single combined certification. Any such certification submitted for a group of organizations working collaboratively, must include a statement that provides that the organizations have reached agreement regarding the manner in which funds that may be used for administrative expenses will be allocated among the organizations. The actual agreement need not be provided. No additional information is required to be submitted at this time in support of this element of the certification.

(8) Added to Existing Funds and No Diversions

The organization must certify in writing that it shall:

add the GM-provided funds to the total of its existing funds spent on the distribution of child safety seats to low-income families and not divert any funds currently budgeted to such activities to other activities

Organizations shall add the GM-provided funds to the total of their existing funds, if any, spent on the distribution of child safety seats to low income and special needs families and not divert any funds currently budgeted to such activities, if any, to other activities. In other words, the funds provided by GM must represent new and additional resources, and may not be used to replace other funds, if any, that otherwise would have been used for the distribution of child safety seats to low-income families and their related education activities. No additional information is required to be submitted

at this time in support of this element of the certification.

(9) Third-Party Audit

The organization must certify in writing that it shall:

allow the activities conducted pursuant to this program to be audited by such third party as selected by DOT

Organizations shall allow the activities conducted pursuant to this program to be audited by such third party as may be selected by DOT. Organizations shall also maintain adequate records to allow an audit to be conducted. No additional information is required to be submitted at this time in support of this element of the certification.

(10) Enforceable Commitments and Promises

The organization must certify in writing that it shall:

acknowledge and agree that such commitments and promises shall be enforceable

Organizations shall acknowledge and agree that the commitments and promises they make shall be enforceable through legal process or other appropriate means. No additional information is required to be submitted at this time in support of this element of the certification.

(11) No Assumption of Responsibility

The organization must certify in writing that it shall:

acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use

Organizations shall acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use. No additional information is required to be submitted at this time in support of this element of the certification.

Certification Procedures

To be considered, certifications must be received no later than 60 days after the date on which today's notice is published in the Federal Register. Certifications should be submitted to the Office of Communication and Outreach, NTS–22, Room 5118, 400 Seventh Street, S.W., Washington, D.C. 20590.

Organizations are strongly encouraged to work collaboratively for the purpose of applying for funds. If organizations plan to work collaboratively, they should submit a single combined certification.

Certifications must address each of the criteria described in detail above, in the section of this notice entitled ''Certification Criteria Established in Settlement Agreement,'' and must include each of the following:

(1) Certification Statement

A written statement, signed by an authorized official of the organization, certifying that the organization shall:

(i) work, through its state or local affiliates, with agencies such as children's hospitals and health agencies to identify families who could not otherwise afford seats or who have special needs; (ii) have an existing loaner or give-away child safety seat program or have staff trained in child passenger safety issues; (iii) distribute the seats to low-income families and/or families with special needs across a broad geographical area throughout the United States; (iv) comply with NHTSA guidelines with respect to the approximate mix of child safety seats (e.g., infant, toddler, booster, special needs); (v) distribute all of the seats purchased with the funds provided by GM to the local agencies within 120 days of the receipt of the funds; (vi) educate recipients of the seats as to methods of proper installation and use; (vii) not use more than 10 percent of the funds provided by GM for administrative expenses related to distribution of the seats; (viii) add the GM-provided funds to the total of its existing funds spent on the distribution of child safety seats to low-income families and not divert any funds currently budgeted to such activities to other activities; (ix) allow the activities conducted pursuant to this program to be audited by such third party as selected by DOT; (x) acknowledge and agree that such commitments and promises shall be enforceable; and (xi) acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use.

(2) Plan

A plan describing how the organization will accomplish the purchase and distribution of seats to local agencies (their affiliates) within 120 days of receipt of the funds, how the organization will reach a broad geographical area, and how it will identify the low income and special needs families to be served by this program. It must include a proposed schedule for the purchase and distribution of seats, a description of new or complementary initiatives that are planned and either letters of support from the organizations that are (or would be) responsible for child safety seat programs in the geographic areas to be served (such as state highway safety offices and state public health agencies) or a description of the organization's plans to coordinate with these responsible organizations.

The plan must clearly demonstrate that the organization is able and prepared to purchase and distribute child safety seats to local agencies (their affiliates) within 120 days of their receipt of the funds and that, if their staff is not already experienced or trained, that they will be trained within the 120-day period.

Organizations that were selected by GM to receive donations for the purchase and distribution of child safety seats under the settlement agreement as a result of the Federal Register notices published in March or June 1995, or in March 1996, must also describe the progress they have made since they received their donations, including the schedule they have followed, the number of seats they have distributed to local agencies (their affiliates) and the number of seats that have been provided to recipients, by geographic location.

(3) Additional Information

The following additional information to ensure that the organization is capable of meeting the objectives of the agreement:

- Information regarding the organization's structure and a designation of geographic locations of state and local affiliates to be involved in the effort;
- Information regarding the organizations and agencies with which the organization will be affiliated for purposes of this program;
- A description of their relationships with affiliates, including the role that affiliates will play, and either letters or some other demonstration of commitment from their affiliates;
- A description of the organization's, its affiliates' or its collaborators': existing loaner or give-away programs; experience in providing education on the use of child safety seats; the number of trained staff; a description of training conducted or taken; and the dates of last training;
- If organizations have staff who have not been trained, but who are capable of being trained in child passenger safety issues, a description of their plans for training the staff and an indication that the training will be completed within 120 days of receipt of the funds;
- If organizations plan to work collaboratively, letters of commitment from all collaborators and a statement that provides that the organizations have reached agreement regarding the manner in which funds that may be

used for administrative expenses will be allocated among the organizations (the actual agreement need not be provided);

- A mission statement of the organization;
- The method to be used to identify underserved low income or special needs families;
- A list of the geographic locations that would be targeted for receipt of the seats;
- The maximum number of seats the organization is capable of distributing to local agencies (their affiliates) within 120 days of its receipt of the funds; the amount of funding the organization is requesting from GM to purchase and distribute this number of seats; the proposed mix and types of seats needed to serve the age and needs of the populations to be targeted (i.e., 25% booster seats, 50% toddler seats, 20% infant seats and 5% special needs seats); the method used to derive the mix; and, if applicable, any change in mix if the organization receives less funding than the full amount requested;
- In indication of whether the organization plans to operate a loaner or a give-away program; an identification of the fees, if any, they intend to charge; and a statement that any income from these fees will be used for the purchase and distribution of additional child safety seats under the agreement; and
- A description of the specific means to be used by the organization, its affiliates or its collaborators to educate families about the proper installation and use of child safety seats.

Organizations must submit one original and two copies of their certifications. Certifications shall be subject to 18 U.S.C. § 1001, which prohibits the making of false statements. Organizations are requested to submit four additional copies to facilitate the review process, but there is no requirement or obligation to do so.

Organizations that would like to be notified upon receipt of their certifications should enclose a self-addressed stamped postcard in the envelope with their certifications. Upon receiving the certifications, the postcard will be returned by mail.

Evaluation Factors

Certifications will be reviewed by an evaluation panel of experienced agency personnel. The panel will determine whether the certifications meet each of the required criteria and will evaluate the certifications based on the following factors:

1. Understanding of the requirements of the agreement and soundness of approach as shown by the organization's plan and certification.

2. The ability to purchase and distribute child safety seats to local agencies (their affiliates) within 120 days of their receipt of the funds as shown by the organization's plan and certification.

3. The ability to identify underserved low income and special needs families.

4. The ability to distribute child safety seats to these target populations at the community level throughout the United States.

- The experience of the organization, its affiliates or its collaborators, in distributing child safety seats
- The breadth and diversity of the underserved population the organization, its affiliates or its collaborators can effectively reach

5. The ability to provide education to recipients.

- The experience of the organization, its affiliates or its collaborators, in providing education on the use of child safety seats
- The level of training of the staff of the organization, its affiliates or its collaborators

6. The ability to conduct a distribution and education program that either creates new initiatives, or complements (rather than duplicates) existing initiatives, in the geographic areas to be served.

Issued on: March 6, 1997.

James Hedlund,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 97–6137 Filed 3–11–97; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Finance Docket No. 33343]

Coach USA, Inc., Control Exemption, Progressive Transportation Services, Inc.; Powder River Transportation Services, Inc.; Worthen Van Service, Inc.; and PCSTC, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of petition for exemption.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier that controls 15 motor passenger carriers, seeks to be exempted, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(5) to acquire control of four additional motor passenger carriers.

DATES: Comments must be filed by April 11, 1997. Petitioner may file a reply by April 21, 1997.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 33343 to: Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, D.C. 20423–0001. Also, send one copy of comments to petitioner's representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired: (202) 565–1695].

SUPPLEMENTARY INFORMATION: Coach seeks an exemption to acquire stock control over four additional motor carriers of passengers that operate in interstate and intrastate commerce: Progressive Transportation Services, Inc. (PTS) (MC–247074) (primarily charter operations and regular-route service in New York State); Powder River Transportation Services, Inc. (PRTS) (MC–161531) (primarily charter operations and regular-route service in Wyoming, Colorado, Montana, and South Dakota); Worthen Van Service, Inc. (WVS) (MC–142573) (charter operations in Wyoming); and PCSTC, Inc., d/b/a Pacific Coast Sightseeing/Gray Line of Anaheim-Los Angeles (PCSTC) (MC–184852) (primarily charter operations and regular-route service in California).[1] According to petitioner, PRTS and WVS largely share common stock ownership, as each is controlled by the same family. Coach states that each of the four carriers accounts for a relatively small market share and operates regionally in diverse markets across the United States.

Coach indicates that it currently controls the nation's second largest group of motor passenger carriers. In May 1996, Coach acquired control of the following 10 motor passenger carriers: Arrow Stage Lines, Inc. (MC–29592); Cape Transit Corp. (MC–161678); Community Coach, Inc. (MC–76022); Community Transit Lines, Inc. (MC–145548); Grosvenor Bus Lines, Inc. (MC–157317); H.A.M.L. Corp. (MC–194792); Leisure Time Tours (MC–142011); Suburban Management Corp. (MC–264527); Suburban Trails, Inc. (MC–149081); and Suburban Transit Corp. (MC–115116).[2] In November 1996 Coach acquired control of the following

[1] Petitioner indicates that the stock of PTS, PRTS, WVS, and PCSTC was placed in separate, independent voting trusts with different trustees, with the intent of avoiding any unlawful control.

[2] *See Notre Capital Ventures II, LLC and Coach USA, Inc.—Control Exemption—Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit Corp.*, STB Finance Docket No. 32876 (Sub-No. 1) (STB served May 3, 1996).

five motor passenger carriers: American Sightseeing Tours, Inc. d/b/a ASTI (MC–252353); California Charters, Inc. (MC–241211); Texas Bus Lines, Inc. (MC–37640); Gulf Coast Transportation, Inc. d/b/a Gray Line Tours of Houston (MC–201397); and K-T Contract Services, Inc. (MC–218583).[3] Petitioner asserts that there is little competition, and no significant overlap in operations, among the 15 carriers it now controls and the four it seeks to control. It acknowledges that there is some overlap in service but states that this overlap will have no meaningful effect on the continued availability of competitive transportation.

Following the acquisition of control, Coach indicates that each of the four carriers will continue to operate in its respective market, under its own name and in the same basic manner as before. Coach claims that improved service at lower costs will result, because of the coordination of functions, centralized management, financial support, rationalization of resources, and economies of scale that are anticipated from the common control. Coach also states that all collective bargaining agreements will be honored, that employee benefits will improve, and that no change in management personnel is planned. Additional information may be obtained from petitioner's representatives.

A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20530.

Decided: February 26, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–6200 Filed 3–11–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32977]

Burlington Northern Railroad Company, Operation Exemption, in Mills and Pottawattamie Counties, IA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10901 Burlington Northern Railroad Company's (BN)[1] reinstitution of operations over approximately 14.0 miles of an abandoned line, formerly owned and operated by BN, between Pacific Junction (MP 475.01) and Council Bluffs, IA (MP 489.01).

DATES: This exemption is effective on April 11, 1997. Petitions to reopen must be filed by April 1, 1997. Petitions to stay must be filed by March 24, 1997.

ADDRESSES: Send pleadings referring to Finance Docket No. 32977 to: (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) petitioner's representative: Sarah J. Whitley, 777 Main Street, Suite 3800, Fort Worth, TX 76102–5384.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: DC News & Data, INC., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Decided: February 25, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–6199 Filed 3–11–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33315][1]

Minnesota Northern Railroad, Inc.—Acquisition and Operation Exemption—Burlington Northern Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Minnesota Northern Railroad, Inc. (MNR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31–34 to acquire from Burlington Northern Railroad Company (BN)[2] and operate approximately 204.10 miles of rail line as follows: (1) 33.25 miles of rail line on the MN Junction at Ada, MN, between Ada Subdivision mileposts 80.25 and 47.0; (2) 20.6 miles of rail line on the Redland Junction at Fertile, MN, between Fertile Subdivision mileposts 65.7 and 45.1; (3) 13.0 miles of rail line on the Tilden Junction at Red Lake Falls, MN, between Grand Forks Subdivision mileposts 56.84 and 13.0 miles east; (4) 44.25 miles of rail line on the MN Junction at Perley, MN, between P Line Subdivision mileposts 65.25 and 21.0; and (5) 93 miles of rail line on the St. Hilaire line at Warroad, MN, between Warroad Subdivision mileposts 11.0 and 104.0.

Concurrent with the above transaction, MNR will acquire incidental overhead trackage rights for the sole purposes of: (1) Interchanging rail freight cars and equipment between MNR and BN at BN's Crookston, MN, rail yard only; and (2) moving locomotives, cars and equipment between the rail lines over BN's Grand Forks Subdivision rail line between milepost 81.5 west of Crookston, and milepost 31.0 at Erskine, MN, and also over all yard tracks in BN's Crookston rail yard. In addition, MNR will acquire BN's trackage rights to operate over the Soo Line Railroad Company between milepost 273.0 at or near Erskine and milepost 309.5 at or near Thief River Falls, MN. BN will retain overhead trackage rights only, without serving any industries on the line, to provide rail freight service over the Perley line, between P Line Subdivision milepost 65.25 and milepost 21.0.

The transaction was scheduled to be consummated on or after December 27, 1996.

Concurrently, RailAmerica, Inc. (RailAmerica), which controls MNR, has filed a notice of exemption in *RailAmerica, Inc.—Continuance in Control Exemption—Minnesota Northern Railroad, Inc.*, STB Finance Docket No. 33316, to exempt under 49 CFR 1180.2(d) and 1180.4(g) from the prior approval requirements of 49 U.S.C. 11323 RailAmerica's continuance in control of MNR when the latter becomes a Class III rail carrier. This transaction

---

[3] *See Coach USA, Inc.—Control Exemption—American Sightseeing Tours, Inc.; California Charters, Inc.; Texas Bus Lines, Inc.; Gulf Coast Transportation, Inc.; and K-T Contract Services, Inc.*, STB Finance Docket No. 33073 (STB served Nov. 8, 1996).

[1] On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company merged with and into Burlington Northern Railroad Company. The name of the surviving corporation is The Burlington Northern and Santa Fe Railway Company. In this notice, we will continue to refer to this entity as BN.

[1] Minnesota Northern Railroad, Inc. (MNR) originally filed the notice of exemption on December 11, 1996. On December 16, 1996, the United Transportation Union (UTU) filed a petition to revoke the exemption, reject the notice, and/or stay the effectiveness of the notice. On December 18, 1996, MNR filed a notice of withdrawal. On December 20, 1996, MNR filed an amended notice of exemption. On December 24, 1996, UTU filed a supplemental petition to revoke, reject, and/or stay. The stay request was not acted upon prior to the December 27, 1996 scheduled effective date of the exemption. The petition to reject or revoke will be handled in a subsequent decision.

[2] On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company merged with and into the Burlington Northern Railroad Company. The name of the surviving corporation is The Burlington Northern and Santa Fe Railway Company. In this notice we will continue to refer to this entity as BN.

was also scheduled to be consummated on or after December 27, 1996. MNR has also filed a related notice of exemption for 2 miles of trackage rights from BN in Erskine, MN, in *Minnesota Northern Railroad, Inc.—Trackage Rights Exemption— The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33337.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423.[3] A copy of all pleadings must be served on petitioner's representative: Edward D. Greenberg, Esq., Galland, Kharasch, & Garfinkle, P.C., Canal Square, 1054 Thirty-First St., N.W., Washington, DC 20007.

Decided: February 28, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–6032 Filed 3–11–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33337][1]

Minnesota Northern Railroad, Inc.—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Minnesota Northern Railroad, Inc. (MNR) over a line of railroad between mileposts 31.0 and 33.0 near Erskine, MN. The transaction was expected to be consummated on January 15, 1997.

This transaction arises out of an agreement between BNSF and MNR whereby MNR has acquired 204.1 miles of track, as well as certain incidental trackage rights. See the notice of exemption filed in *Minnesota Northern Railroad, Inc.—Acquisition and Operation Exemption—Burlington Northern Railroad Company,* STB Finance Docket No. 33315, and a related notice of exemption filed in *RailAmerica, Inc.—Continuance in Control Exemption—Minnesota Northern Railroad, Inc.,* STB Finance Docket No. 33316. These transactions were scheduled to be consummated on or after December 27, 1996.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423.[2] A copy of all pleadings must be served on petitioner's representative: Edward D. Greenberg, Esq., Galland, Kharasch, & Garfinkle, P.C., Canal Square, 1054 Thirty-First St., N.W., Washington, DC 20007.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: February 28, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–6033 Filed 3–11–97; 8:45 am]

BILLING CODE 4915–00–P

---

[3] The Board is relocating on March 16, 1997. *See Surface Transportation Board—1997 Office Relocation Business Plan,* STB Ex Parte No. 546 (STB served Feb. 21, 1997).

[1] Minnesota Northern Railroad, Inc. (MNR) filed the notice of exemption on January 8, 1997. MNR also filed a motion for a protective order on January 9, 1997. On January 13, 1997, the United Transportation Union (UTU) filed a petition to revoke the exemption, reject the notice, and/or stay the effectiveness of the notice. On January 14, 1997, a decision was served denying UTU's stay petition. The petition to reject or revoke and the motion for a protective order will be handled in separate decisions.

[2] The Board is relocating on March 16, 1997. *See Surface Transportation Board—1997 Office Relocation Business Plan,* STB Ex Parte No. 546 (STB served Feb. 21, 1997).

[Finance Docket No. 32173 et al.[1]**]**

Orange County Transportation Authority/ Riverside County Transportation Commission/ San Bernardino Associated Governments/ San Diego Metropolitan Transit Development Board/ North San Diego County Transit Development Board—Acquisition Exemption—The Atchison, Topeka And Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10502 and other remaining regulatory provisions of 49 U.S.C. Subtitle IV. The Board grants the petition of southern California transit agencies for: (1) a blanket exemption from 49 U.S.C. Subtitle IV to operate 9 rail lines acquired from The Atchison, Topeka and Santa Fe Railway Company subject to future compliance with requirements for the protection of employees and the environment; (2) clarification of the ICC's decision in *Orange County Transp.—Exempt.—Atchison, T. & S.F. Ry. Co.,* 10 I.C.C.2d 78 (1994); and (3) establishment of procedures to implement actions taken under blanket exemptions from 49 U.S.C. Subtitle IV.

DATES: The Board's decision will be effective on April 11, 1997. Petitions to stay must be filed by March 24, 1997. Petitions to reopen must be filed by April 1, 1997.

ADDRESSES: Send pleadings referring to Finance Docket No. 32173 *et al.* to: (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) petitioners' representative: Charles A. Spitulnik,

---

[1] This proceeding includes Finance Docket No. 32172, *Los Angeles County Transportation Commission—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company.*

Hopkins & Sutter, 888 16th Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 565–1600. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's full decision. To purchase a copy of the full decision, write to, call, or pick up in person from DC News & Data, Inc., Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. (Assistance for the hearing impaired is available through TDD services at (202) 565–1695.)

Decided: February 28, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary,

[FR Doc. 97–6201 Filed 3–11–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33316] [1]

RailAmerica, Inc.; Continuance in Control Exemption; Minnesota Northern Railroad, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: RailAmerica, Inc. (RailAmerica) has filed a notice of exemption under 49 CFR 1180.2(d) and 1180.4(g) from the prior approval requirements of 49 U.S.C. 11323 to continue in control of Minnesota Northern Railroad, Inc. (MNR) upon MNR's becoming a Class III rail carrier. The transaction was scheduled to be consummated on or about December 27, 1996.

MNR is a corporation newly formed for the purpose of acquiring and operating 204.10 miles of rail line from Burlington Northern Railroad Company (BN) [2] in Minnesota. MNR has concurrently filed a notice of exemption in *Minnesota Northern Railroad, Inc.—Exemption—Acquisition, Operation, and Incidental Trackage Rights Exemption, Burlington Northern Railroad Company,* STB Finance Docket No. 33315, to acquire and operate the rail lines together with incidental overhead trackage rights. MNR has also filed a notice of exemption for 2 miles of trackage rights from BN in Erskine, MN, in *Minnesota Northern Railroad, Inc.—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33337.

RailAmerica controls 10 Class III railroads in addition to MNR. These other carriers are: Evansville Terminal Company, Inc.; Huron & Eastern Railway Company, Inc.; Saginaw Valley Railway Company, Inc.; West Texas & Lubbock Railroad Company, Inc.; Plainview Terminal Company; Dakota Rail, Inc.; South Central Tennessee Railroad Company; Cascade and Columbia River Railroad Company; Gettysburg Railway Company; and Otter Tail Valley Railroad.

RailAmerica states that: (1) MNR does not connect with any other railroads in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect MNR with any other railroad in its corporate family; and (3) the transaction does not involve a Class I carrier. The transaction is thus exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III railroad carriers only, the Board, under statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings that are filed up to and including March 12, 1997 referring to STB Finance Docket No. 33316, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW, Washington, DC 20423. Pleadings filed after March 18, 1997, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20006.[3] A copy of all pleadings must be served on petitioner's representative: Edward D. Greenberg, Esq., Galland, Kharasch, & Garfinkle, P.C., Canal Square, 1054 Thirty-First St., N.W., Washington, DC 20007.

Decided: February 28, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–6198 Filed 3–11–97; 8:45 am]

BILLING CODE 4915–00–P

---

[1] RailAmerica, Inc. (RailAmerica) originally filed the notice of exemption on December 11, 1996. On December 16, 1996, the United Transportation Union (UTU) filed a petition to revoke the exemption, reject, and/or stay the effectiveness of the notice. On December 18, 1996, RailAmerica filed a notice of withdrawal. On December 20, 1996, RailAmerica filed an amended notice of exemption. On December 24, 1996, UTU filed a supplemental petition to revoke, reject, and/or stay. The stay was filed too close to the consummation date for it to be acted on. The petition to reject or revoke will be handled in a subsequent decision.

[2] On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company merged with and into the Burlington Northern Railroad Company. The name of the surviving corporation is The Burlington Northern and Santa Fe Railway Company. In this notice we will continue to refer to this entity as BN.

[3] Because the Board is relocating between March 13 and March 18, 1997, mail will not be received until March 19, 1997. See *Surface Transportation Board—1997 Office Relocation Business Plan,* STB Ex Parte No. 546 (served February 21, 1997).

[STB Finance Docket No. 33330] [1]

Union County Industrial Railroad Company—Corporate Family Transaction Exemption—West Shore Railway Services, Inc.

Union County Industrial Railroad Company (UCIR) and West Shore Railway Services, Inc. (West Shore),[2] Class III railroads, have jointly filed a verified notice of exemption. The exempt transaction is a merger of West Shore into UCIR.

The earliest the transaction could be consummated was December 30, 1996, the effective date of the exemption (7 days after the exemption was filed).

UCIR will provide continuing rail common carrier service on the lines to be acquired by West Shore Railroad Corporation (WSRC) in STB Finance Docket No. 33329 [3] and approximately 8.965 miles previously operated by West Shore in the Commonwealth of Pennsylania. The merger will improve the overall efficiency of rail operations and reduce costs associated with two corporate entities.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction

---

[1] This notice corrects and supersedes the notice in this proceeding that was served on January 15, 1997, and published the same date at 62 FR 2215.

[2] UCIR and West Shore are owned and controlled by Richard D. Robey.

[3] UCIR owns and operates approximately 3.9 miles of rail line in the Commonwealth of Pennsylvania, which will be acquired by WSRC in *West Shore Railroad Corporation—Acquisition Exemption—Union County Industrial Railroad Company,* STB Finance Docket No. 33329 (STB served Jan. 15, 1997).

will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33330, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: March 4, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–6034 Filed 3–11–7; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Surety Companies Acceptable on Federal Bonds, Liberty Mutual Fire Insurance Company

SUMMARY: (Dept. Circ. 570, 1996 Rev., Supp. No. 10.)

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch, (202) 874–7102.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34297, to reflect this addition:

Liberty Mutual Fire Insurance Company. Business address: 175 Berkeley Street, Boston, MA 02117. Phone: (617) 357–9500. Underwriting limitation b/: $51,386,000. Surety licenses c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. Incorporated in: Massachusetts.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–7102.

Dated: March 3, 1997.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–6205 Filed 3–11–97; 8:45 am]

BILLING CODE 4810–35–M

Financial Management Service; Surety Companies Acceptable on Federal Bonds, Northland Insurance Company

SUMMARY: (Dept. Circ. 570, 1996 Rev., Supp. No. 11).

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch, (202) 874–6905.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34301 to reflect this addition:

Northland Insurance Company. Business Address: P.O. Box 64816, St. Paul, MN 55164–0816. Phone: (612) 688–4100. Underwriting limitation *b*/: $17,465,000. Surety licenses *c*/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, WA, WV, WY. Incorporated in: Minnesota.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782.

Dated: March 3, 1997.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–6204 Filed 3–11–97; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

AGENCY: United States Institute of Peace.

Date/Time: Thursday, March 20, 1997, 9:00 a.m.–5:30 p.m.

Location: 1550 M Street, NW, M Street Lobby Conference Room, Washington, DC 20005.

Status: Open Session-Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: March Board Meeting; Approval of Minutes of the Seventy-ninth Meeting of the Board of Directors;

Chairman's Report; President's Report; Committee Reports; Selection of 1997–1988 Jennings Randolph Fellows; Selection of Solicited Grants; Building and Space Plans; Other General Issues.

Contact: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: March 10, 1997.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 97–6330 Filed 3–10–97; 10:45 am]

BILLING CODE 6820–AR–M

federal register

Wednesday
March 12, 1997

Part II

Department of Housing and Urban Development

Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4156–N–02]

Notice of Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher, Rental Certificate and Moderate Rehabilitation Programs

Note: This Notice is being republished to correct an error in the formatting of the attached administrative fees published on March 3, 1997, AT 62 FR 9488.

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice announces the monthly per unit fee amounts for use in determining the on-going administrative fee for public housing agencies and Indian housing authorities (HAs) administering the rental voucher, rental certificate, and moderate rehabilitation programs (including Single Room Occupancy and Shelter Plus Care) during Federal Fiscal Year 1997.

EFFECTIVE DATE: HUD will use the procedures in this Notice to approve year-end financial statements for HA fiscal years ending on December 31, 1996; March 31, 1997; June 30, 1997; and September 30, 1997. HAs also may use these procedures to project earned administrative fees in the annual HA budget. The procedures in this Notice apply to that portion of the HA fiscal year that coincides with the Federal Fiscal Year (FY) 1997 (i.e., from October 1, 1996, to September 30, 1997).

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call TTY number (202) 708–4594. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

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 have been assigned OMB control number 2502–0348. 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.

I. Purpose and Substantive Description

(a) In FY 95 HUD changed the way that HA administrative fees were calculated. These new procedures were published in the Federal Register on January 24, 1995 (60 FR 4764). HUD also issued an administrative Notice PIH 96–22, dated April 19, 1996, providing more detailed processing instructions. The system that HUD used to determine administrative fees before FY 95 had three different rates that were applied to the Section 8 existing housing fair market rents. Under the new system implemented in FY 95, HAs were funded for pre-FY 89 funding increments at a rate of 8.2 percent of a ''base amount'' for the initial 600 rental vouchers and rental certificates and 7.79 percent of a ''base amount'' for all rental vouchers and rental certificates above 600. This same system using a ''base amount'' was continued in FY 96.

(b) The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204, 110 Stat. 2874) changed the method to be used in calculating HA administrative fees. The law establishes a method for calculating HA fees for the rental voucher, certificate, and moderate rehabilitation (including Single Room Occupancy and Shelter Plus Care) programs in FY 97. The law, however, reduced the percentages for FY 97 effective for the period from October 1, 1996 through September 30, 1997 to 7.5 percent of the HUD-determined ''base amount'' for the first 600 units in an HA's rental voucher and rental certificate programs combined, and for the first 600 units in an HA's moderate rehabilitation program, and to 7 percent of the HUD-determined ''base amount'' for each additional unit in these programs over 600. Furthermore, the law provides HUD may provide a decreased fee for HA-owned units. For FY 97, HUD has determined that HAs will earn an administrative fee for HA-owned rental voucher, rental certificate and moderate rehabilitation units based on 3 percent of the ''base amount.''

The law also made changes with respect to preliminary fees and administrative fees. Under the new law HUD may approve preliminary fees of $500 per unit for the initial funding increment for the HA, but only in the first year an HA administers a tenant-based rental voucher or rental certificate program and only for an HA that did not administer a tenant-based rental voucher or certificate program before September 26, 1996. For example, if an HA is currently administering a rental certificate program and it receives its first funding increment under the rental voucher program, the HA is not eligible to receive a preliminary fee. The law does not provide for preliminary fees for the regular moderate rehabilitation program or the moderate rehabilitation single room occupancy program or the moderate rehabilitation shelter plus care program. HUD may also approve additional administrative fees for costs incurred in assisting families who experience difficulty in obtaining appropriate housing and for extraordinary costs.

II. Applicability of HUD Notice PIH 96–22

On April 19, 1996, HUD issued a Notice (PIH 96–22) establishing the procedures for the calculation of on-going administrative fees for the rental voucher and rental certificate programs. The provisions of the HUD Notice PIH 96–22 do not apply for unit months commencing October 1, 1996. Instead, a revised administrative fee HUD Notice will be issued.

III. Method to Determine Per Unit On-Going Administrative Fee

(a) *Method.* A housing agency is paid an on-going administrative fee for each unit month for which a dwelling unit is covered by a housing assistance payments contract. Under the system for FY 97, the on-going administrative fee is:

- 7.5 percent of a ''base amount'' for the first 600 units in an HA's rental voucher and rental certificate programs combined, and for the first 600 units in an HA's moderate rehabilitation program.
- 7 percent of the ''base amount'' for each additional rental voucher, rental certificate, or moderate rehabilitation unit above the 600-unit threshold.

In FY 95 and FY 96, the ''base amount'' used by HUD was the higher of (a) the FY 1993 fair market rent for a two-bedroom unit in the HA's market area, or (b) the FY 94 fair market rent for a two-bedroom unit, but not more than 103.5 percent of the FY 93 fair market rent. The new law provides that this base amount may be adjusted in FY 97 to reflect changes in wage data or other objectively measurable data that reflect the cost of administering the program in FY 96. Accordingly, the monthly FY 97 per unit fee amounts published in this notice were derived from the new base amounts that have been adjusted to reflect average local government wages as measured by the most recent two years of Bureau of

Labor Statistics data from the ES–202 series.

(b) *Published Fee Amounts.* HUD has attached a schedule of monthly per unit fee amounts for use by HUD and HAs when preparing and approving HA budgets and fiscal year-end financial statements. The tables are organized by the HUD-established fair market rent areas and show the monthly fee amounts an HA will earn for each unit under a housing assistance payments contract on the first day of the applicable month.

(1) *Column A.* The amount in this column is the monthly per unit fee amount for up to 7,200 unit months (600 units) in Federal FY 97 in an HA's rental voucher and rental certificate programs combined, and for up to 7,200 unit months (600 units) in Federal FY 97 in an HA's moderate rehabilitation program. (This amount was developed by multiplying the fee ''base amount'' by 7.5 percent.) For the HA's rental voucher and rental certificate programs combined, and for the HA's moderate rehabilitation program, the reimbursement is computed by multiplying the number of unit months that were under a housing assistance payments contract during Federal FY 97 by the monthly per unit fee amount in column A (up to a maximum of 7,200 unit months during Federal FY 97). The maximum number of unit months under a housing assistance payments contract in Federal FY 97 during the HA's fiscal year that this revised procedure is first implemented and for which the column A fee amount may be used, depends on the HA fiscal year end:

December 31 HA.	1,800 unit months.	(7,200×.25 [3 months] of FY 97)
March 31 HA	3,600 unit months.	
June 30 HA ..	5,400 unit months.	
September 30 HA.	7,200 unit months.	

(2) *Column B.* The amount in this column is the monthly per unit fee amount for any unit months in Federal FY 97 in excess of 7,200 unit months (for which a fee was calculated from column A) in the rental voucher and rental certificate programs combined, and in excess of 7,200 unit months in the moderate rehabilitation programs. This amount was developed by multiplying the HUD established fee base amount by 7 percent. For the HA's rental voucher and rental certificate programs combined, and for the HA's moderate rehabilitation program, the reimbursement is computed by multiplying the number of unit months that were under a housing assistance payments contract during Federal FY 97 that exceeds 7,200 unit months by the monthly per unit fee amount in column B). The monthly per unit fee in column B will be multiplied by the number of unit months that rental voucher, rental certificate and moderate rehabilitation units under housing assistance payments contracts during Federal FY 97 exceeds unit months for which a fee is calculated from column A.

(3) *Column C.* The amount in this column is the monthly per unit fee amount for HA owned units for Federal FY 97 under the rental voucher, rental certificate, or moderate rehabilitation programs. This amount was developed by multiplying a HUD established fee base by 3 percent. The monthly per unit fee amount in column C will be multiplied by the number of unit months that rental voucher, rental certificate, or moderate rehabilitation units owned by the HA are under housing assistance payments contracts during Federal FY 97.

(c) *Future Year publication date.* For subsequent fiscal years, HUD will publish an annual Notice in the Federal Register establishing the monthly per unit fee amounts for use in determining the on-going administrative fees for HAs operating the rental voucher, rental certificate and moderate rehabilitation programs in each metropolitan and each non-metropolitan fair market rent area for that Federal fiscal year. The annual change in the per-unit-month fee amounts will be based on changes in wage data or other objectively measurable data, as determined by HUD, that reflect the costs of administering the program.

The amounts shown on the attached schedule do not reflect the authority given to HUD to increase the fee if necessary to reflect extraordinary expenses such as the higher costs of administering small programs and programs operating over large geographic areas or expenses incurred because of difficulties some categories of families are having in finding appropriate housing. HUD will consider HA requests for such increased administrative fees. Furthermore, the amounts shown do not include preliminary fees.

IV. Other Matters

Environmental Finding

This notice is categorically excluded from the requirements of 24 CFR part 50, the HUD regulations which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). (See 24 CFR 50.19(b)(3).) This notice does not require environmental review because it does not alter physical conditions in a manner or to an extent that would require review under NEPA or the other laws and authorities cited at § 50.4.

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 determination of administrative fees for HAs administering the rental voucher, rental certificate and moderate rehabilitation programs during Federal Fiscal Year 1997, and does not substantially alter the established roles of the Department, the States, and local governments.

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 determination of administrative fees for HAs administering the rental voucher, rental certificate and moderate rehabilitation programs during Federal Fiscal Year 1997, and does not substantially alter the requirements of eligibility for the programs involved.

Accordingly, the Department publishes the monthly per unit fee

amounts to be used for determining HA administrative fees under the rental voucher, rental certificate and moderate rehabilitation programs as set forth on the schedule appended to this notice.

Dated: February 21, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

FY 1997 SECTION 8 ADMINISTRATIVE FEES

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A L A B A M A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Anniston, AL MSA	34.67	32.36	13.87	Calhoun
Birmingham, AL MSA	35.64	33.27	14.26	Blount, St. Clair, Jefferson, Shelby
Columbus, GA-AL MSA	33.58	31.34	13.43	Russell
Decatur, AL MSA	34.67	32.36	13.87	Morgan, Lawrence
Dothan, AL MSA	34.75	32.43	13.90	Houston, Dale
Florence, AL MSA	34.67	32.36	13.87	Lauderdale, Colbert
Gadsden, AL MSA	34.67	32.36	13.87	Etowah
Huntsville, AL MSA	36.21	33.80	14.49	Limestone, Madison
Mobile, AL MSA	36.20	33.79	14.48	Baldwin, Mobile
Montgomery, AL MSA	34.67	32.36	13.87	Autauga, Montgomery, Elmore
Tuscaloosa, AL MSA	34.96	32.63	13.98	Tuscaloosa

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Barbour	34.67	32.36	13.87	Bullock	34.67	32.36	13.87
Bibb	34.67	32.36	13.87	Dekalb	34.67	32.36	13.87
Dallas	34.67	32.36	13.87	Cullman	34.67	32.36	13.87
Crenshaw	34.67	32.36	13.87	Covington	34.67	32.36	13.87
Coosa	34.67	32.36	13.87	Conecuh	34.67	32.36	13.87
Coffee	34.67	32.36	13.87	Cleburne	34.67	32.36	13.87
Clay	34.67	32.36	13.87	Clarke	34.67	32.36	13.87
Choctaw	34.67	32.36	13.87	Chilton	34.67	32.36	13.87
Cherokee	34.67	32.36	13.87	Chambers	34.67	32.36	13.87
Butler	34.67	32.36	13.87	Winston	34.67	32.36	13.87
Wilcox	34.67	32.36	13.87	Washington	34.67	32.36	13.87
Walker	34.67	32.36	13.87	Tallapoosa	34.67	32.36	13.87
Talladega	34.67	32.36	13.87	Sumter	34.67	32.36	13.87
Randolph	34.67	32.36	13.87	Pike	34.67	32.36	13.87
Pickens	34.67	32.36	13.87	Perry	34.67	32.36	13.87
Monroe	34.67	32.36	13.87	Marshall	34.67	32.36	13.87
Marion	34.67	32.36	13.87	Marengo	34.67	32.36	13.87
Macon	34.67	32.36	13.87	Lowndes	34.67	32.36	13.87
Lee	34.67	32.36	13.87	Lamar	34.67	32.36	13.87
Jackson	34.67	32.36	13.87	Henry	34.67	32.36	13.87
Hale	34.67	32.36	13.87	Greene	34.67	32.36	13.87
Geneva	34.67	32.36	13.87	Franklin	34.67	32.36	13.87
Fayette	34.67	32.36	13.87	Escambia	34.67	32.36	13.87

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A L A S K A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Anchorage, AK MSA	56.93	53.13	22.77	Anchorage

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Bristol Bay	59.28	55.33	23.71	Bethel	61.35	57.26	24.54
Aleutian West	59.28	55.33	23.71	Aleutian East	59.28	55.33	23.71
Yukon-Koyukuk	59.28	55.33	23.71	Wrangell-Petersburg	66.58	62.14	26.63
Wade Hampton	59.28	55.33	23.71	Valdez-Cordova	68.00	63.47	27.20
Southeast Fairbanks	48.80	45.55	19.52	Skagway-Yakutat-Angoon	59.28	55.33	23.71
Sitka	66.58	62.14	26.63	Pr.Wales-Outer Ketchikan	59.28	55.33	23.71
Northwest Arctic	56.32	52.57	22.53	North Slope	61.35	57.26	24.54
Nome	61.35	57.26	24.54	Matanuska-Susitna	50.39	47.04	20.16
Lake & Peninsula	56.32	52.57	22.53	Kodiak Island	68.00	63.47	27.20
Ketchikan Gateway	68.00	63.47	27.20	Kenai Peninsula	54.76	51.11	21.90
Juneau	68.00	63.47	27.20	Haines	59.28	55.33	23.71
Fairbanks North Star	58.28	54.39	23.31	Dillingham	61.35	57.26	24.54

A R I Z O N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Flagstaff, AZ	44.09	41.15	17.64	Coconino
Las Vegas, NV-AZ MSA	55.08	51.41	22.03	Mohave
Phoenix-Mesa, AZ MSA	40.33	37.63	16.13	Pinal, Maricopa
Tucson, AZ MSA	39.87	37.21	15.95	Pima
Yuma, AZ MSA	44.80	41.81	17.92	Yuma

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Cochise	35.37	33.01	14.15	Apache	34.74	32.42	13.89
La Paz	44.88	41.89	17.95	Greenlee	35.37	33.01	14.15
Graham	35.37	33.01	14.15	Gila	36.00	33.60	14.40
Yavapai	44.09	41.15	17.64	Santa Cruz	36.61	34.17	14.64
Navajo	34.74	32.42	13.89				

A R K A N S A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	33.03	30.83	13.21	Benton, Washington
Fort Smith, AR-OK MSA	33.03	30.83	13.21	Crawford, Sebastian
Jonesboro, AR MSA	33.03	30.83	13.21	Craighead
Little Rock-North Little Rock, AR MSA	36.04	33.64	14.41	Faulkner, Saline, Pulaski, Lonoke
Memphis, TN-AR-MS MSA	37.90	35.38	15.16	Crittenden

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A R K A N S A S continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Pine Bluff, AR MSA	33.03	30.83	13.21	Jefferson
Texarkana, TX-Texarkana, AR MSA	33.32	31.10	13.33	Miller

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Ashley	33.03	30.83	13.21	Arkansas	33.03	30.83	13.21
Cross	33.03	30.83	13.21	Desha	33.03	30.83	13.21
Dallas	33.03	30.83	13.21	Conway	33.03	30.83	13.21
Columbia	33.03	30.83	13.21	Cleveland	33.03	30.83	13.21
Cleburne	33.03	30.83	13.21	Clay	33.03	30.83	13.21
Clark	33.03	30.83	13.21	Chicot	33.03	30.83	13.21
Carroll	33.03	30.83	13.21	Calhoun	33.03	30.83	13.21
Bradley	33.03	30.83	13.21	Boone	33.03	30.83	13.21
Baxter	33.03	30.83	13.21	Polk	33.03	30.83	13.21
Poinsett	33.03	30.83	13.21	Pike	33.03	30.83	13.21
Phillips	33.03	30.83	13.21	Perry	33.03	30.83	13.21
Ouachita	33.03	30.83	13.21	Newton	33.03	30.83	13.21
Nevada	33.03	30.83	13.21	Montgomery	33.03	30.83	13.21
Monroe	33.03	30.83	13.21	Mississippi	33.03	30.83	13.21
Marion	33.03	30.83	13.21	Madison	33.03	30.83	13.21
Logan	33.03	30.83	13.21	Little River	33.03	30.83	13.21
Lincoln	33.03	30.83	13.21	Lee	33.03	30.83	13.21
Lawrence	33.03	30.83	13.21	Lafayette	33.03	30.83	13.21
Johnson	33.03	30.83	13.21	Jackson	33.03	30.83	13.21
Izard	33.03	30.83	13.21	Independence	33.03	30.83	13.21
Howard	33.03	30.83	13.21	Hot Spring	33.03	30.83	13.21
Hempstead	33.03	30.83	13.21	Greene	33.03	30.83	13.21
Grant	33.03	30.83	13.21	Garland	33.03	30.83	13.21
Fulton	33.03	30.83	13.21	Franklin	33.03	30.83	13.21
Drew	33.03	30.83	13.21	Yell	33.03	30.83	13.21
Woodruff	33.03	30.83	13.21	White	33.03	30.83	13.21
Van Buren	33.03	30.83	13.21	Union	33.03	30.83	13.21
Stone	33.03	30.83	13.21	Sharp	33.03	30.83	13.21
Sevier	33.03	30.83	13.21	Searcy	33.03	30.83	13.21
Scott	33.03	30.83	13.21	St. Francis	33.03	30.83	13.21
Randolph	33.03	30.83	13.21	Prairie	33.03	30.83	13.21
Pope	33.03	30.83	13.21				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C A L I F O R N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bakersfield, CA MSA	47.37	44.21	18.95	Kern
Chico-Paradise, CA MSA	41.62	38.85	16.65	Butte
Fresno, CA MSA	43.31	40.42	17.32	Madera, Fresno
Los Angeles-Long Beach, CA PMSA	62.16	58.02	24.86	Los Angeles
Merced, CA MSA	40.70	37.98	16.28	Merced
Modesto, CA MSA	45.61	42.57	18.24	Stanislaus
Oakland, CA PMSA	62.16	58.02	24.86	Alameda, Contra Costa
Orange County, CA PMSA	62.16	58.02	24.86	Orange
Redding, CA MSA	43.31	40.42	17.32	Shasta
Riverside-San Bernardino, CA PMSA	49.59	46.29	19.84	Riverside, San Bernardino
Sacramento, CA PMSA	47.21	44.05	18.88	El Dorado, Sacramento, Placer
Salinas, CA MSA	53.55	49.98	21.42	Monterey
San Diego, CA MSA	55.57	51.87	22.23	San Diego
San Francisco, CA PMSA	62.16	58.02	24.86	San Mateo, San Francisco, Marin
San Jose, CA PMSA	62.16	58.02	24.86	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	53.80	50.22	21.52	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	60.69	56.64	24.28	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	62.16	58.02	24.86	Santa Cruz
Santa Rosa, CA PMSA	60.63	56.59	24.25	Sonoma
Stockton-Lodi, CA MSA	45.30	42.28	18.12	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	53.96	50.36	21.59	Napa, Solano
Ventura, CA PMSA	62.16	58.02	24.86	Ventura
Visalia-Tulare-Porterville, CA MSA	40.39	37.70	16.16	Tulare
Yolo, CA PMSA	47.21	44.05	18.88	Yolo
Yuba City, CA MSA	35.72	33.34	14.29	Yuba, Sutter

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Mono	49.19	45.91	19.67	Modoc	39.71	37.06	15.88
Mendocino	46.76	43.64	18.70	Mariposa	47.52	44.36	19.01
Lassen	39.71	37.06	15.88	Lake	43.38	40.49	17.35
Kings	39.09	36.49	15.64	Inyo	47.52	44.36	19.01
Imperial	45.07	42.07	18.03	Humboldt	44.69	41.71	17.88
Glenn	35.95	33.56	14.38	Del Norte	43.38	40.49	17.35
Colusa	35.95	33.56	14.38	Calaveras	47.52	44.36	19.01
Amador	47.52	44.36	19.01	Alpine	47.52	44.36	19.01
Tuolumne	47.52	44.36	19.01	Trinity	43.38	40.49	17.35
Tehama	39.71	37.06	15.88	Siskiyou	39.71	37.06	15.88
Sierra	53.27	49.72	21.31	San Benito	49.19	45.91	19.67
Plumas	39.71	37.06	15.88	Nevada	53.27	49.72	21.31

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O L O R A D O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	47.82	44.62	19.13	Boulder
Colorado Springs, CO MSA	39.31	36.69	15.73	El Paso
Denver, CO PMSA	42.14	39.33	16.86	Arapahoe, Adams, Jefferson, Douglas, Denver
Fort Collins-Loveland, CO MSA	45.32	42.30	18.13	Larimer
Grand Junction, CO MSA	49.29	46.01	19.72	Mesa
Greeley, CO PMSA	39.08	36.47	15.63	Weld
Pueblo, CO MSA	38.92	36.33	15.57	Pueblo

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alamosa	39.00	36.40	15.60	Chaffee	43.29	40.40	17.32
Bent	33.39	31.16	13.36	Baca	33.39	31.16	13.36
Archuleta	39.00	36.40	15.60	Dolores	39.00	36.40	15.60
Delta	51.56	48.12	20.62	Custer	43.29	40.40	17.32
Crowley	33.39	31.16	13.36	Costilla	39.00	36.40	15.60
Conejos	39.00	36.40	15.60	Clear Creek	43.29	40.40	17.32
Cheyenne	33.39	31.16	13.36	Saguache	39.00	36.40	15.60
Routt	51.56	48.12	20.62	Rio Grande	39.00	36.40	15.60
Rio Blanco	49.29	46.01	19.72	Prowers	33.39	31.16	13.36
Pitkin	53.36	49.80	21.35	Phillips	33.39	31.16	13.36
Park	43.29	40.40	17.32	Ouray	51.56	48.12	20.62
Otero	33.39	31.16	13.36	Morgan	33.39	31.16	13.36
Montrose	51.56	48.12	20.62	Montezuma	39.00	36.40	15.60
Moffat	49.29	46.01	19.72	Mineral	39.00	36.40	15.60
Logan	33.39	31.16	13.36	Lincoln	33.39	31.16	13.36
Las Animas	39.00	36.40	15.60	La Plata	44.22	41.28	17.69
Lake	43.29	40.40	17.32	Kit Carson	33.39	31.16	13.36
Kiowa	33.39	31.16	13.36	Jackson	51.56	48.12	20.62
Huerfano	39.00	36.40	15.60	Hinsdale	51.56	48.12	20.62
Gunnison	51.56	48.12	20.62	Grand	51.56	48.12	20.62
Gilpin	44.80	41.82	17.92	Garfield	49.29	46.01	19.72
Fremont	43.29	40.40	17.32	Elbert	34.55	32.25	13.82
Eagle	53.36	49.80	21.35	Yuma	33.39	31.16	13.36
Washington	33.39	31.16	13.36	Teller	43.53	40.62	17.41
Summit	51.56	48.12	20.62	Sedgwick	33.39	31.16	13.36
San Miguel	53.36	49.80	21.35	San Juan	39.00	36.40	15.60

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O N N E C T I C U T

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Bridgeport, CT PMSA	59.30	55.35	23.72	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	63.56	59.33	25.42	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	55.89	52.15	22.35	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town New London county towns of Colchester town, Lebanon town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	61.60	57.50	24.64	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	54.86	51.20	21.94	Middlesex county towns of Old Saybrook town Windham county towns of Canterbury town, Plainfield town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	63.56	59.33	25.42	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	50.29	46.94	20.12	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	52.49	48.99	21.00	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Litchfield	52.97	49.44	21.19	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Hartford	49.92	46.59	19.97	Hartland town
Windham	49.14	45.86	19.65	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town
Tolland	55.49	51.79	22.20	Union town
New London	42.59	39.75	17.04	Lyme town, Voluntown town
Middlesex	59.37	55.42	23.75	Chester town, Deep River town, Essex town Westbrook town

D E L A W A R E

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Dover, DE MSA	43.89	40.96	17.56	Kent
Wilmington-Newark, DE-MD PMSA	51.55	48.11	20.62	New Castle

NONMETROPOLITAN COUNTIES	A	B	C
Sussex	43.89	40.96	17.56

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Washington, DC-MD-VA	63.93	59.67	25.57	District of Columbia

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

F L O R I D A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	43.77	40.85	17.51	Volusia, Flagler
Fort Lauderdale, FL PMSA	55.48	51.78	22.19	Broward
Fort Myers-Cape Coral, FL MSA	45.91	42.85	18.36	Lee
Fort Pierce-Port Lucie, FL MSA	46.51	43.42	18.61	St. Lucie, Martin
Fort Walton Beach, FL MSA	34.42	32.12	13.77	Okaloosa
Gainesville, FL MSA	39.24	36.62	15.70	Alachua
Jacksonville, FL MSA	41.36	38.60	16.54	St. Johns, Nassau, Duval, Clay
Lakeland-Winter Haven, FL MSA	36.34	33.92	14.53	Polk
Melbourne-Titusville-Palm Bay, FL MSA	42.10	39.30	16.84	Brevard
Miami, FL PMSA	59.25	55.30	23.70	Dade
Naples, FL MSA	47.77	44.58	19.11	Collier
Ocala, FL MSA	35.78	33.40	14.31	Marion
Orlando, FL MSA	45.60	42.56	18.24	Lake, Osceola, Orange, Seminole
Panama City, FL MSA	34.42	32.12	13.77	Bay
Pensacola, FL MSA	35.78	33.40	14.31	Santa Rosa, Escambia
Punta Gorda, FL MSA	44.70	41.72	17.88	Charlotte
Sarasota-Bradenton, FL MSA	47.92	44.73	19.17	Manatee, Sarasota
Tallahassee, FL MSA	38.86	36.27	15.54	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	43.66	40.75	17.46	Hernando, Pasco, Hillsborough, Pinellas
West Palm Beach-Boca Raton, FL MSA	46.27	43.18	18.51	Palm Beach

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Bradford	38.03	35.50	15.21	Baker	34.42	32.12	13.77
Glades	43.42	40.53	17.37	Gilchrist	34.42	32.12	13.77
Franklin	34.42	32.12	13.77	Dixie	34.42	32.12	13.77
Desoto	34.42	32.12	13.77	Columbia	34.42	32.12	13.77
Citrus	34.42	32.12	13.77	Calhoun	34.42	32.12	13.77
Putnam	34.42	32.12	13.77	Okeechobee	34.42	32.12	13.77
Monroe	59.16	55.23	23.67	Madison	34.42	32.12	13.77
Liberty	34.42	32.12	13.77	Levy	34.42	32.12	13.77
Lafayette	34.42	32.12	13.77	Jefferson	34.42	32.12	13.77
Jackson	34.42	32.12	13.77	Indian River	46.35	43.26	18.54
Holmes	34.42	32.12	13.77	Highlands	34.42	32.12	13.77
Hendry	43.42	40.53	17.37	Hardee	34.42	32.12	13.77
Hamilton	34.42	32.12	13.77	Gulf	34.42	32.12	13.77
Washington	34.42	32.12	13.77	Walton	34.42	32.12	13.77
Wakulla	34.42	32.12	13.77	Union	34.42	32.12	13.77
Taylor	34.42	32.12	13.77	Suwannee	34.42	32.12	13.77
Sumter	34.42	32.12	13.77				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

G E O R G I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albany, GA MSA	33.58	31.34	13.43	Dougherty, Lee
Athens, GA MSA	34.42	32.14	13.77	Clarke, Oconee, Madison
Atlanta, GA	46.21	43.12	18.48	Clayton, Cherokee, Bartow, Barrow, Rockdale, Spalding Paulding, Newton, Henry, Gwinnett, Fulton, Forsyth Fayette, Douglas, Dekalb, Coweta, Cobb
Augusta-Aiken, GA-SC MSA	34.42	32.14	13.77	Columbia, Richmond, Mcduffie
Carroll County, GA	33.58	31.34	13.43	Carroll
Chattanooga, TN-GA MSA	37.74	35.22	15.10	Catoosa, Walker, Dade
Columbus, GA-AL MSA	33.58	31.34	13.43	Muscogee, Harris, Chattahoochee
Macon, GA MSA	34.13	31.85	13.65	Bibb, Twiggs, Peach, Jones, Houston
Pickens County, GA	33.58	31.34	13.43	Pickens
Savannah, GA MSA	35.07	32.74	14.03	Bryan, Effingham, Chatham
Walton County, GA	45.50	42.47	18.20	Walton

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Appling	33.58	31.34	13.43	Bacon	33.58	31.34	13.43
Atkinson	33.58	31.34	13.43	Ben Hill	33.58	31.34	13.43
Banks	33.58	31.34	13.43	Baldwin	33.58	31.34	13.43
Baker	33.58	31.34	13.43	Calhoun	33.58	31.34	13.43
Butts	45.50	42.47	18.20	Burke	33.58	31.34	13.43
Bulloch	33.58	31.34	13.43	Brooks	33.58	31.34	13.43
Brantley	33.58	31.34	13.43	Bleckley	33.58	31.34	13.43
Berrien	33.58	31.34	13.43	Hancock	33.58	31.34	13.43
Hall	37.11	34.64	14.84	Habersham	33.58	31.34	13.43
Greene	33.58	31.34	13.43	Grady	33.58	31.34	13.43
Gordon	33.58	31.34	13.43	Glynn	33.58	31.34	13.43
Glascock	33.58	31.34	13.43	Gilmer	33.58	31.34	13.43
Franklin	33.58	31.34	13.43	Floyd	33.58	31.34	13.43
Fannin	33.58	31.34	13.43	Evans	33.58	31.34	13.43
Emanuel	33.58	31.34	13.43	Elbert	33.58	31.34	13.43
Echols	33.58	31.34	13.43	Early	33.58	31.34	13.43
Dooly	33.58	31.34	13.43	Dodge	33.58	31.34	13.43
Decatur	33.58	31.34	13.43	Dawson	33.58	31.34	13.43
Crisp	33.58	31.34	13.43	Crawford	33.58	31.34	13.43
Cook	33.58	31.34	13.43	Colquitt	33.58	31.34	13.43
Coffee	33.58	31.34	13.43	Clinch	33.58	31.34	13.43
Clay	33.58	31.34	13.43	Chattooga	33.58	31.34	13.43
Charlton	33.58	31.34	13.43	Candler	33.58	31.34	13.43
Camden	33.58	31.34	13.43	Worth	33.58	31.34	13.43
Wilkinson	33.58	31.34	13.43	Wilkes	33.58	31.34	13.43
Wilcox	33.58	31.34	13.43	Whitfield	33.58	31.34	13.43

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

G E O R G I A continued

NONMETROPOLITAN COUNTIES	A	B	C
White	33.58	31.34	13.43
Webster	33.58	31.34	13.43
Washington	33.58	31.34	13.43
Ware	33.58	31.34	13.43
Union	33.58	31.34	13.43
Troup	33.58	31.34	13.43
Towns	33.58	31.34	13.43
Tift	33.58	31.34	13.43
Terrell	33.58	31.34	13.43
Taylor	33.58	31.34	13.43
Taliaferro	33.58	31.34	13.43
Sumter	33.58	31.34	13.43
Stephens	33.58	31.34	13.43
Screven	33.58	31.34	13.43
Randolph	33.58	31.34	13.43
Quitman	33.58	31.34	13.43
Pulaski	33.58	31.34	13.43
Pike	33.58	31.34	13.43
Oglethorpe	33.58	31.34	13.43
Morgan	33.58	31.34	13.43
Monroe	33.58	31.34	13.43
Miller	33.58	31.34	13.43
Marion	33.58	31.34	13.43
Mcintosh	33.58	31.34	13.43
Lowndes	33.58	31.34	13.43
Lincoln	33.58	31.34	13.43
Laurens	33.58	31.34	13.43
Lamar	33.58	31.34	13.43
Jenkins	33.58	31.34	13.43
Jeff Davis	33.58	31.34	13.43
Jackson	33.58	31.34	13.43
Heard	33.58	31.34	13.43
Haralson	33.58	31.34	13.43

NONMETROPOLITAN COUNTIES	A	B	C
Wheeler	33.58	31.34	13.43
Wayne	33.58	31.34	13.43
Warren	33.58	31.34	13.43
Upson	33.58	31.34	13.43
Turner	33.58	31.34	13.43
Treutlen	33.58	31.34	13.43
Toombs	33.58	31.34	13.43
Thomas	33.58	31.34	13.43
Telfair	33.58	31.34	13.43
Tattnall	33.58	31.34	13.43
Talbot	33.58	31.34	13.43
Stewart	33.58	31.34	13.43
Seminole	33.58	31.34	13.43
Schley	33.58	31.34	13.43
Rabun	33.58	31.34	13.43
Putnam	33.58	31.34	13.43
Polk	33.58	31.34	13.43
Pierce	33.58	31.34	13.43
Murray	33.58	31.34	13.43
Montgomery	33.58	31.34	13.43
Mitchell	33.58	31.34	13.43
Meriwether	33.58	31.34	13.43
Macon	33.58	31.34	13.43
Lumpkin	33.58	31.34	13.43
Long	33.58	31.34	13.43
Liberty	33.58	31.34	13.43
Lanier	33.58	31.34	13.43
Johnson	33.58	31.34	13.43
Jefferson	33.58	31.34	13.43
Jasper	33.58	31.34	13.43
Irwin	33.58	31.34	13.43
Hart	33.58	31.34	13.43

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

H A W A I I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Honolulu, HI MSA	65.08	60.75	26.03	Honolulu

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Hawaii	57.78	53.93	23.11	Maui	65.08	60.75	26.03
Kauai	65.08	60.75	26.03				

I D A H O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Boise City, ID MSA	49.01	45.74	19.60	Canyon, Ada
Pocatello, ID MSA	39.44	36.81	15.78	Bannock

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	38.11	35.57	15.24	Benewah	39.44	36.81	15.78
Bear Lake	39.44	36.81	15.78	Fremont	42.65	39.80	17.06
Franklin	39.44	36.81	15.78	Elmore	38.11	35.57	15.24
Custer	42.65	39.80	17.06	Clearwater	39.44	36.81	15.78
Clark	42.65	39.80	17.06	Cassia	40.42	37.73	16.17
Caribou	39.44	36.81	15.78	Camas	40.42	37.73	16.17
Butte	42.65	39.80	17.06	Boundary	39.44	36.81	15.78
Bonneville	42.65	39.80	17.06	Bonner	39.44	36.81	15.78
Boise	38.11	35.57	15.24	Blaine	41.84	39.05	16.74
Bingham	39.44	36.81	15.78	Washington	38.11	35.57	15.24
Valley	38.11	35.57	15.24	Twin Falls	40.42	37.73	16.17
Teton	42.65	39.80	17.06	Shoshone	39.44	36.81	15.78
Power	39.44	36.81	15.78	Payette	38.11	35.57	15.24
Owyhee	38.11	35.57	15.24	Oneida	39.44	36.81	15.78
Nez Perce	39.44	36.81	15.78	Minidoka	40.42	37.73	16.17
Madison	42.65	39.80	17.06	Lincoln	40.42	37.73	16.17
Lewis	39.44	36.81	15.78	Lemhi	42.65	39.80	17.06
Latah	39.44	36.81	15.78	Kootenai	40.82	38.09	16.33
Jerome	40.42	37.73	16.17	Jefferson	42.65	39.80	17.06
Idaho	39.44	36.81	15.78	Gooding	40.42	37.73	16.17
Gem	38.11	35.57	15.24				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I L L I N O I S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	40.80	38.08	16.32	Mclean
Champaign-Urbana, IL MSA	40.94	38.21	16.38	Champaign
Chicago, IL	58.09	54.21	23.24	Will, Mchenry, Lake, Kane, Dupage, Cook
Davenport-Moline-Rock Island, IA-IL MSA	41.90	39.10	16.76	Rock Island, Henry
Decatur, IL MSA	39.55	36.92	15.82	Macon
De Kalb County, IL	46.04	42.97	18.42	Dekalb
Grundy County, IL	59.25	55.30	23.70	Grundy
Kankakee, IL PMSA	39.63	37.00	15.85	Kankakee
Kendall County, Il	58.59	54.68	23.43	Kendall
Peoria-Pekin, IL MSA	45.87	42.81	18.35	Peoria, Woodford, Tazewell
Rockford, IL MSA	41.71	38.94	16.68	Winnebago, Ogle, Boone
St. Louis, MO-IL MSA	39.24	36.61	15.70	Clinton, St. Clair, Monroe, Madison, Jersey
Springfield, IL MSA	41.80	39.01	16.72	Sangamon, Menard

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alexander	35.57	33.19	14.23	Adams	35.57	33.19	14.23
Calhoun	35.57	33.19	14.23	Bureau	37.73	35.22	15.09
Brown	35.57	33.19	14.23	Bond	35.57	33.19	14.23
Cumberland	35.57	33.19	14.23	Crawford	35.57	33.19	14.23
Coles	35.57	33.19	14.23	Clay	35.57	33.19	14.23
Clark	35.57	33.19	14.23	Christian	35.57	33.19	14.23
Cass	35.57	33.19	14.23	Carroll	35.57	33.19	14.23
Mason	35.57	33.19	14.23	Marshall	37.73	35.22	15.09
Marion	35.57	33.19	14.23	Macoupin	35.57	33.19	14.23
Mcdonough	35.57	33.19	14.23	Logan	35.57	33.19	14.23
Livingston	35.57	33.19	14.23	Lee	42.54	39.71	17.02
Lawrence	35.57	33.19	14.23	La Salle	42.54	39.71	17.02
Knox	36.31	33.89	14.52	Johnson	35.57	33.19	14.23
Jo Daviess	35.57	33.19	14.23	Jefferson	35.57	33.19	14.23
Jasper	35.57	33.19	14.23	Jackson	35.99	33.58	14.39
Iroquois	35.57	33.19	14.23	Henderson	35.57	33.19	14.23
Hardin	35.57	33.19	14.23	Hancock	35.57	33.19	14.23
Hamilton	35.57	33.19	14.23	Greene	35.57	33.19	14.23
Gallatin	35.57	33.19	14.23	Fulton	37.73	35.22	15.09
Franklin	35.99	33.58	14.39	Ford	35.57	33.19	14.23
Fayette	35.57	33.19	14.23	Effingham	35.57	33.19	14.23
Edwards	35.57	33.19	14.23	Edgar	35.57	33.19	14.23
Douglas	35.57	33.19	14.23	De Witt	35.57	33.19	14.23
Williamson	35.99	33.58	14.39	Whiteside	42.54	39.71	17.02
White	35.57	33.19	14.23	Wayne	35.57	33.19	14.23

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	A	B	C
Washington	35.57	33.19	14.23
Wabash	35.57	33.19	14.23
Union	35.57	33.19	14.23
Stark	37.73	35.22	15.09
Scott	35.57	33.19	14.23
Saline	35.57	33.19	14.23
Randolph	35.57	33.19	14.23
Pulaski	35.57	33.19	14.23
Pike	35.57	33.19	14.23
Perry	35.57	33.19	14.23
Morgan	35.57	33.19	14.23
Mercer	35.57	33.19	14.23
Warren	35.57	33.19	14.23
Vermilion	35.57	33.19	14.23
Stephenson	35.57	33.19	14.23
Shelby	35.57	33.19	14.23
Schuyler	35.57	33.19	14.23
Richland	35.57	33.19	14.23
Putnam	37.73	35.22	15.09
Pope	35.57	33.19	14.23
Piatt	35.57	33.19	14.23
Moultrie	35.57	33.19	14.23
Montgomery	35.57	33.19	14.23
Massac	35.57	33.19	14.23

I N D I A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bloomington, IN MSA	35.93	33.54	14.37	Monroe
Cincinnati, OH-KY-IN	39.10	36.49	15.64	Dearborn
Elkhart-Goshen, IN MSA	35.03	32.70	14.01	Elkhart
Evansville-Henderson, IN-KY MSA	34.79	32.47	13.92	Posey, Warrick, Vanderburgh
Fort Wayne, IN MSA	36.26	33.84	14.50	Allen, Adams, Whitley, Wells, Huntington, De Kalb
Gary, IN PMSA	44.26	41.31	17.70	Porter, Lake
Indianapolis, IN MSA	40.09	37.41	16.03	Hamilton, Boone, Madison, Johnson, Hendricks, Hancock Shelby, Morgan, Marion
Kokomo, IN MSA	35.26	32.92	14.11	Howard, Tipton
Lafayette, IN MSA	38.71	36.13	15.48	Clinton, Tippecanoe
Louisville, KY-IN MSA	32.10	29.96	12.84	Clark, Scott, Harrison, Floyd
Muncie, IN MSA	33.77	31.52	13.51	Delaware
Ohio County, IN	33.77	31.52	13.51	Ohio
South Bend, IN MSA	35.69	33.30	14.28	St. Joseph
Terre Haute, IN MSA	33.77	31.52	13.51	Vermillion, Clay, Vigo

NONMETROPOLITAN COUNTIES	A	B	C
Bartholomew	36.58	34.14	14.63
Benton	33.77	31.52	13.51
Cass	33.77	31.52	13.51
Brown	36.58	34.14	14.63
Fulton	33.77	31.52	13.51
Fountain	33.77	31.52	13.51
Dubois	33.77	31.52	13.51
Blackford	33.77	31.52	13.51
Crawford	33.77	31.52	13.51
Carroll	33.77	31.52	13.51
Gibson	33.77	31.52	13.51
Franklin	33.77	31.52	13.51
Fayette	33.77	31.52	13.51
Decatur	35.35	32.99	14.14

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I N D I A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Daviess	33.77	31.52	13.51
Martin	33.77	31.52	13.51
Lawrence	33.77	31.52	13.51
Lagrange	33.77	31.52	13.51
Knox	33.77	31.52	13.51
Jefferson	33.77	31.52	13.51
Jasper	33.77	31.52	13.51
Henry	33.77	31.52	13.51
Grant	33.77	31.52	13.51
Wayne	33.77	31.52	13.51
Warren	33.77	31.52	13.51
Union	33.77	31.52	13.51
Sullivan	33.77	31.52	13.51
Starke	33.77	31.52	13.51
Rush	33.77	31.52	13.51
Randolph	33.77	31.52	13.51
Pulaski	33.77	31.52	13.51
Perry	33.77	31.52	13.51
Owen	34.24	31.96	13.70
Noble	33.77	31.52	13.51
Montgomery	33.77	31.52	13.51

NONMETROPOLITAN COUNTIES	A	B	C
Miami	33.77	31.52	13.51
Marshall	33.77	31.52	13.51
La Porte	34.96	32.62	13.98
Kosciusko	33.77	31.52	13.51
Jennings	35.35	32.99	14.14
Jay	33.77	31.52	13.51
Jackson	35.35	32.99	14.14
Greene	33.77	31.52	13.51
White	33.77	31.52	13.51
Washington	34.72	32.41	13.89
Wabash	33.77	31.52	13.51
Switzerland	33.77	31.52	13.51
Steuben	33.77	31.52	13.51
Spencer	33.77	31.52	13.51
Ripley	33.77	31.52	13.51
Putnam	33.85	31.59	13.54
Pike	33.77	31.52	13.51
Parke	33.77	31.52	13.51
Orange	33.77	31.52	13.51
Newton	33.77	31.52	13.51

I O W A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	40.47	37.77	16.19	Linn
Davenport-Moline-Rock Island, IA-IL MSA	41.90	39.10	16.76	Scott
Des Moines, IA MSA	41.80	39.02	16.72	Polk, Dallas, Warren
Dubuque, IA MSA	37.45	34.96	14.98	Dubuque
Iowa City, IA MSA	42.61	39.77	17.04	Johnson
Omaha, NE-IA MSA	37.21	34.73	14.88	Pottawattamie
Sioux City, IA-NE MSA	36.58	34.14	14.63	Woodbury
Waterloo-Cedar Falls, IA MSA	40.62	37.91	16.25	Black Hawk

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I O W A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	33.97	31.70	13.59	Adair	33.97	31.70	13.59
Benton	33.97	31.70	13.59	Audubon	33.97	31.70	13.59
Appanoose	33.97	31.70	13.59	Allamakee	33.97	31.70	13.59
Cass	33.97	31.70	13.59	Carroll	33.97	31.70	13.59
Calhoun	33.97	31.70	13.59	Butler	33.97	31.70	13.59
Buena Vista	33.97	31.70	13.59	Buchanan	33.97	31.70	13.59
Bremer	40.62	37.91	16.25	Boone	36.42	34.00	14.57
Fayette	33.97	31.70	13.59	Emmet	33.97	31.70	13.59
Dickinson	33.97	31.70	13.59	Des Moines	33.97	31.70	13.59
Delaware	35.78	33.40	14.31	Decatur	33.97	31.70	13.59
Davis	33.97	31.70	13.59	Crawford	33.97	31.70	13.59
Clinton	35.78	33.40	14.31	Clayton	33.97	31.70	13.59
Clay	33.97	31.70	13.59	Clarke	33.97	31.70	13.59
Chickasaw	33.97	31.70	13.59	Cherokee	33.97	31.70	13.59
Cerro Gordo	33.97	31.70	13.59	Cedar	35.78	33.40	14.31
Monona	33.97	31.70	13.59	Mitchell	33.97	31.70	13.59
Mills	33.97	31.70	13.59	Marshall	33.97	31.70	13.59
Marion	33.97	31.70	13.59	Mahaska	33.97	31.70	13.59
Madison	33.97	31.70	13.59	Lyon	33.97	31.70	13.59
Lucas	33.97	31.70	13.59	Louisa	33.97	31.70	13.59
Lee	33.97	31.70	13.59	Kossuth	33.97	31.70	13.59
Keokuk	33.97	31.70	13.59	Jones	33.97	31.70	13.59
Jefferson	33.97	31.70	13.59	Jasper	33.97	31.70	13.59
Jackson	35.78	33.40	14.31	Iowa	33.97	31.70	13.59
Ida	33.97	31.70	13.59	Humboldt	33.97	31.70	13.59
Howard	33.97	31.70	13.59	Henry	33.97	31.70	13.59
Harrison	33.97	31.70	13.59	Hardin	33.97	31.70	13.59
Hancock	33.97	31.70	13.59	Hamilton	33.97	31.70	13.59
Guthrie	33.97	31.70	13.59	Grundy	33.97	31.70	13.59
Greene	33.97	31.70	13.59	Fremont	33.97	31.70	13.59
Franklin	33.97	31.70	13.59	Floyd	33.97	31.70	13.59
Wright	33.97	31.70	13.59	Worth	33.97	31.70	13.59
Winneshiek	33.97	31.70	13.59	Winnebago	33.97	31.70	13.59
Webster	33.97	31.70	13.59	Wayne	33.97	31.70	13.59
Washington	33.97	31.70	13.59	Wapello	35.71	33.32	14.28
Van Buren	33.97	31.70	13.59	Union	33.97	31.70	13.59
Taylor	33.97	31.70	13.59	Tama	33.97	31.70	13.59
Story	36.90	34.43	14.76	Sioux	33.97	31.70	13.59
Shelby	33.97	31.70	13.59	Sac	33.97	31.70	13.59
Ringgold	33.97	31.70	13.59	Poweshiek	33.97	31.70	13.59

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I O W A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Pocahontas	33.97	31.70	13.59	Plymouth	33.97	31.70	13.59
Palo Alto	33.97	31.70	13.59	Page	33.97	31.70	13.59
Osceola	33.97	31.70	13.59	O'Brien	33.97	31.70	13.59
Muscatine	33.97	31.70	13.59	Montgomery	33.97	31.70	13.59
Monroe	33.97	31.70	13.59				

K A N S A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	38.14	35.60	15.26	Johnson, Wyandotte, Miami, Leavenworth
Lawrence, KS MSA	40.71	38.00	16.28	Douglas
Topeka, KS MSA	36.84	34.39	14.74	Shawnee
Wichita, KS MSA	39.69	37.04	15.88	Butler, Sedgwick, Harvey

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Barber	33.77	31.52	13.51	Atchison	33.77	31.52	13.51
Anderson	33.77	31.52	13.51	Allen	33.77	31.52	13.51
Clark	33.77	31.52	13.51	Cheyenne	33.77	31.52	13.51
Cherokee	33.77	31.52	13.51	Chautauqua	33.77	31.52	13.51
Chase	33.77	31.52	13.51	Brown	33.77	31.52	13.51
Bourbon	33.77	31.52	13.51	Barton	33.77	31.52	13.51
Franklin	33.77	31.52	13.51	Ford	33.77	31.52	13.51
Finney	33.77	31.52	13.51	Ellsworth	33.77	31.52	13.51
Ellis	33.77	31.52	13.51	Elk	33.77	31.52	13.51
Edwards	33.77	31.52	13.51	Doniphan	33.77	31.52	13.51
Dickinson	33.77	31.52	13.51	Decatur	33.77	31.52	13.51
Crawford	33.77	31.52	13.51	Cowley	33.77	31.52	13.51
Comanche	33.77	31.52	13.51	Coffey	33.77	31.52	13.51
Cloud	33.77	31.52	13.51	Clay	33.77	31.52	13.51
Wallace	33.77	31.52	13.51	Wabaunsee	33.77	31.52	13.51
Trego	33.77	31.52	13.51	Thomas	33.77	31.52	13.51
Sumner	33.77	31.52	13.51	Stevens	33.77	31.52	13.51
Stanton	33.77	31.52	13.51	Stafford	33.77	31.52	13.51
Smith	33.77	31.52	13.51	Sherman	33.77	31.52	13.51
Sheridan	33.77	31.52	13.51	Seward	33.77	31.52	13.51
Scott	33.77	31.52	13.51	Saline	33.77	31.52	13.51
Russell	33.77	31.52	13.51	Rush	33.77	31.52	13.51
Rooks	33.77	31.52	13.51	Riley	33.77	31.52	13.51
Rice	33.77	31.52	13.51	Republic	33.77	31.52	13.51
Reno	33.77	31.52	13.51	Rawlins	33.77	31.52	13.51
Pratt	33.77	31.52	13.51	Pottawatomie	33.77	31.52	13.51

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K A N S A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Phillips	33.77	31.52	13.51
Ottawa	33.77	31.52	13.51
Osage	33.77	31.52	13.51
Ness	33.77	31.52	13.51
Nemaha	33.77	31.52	13.51
Morris	33.77	31.52	13.51
Mitchell	33.77	31.52	13.51
Marshall	33.77	31.52	13.51
Mcpherson	33.77	31.52	13.51
Logan	33.77	31.52	13.51
Lincoln	33.77	31.52	13.51
Labette	33.77	31.52	13.51
Kingman	33.77	31.52	13.51
Jewell	33.77	31.52	13.51
Jackson	33.77	31.52	13.51
Haskell	33.77	31.52	13.51
Hamilton	33.77	31.52	13.51
Greeley	33.77	31.52	13.51
Grant	33.77	31.52	13.51
Gove	33.77	31.52	13.51
Woodson	33.77	31.52	13.51
Wichita	33.77	31.52	13.51

NONMETROPOLITAN COUNTIES	A	B	C
Pawnee	33.77	31.52	13.51
Osborne	33.77	31.52	13.51
Norton	33.77	31.52	13.51
Neosho	33.77	31.52	13.51
Morton	33.77	31.52	13.51
Montgomery	33.77	31.52	13.51
Meade	33.77	31.52	13.51
Marion	33.77	31.52	13.51
Lyon	33.77	31.52	13.51
Linn	33.77	31.52	13.51
Lane	33.77	31.52	13.51
Kiowa	33.77	31.52	13.51
Kearny	33.77	31.52	13.51
Jefferson	33.77	31.52	13.51
Hodgeman	33.77	31.52	13.51
Harper	33.77	31.52	13.51
Greenwood	33.77	31.52	13.51
Gray	33.77	31.52	13.51
Graham	33.77	31.52	13.51
Geary	33.77	31.52	13.51
Wilson	33.77	31.52	13.51
Washington	33.77	31.52	13.51

K E N T U C K Y

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	39.10	36.49	15.64	Kenton, Campbell, Boone
Clarksville-Hopkinsville, TN-KY MSA	38.40	35.84	15.36	Christian
Evansville-Henderson, IN-KY MSA	34.79	32.47	13.92	Henderson
Gallatin County, KY	32.10	29.96	12.84	Gallatin
Grant County, KY	32.10	29.96	12.84	Grant
Huntington-Ashland, WV-KY-OH MSA	34.88	32.55	13.95	Boyd, Greenup, Carter
Lexington, KY MSA	35.55	33.18	14.22	Clark, Bourbon, Woodford, Scott, Madison, Jessamine Fayette
Louisville, KY-IN MSA	32.10	29.96	12.84	Bullitt, Oldham, Jefferson
Owensboro, KY MSA	32.10	29.96	12.84	Daviess
Pendleton County, KY	32.10	29.96	12.84	Pendleton

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	A	B	C
Allen	32.10	29.96	12.84
Bath	32.10	29.96	12.84
Ballard	32.10	29.96	12.84
Henry	32.10	29.96	12.84
Harrison	32.10	29.96	12.84
Hardin	32.10	29.96	12.84
Green	32.10	29.96	12.84
Graves	32.10	29.96	12.84
Fulton	32.10	29.96	12.84
Floyd	32.10	29.96	12.84
Estill	32.10	29.96	12.84
Edmonson	32.10	29.96	12.84
Crittenden	32.10	29.96	12.84
Clay	32.10	29.96	12.84
Carroll	32.10	29.96	12.84
Calloway	32.10	29.96	12.84
Butler	32.10	29.96	12.84
Breathitt	32.10	29.96	12.84
Boyle	32.10	29.96	12.84
Wolfe	32.10	29.96	12.84
Webster	32.10	29.96	12.84
Washington	32.10	29.96	12.84
Union	32.10	29.96	12.84
Trigg	32.10	29.96	12.84
Taylor	32.10	29.96	12.84
Simpson	32.10	29.96	12.84
Russell	32.10	29.96	12.84
Rockcastle	32.10	29.96	12.84
Pulaski	32.10	29.96	12.84
Pike	32.10	29.96	12.84
Owsley	32.10	29.96	12.84
Ohio	32.10	29.96	12.84
Nelson	32.10	29.96	12.84
Morgan	32.10	29.96	12.84
Monroe	32.10	29.96	12.84
Mercer	32.70	30.52	13.08
Meade	32.10	29.96	12.84
Martin	32.10	29.96	12.84
Marion	32.10	29.96	12.84
Mclean	32.10	29.96	12.84

NONMETROPOLITAN COUNTIES	A	B	C
Adair	32.10	29.96	12.84
Barren	32.10	29.96	12.84
Anderson	32.70	30.52	13.08
Hart	32.10	29.96	12.84
Harlan	32.10	29.96	12.84
Hancock	32.10	29.96	12.84
Grayson	32.10	29.96	12.84
Garrard	32.10	29.96	12.84
Franklin	32.70	30.52	13.08
Fleming	32.10	29.96	12.84
Elliott	32.10	29.96	12.84
Cumberland	32.10	29.96	12.84
Clinton	32.10	29.96	12.84
Casey	32.10	29.96	12.84
Carlisle	32.10	29.96	12.84
Caldwell	32.10	29.96	12.84
Breckinridge	32.10	29.96	12.84
Bracken	32.10	29.96	12.84
Bell	32.10	29.96	12.84
Whitley	32.10	29.96	12.84
Wayne	32.10	29.96	12.84
Warren	32.10	29.96	12.84
Trimble	32.10	29.96	12.84
Todd	32.10	29.96	12.84
Spencer	32.10	29.96	12.84
Shelby	32.10	29.96	12.84
Rowan	32.10	29.96	12.84
Robertson	32.10	29.96	12.84
Powell	32.10	29.96	12.84
Perry	32.10	29.96	12.84
Owen	32.10	29.96	12.84
Nicholas	32.10	29.96	12.84
Muhlenberg	32.10	29.96	12.84
Montgomery	32.10	29.96	12.84
Metcalfe	32.10	29.96	12.84
Menifee	32.10	29.96	12.84
Mason	32.10	29.96	12.84
Marshall	32.10	29.96	12.84
Magoffin	32.10	29.96	12.84
Mccreary	32.10	29.96	12.84

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Mccracken	32.10	29.96	12.84	Lyon	32.10	29.96	12.84
Logan	32.10	29.96	12.84	Livingston	32.10	29.96	12.84
Lincoln	32.10	29.96	12.84	Lewis	32.10	29.96	12.84
Letcher	32.10	29.96	12.84	Leslie	32.10	29.96	12.84
Lee	32.10	29.96	12.84	Lawrence	32.10	29.96	12.84
Laurel	32.10	29.96	12.84	Larue	32.10	29.96	12.84
Knox	32.10	29.96	12.84	Knott	32.10	29.96	12.84
Johnson	32.10	29.96	12.84	Jackson	32.10	29.96	12.84
Hopkins	32.10	29.96	12.84	Hickman	32.10	29.96	12.84

L O U I S I A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Alexandria, LA MSA	34.22	31.94	13.69	Rapides
Baton Rouge, LA MSA	40.30	37.61	16.12	East Baton Rouge, Ascension, West Baton Rouge, Livingston
Houma, LA MSA	35.73	33.35	14.29	Terrebonne, Lafourche
Lafayette, LA MSA	40.30	37.61	16.12	St. Martin, Lafayette, St. Landry, Acadia
Lake Charles, LA MSA	34.22	31.94	13.69	Calcasieu
Monroe, LA MSA	34.22	31.94	13.69	Ouachita
New Orleans, LA	37.32	34.83	14.93	St. Tammany, St. John the Baptist, St. Charles St. Bernard, Plaquemines, Orleans, Jefferson
St. James Parish, LA	34.22	31.94	13.69	St. James
Shreveport-Bossier City, LA MSA	36.53	34.10	14.61	Bossier, Webster, Caddo

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Beauregard	34.22	31.94	13.69	Avoyelles	34.22	31.94	13.69
Assumption	34.22	31.94	13.69	Allen	34.22	31.94	13.69
East Carroll	34.22	31.94	13.69	De Soto	34.22	31.94	13.69
Concordia	34.22	31.94	13.69	Claiborne	34.22	31.94	13.69
Catahoula	34.22	31.94	13.69	Cameron	34.22	31.94	13.69
Caldwell	34.22	31.94	13.69	Bienville	34.22	31.94	13.69
Winn	34.22	31.94	13.69	West Feliciana	34.22	31.94	13.69
West Carroll	34.22	31.94	13.69	Washington	34.22	31.94	13.69
Vernon	34.22	31.94	13.69	Vermilion	34.22	31.94	13.69
Union	34.22	31.94	13.69	Tensas	34.22	31.94	13.69
Tangipahoa	34.22	31.94	13.69	St. Mary	34.22	31.94	13.69
St. Helena	34.22	31.94	13.69	Sabine	34.22	31.94	13.69
Richland	34.22	31.94	13.69	Red River	34.22	31.94	13.69
Pointe Coupee	34.22	31.94	13.69	Natchitoches	34.22	31.94	13.69
Morehouse	34.22	31.94	13.69	Madison	34.22	31.94	13.69
Lincoln	34.22	31.94	13.69	La Salle	34.22	31.94	13.69

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

L O U I S I A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Jefferson Davis	34.22	31.94	13.69
Iberville	34.22	31.94	13.69
Grant	34.22	31.94	13.69
Evangeline	34.22	31.94	13.69
Jackson	34.22	31.94	13.69
Iberia	34.22	31.94	13.69
Franklin	34.22	31.94	13.69
East Feliciana	34.22	31.94	13.69

M A I N E

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Bangor, ME MSA	40.42	37.72	16.17	Waldo county towns of Winterport town Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town
Lewiston-Auburn, ME MSA	39.82	37.16	15.93	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	55.65	51.93	22.26	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	52.27	48.79	20.91	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Aroostook	37.15	34.68	14.86	
Androscoggin	36.79	34.34	14.72	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Kennebec	39.06	36.45	15.62	
Hancock	38.14	35.60	15.25	
Franklin	36.47	34.03	14.59	
Cumberland	42.55	39.71	17.02	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Waldo	37.68	35.17	15.07	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A I N E continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
				Waldo town
Somerset	37.07	34.60	14.83	
Sagadahoc	44.60	41.62	17.84	
Piscataquis	32.73	30.55	13.09	
Penobscot	37.68	35.17	15.07	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Oxford	36.47	34.03	14.59	
Lincoln	38.37	35.82	15.35	
Knox	39.00	36.40	15.60	
York	48.95	45.69	19.58	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town
Washington	37.68	35.17	15.07	

M A R Y L A N D

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Baltimore, MD	46.63	43.52	18.65	Baltimore, Anne Arundel, Queen Anne's, Howard, Harford Carroll, Baltimore city
Columbia, MD	61.62	57.51	24.65	Columbia
Cumberland, MD-WV MSA	33.10	30.89	13.24	Allegany
Hagerstown, MD PMSA	36.58	34.14	14.63	Washington
Washington, DC-MD-VA	63.93	59.67	25.57	Montgomery, Frederick, Charles, Calvert, Prince George's
Wilmington-Newark, DE-MD PMSA	51.55	48.11	20.62	Cecil

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A R Y L A N D continued

NONMETROPOLITAN COUNTIES	A	B	C
Dorchester	35.26	32.91	14.10
Somerset	35.26	32.91	14.10
Kent	37.13	34.66	14.85
Worcester	36.34	33.92	14.54
Talbot	40.58	37.87	16.23
Caroline	33.79	31.54	13.51
St. Mary's	49.80	46.48	19.92
Garrett	33.10	30.89	13.24
Wicomico	41.91	39.11	16.76

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	62.89	58.70	25.16	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town
Boston, MA-NH PMSA	62.74	58.55	25.10	Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Mendon town, Milford town, Millville town Southborough town, Upton town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town
Brockton, MA PMSA	52.19	48.71	20.88	Bristol county towns of Easton town, Raynham town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town Norfolk county towns of Avon town
Fitchburg-Leominster, MA MSA	52.58	49.08	21.03	Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town Middlesex county towns of Ashby town
Lawrence, MA-NH PMSA	50.41	47.05	20.16	Essex county towns of Andover town, Boxford town Georgetown town, Groveland town, Haverhill city Lawrence city, Merrimac town, Methuen town North Andover town, West Newbury town
Lowell, MA-NH PMSA	52.66	49.14	21.06	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA MSA	45.52	42.49	18.21	Plymouth county towns of Marion town, Mattapoisett town Rochester town Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city
Pittsfield, MA MSA	48.16	44.95	19.26	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA	51.92	48.45	20.77	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA	47.15	44.00	18.86	Hampden county towns of Agawam town, Chicopee city East Longmeadow to, Hampden town, Holyoke city Longmeadow town, Ludlow town, Monson town Montgomery town, Palmer town, Russell town Southwick town, Springfield city, Westfield city West Springfield t, Wilbraham town Franklin county towns of Sunderland town Hampshire county towns of Amherst town, Belchertown town Easthampton town, Granby town, Hadley town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Hatfield town, Huntington town, Northampton city Southampton town, South Hadley town, Ware town Williamsburg town
Worcester, MA-CT	52.49	48.99	21.00	Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town Boylston town, Brookfield town, Charlton town Clinton town, Douglas town, Dudley town East Brookfield to, Grafton town, Holden town Leicester town, Millbury town, Northborough town Northbridge town, North Brookfield t, Oakham town Oxford town, Paxton town, Princeton town, Rutland town Shrewsbury town, Southbridge town, Spencer town Sterling town, Sturbridge town, Sutton town Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Barnstable	62.89	58.70	25.16	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Hampden	45.92	42.85	18.37	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Franklin	47.77	44.59	19.11	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Dukes	62.89	58.70	25.16	
Berkshire	42.42	39.59	16.97	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town
Worcester	47.07	43.94	18.83	Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town
Nantucket	62.89	58.70	25.16	
Hampshire	57.62	53.78	23.05	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I C H I G A N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	51.86	48.40	20.74	Lenawee, Washtenaw, Livingston
Benton Harbor, MI MSA	37.94	35.41	15.17	Berrien
Detroit, MI PMSA	43.52	40.62	17.41	Lapeer, Wayne, St. Clair, Oakland, Monroe, Macomb
Flint, MI PMSA	37.46	34.96	14.98	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	41.08	38.34	16.43	Kent, Allegan, Ottawa, Muskegon
Jackson, MI MSA	37.61	35.11	15.05	Jackson
Kalamazoo-Battle Creek, MI MSA	39.22	36.62	15.69	Calhoun, Van Buren, Kalamazoo
Lansing-East Lansing, MI MSA	41.73	38.94	16.69	Eaton, Clinton, Ingham
Saginaw-Bay City-Midland, MI MSA	37.21	34.73	14.88	Bay, Saginaw, Midland

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Antrim	36.97	34.51	14.79	Alpena	34.48	32.18	13.79
Alger	34.48	32.18	13.79	Alcona	34.48	32.18	13.79
Cheboygan	34.48	32.18	13.79	Charlevoix	36.97	34.51	14.79
Cass	34.48	32.18	13.79	Branch	34.72	32.40	13.89
Benzie	36.97	34.51	14.79	Barry	35.93	33.54	14.37
Baraga	34.48	32.18	13.79	Arenac	34.48	32.18	13.79
Iron	34.48	32.18	13.79	Iosco	34.48	32.18	13.79
Ionia	34.56	32.25	13.82	Huron	34.48	32.18	13.79
Houghton	34.48	32.18	13.79	Hillsdale	36.81	34.36	14.72
Gratiot	37.21	34.73	14.88	Grand Traverse	38.27	35.72	15.31
Gogebic	34.48	32.18	13.79	Gladwin	34.48	32.18	13.79
Emmet	36.97	34.51	14.79	Dickinson	34.48	32.18	13.79
Delta	34.48	32.18	13.79	Crawford	34.48	32.18	13.79
Clare	34.48	32.18	13.79	Chippewa	34.48	32.18	13.79
Wexford	36.97	34.51	14.79	Tuscola	34.60	32.29	13.84
Shiawassee	36.73	34.28	14.69	Schoolcraft	34.48	32.18	13.79
Sanilac	34.48	32.18	13.79	St. Joseph	34.72	32.40	13.89
Roscommon	34.48	32.18	13.79	Presque Isle	34.48	32.18	13.79
Otsego	34.48	32.18	13.79	Oscoda	34.48	32.18	13.79
Osceola	34.48	32.18	13.79	Ontonagon	34.48	32.18	13.79
Ogemaw	34.48	32.18	13.79	Oceana	34.48	32.18	13.79
Newaygo	34.48	32.18	13.79	Montmorency	34.48	32.18	13.79
Montcalm	34.48	32.18	13.79	Missaukee	36.97	34.51	14.79
Menominee	36.97	34.51	14.79	Mecosta	34.48	32.18	13.79
Mason	34.48	32.18	13.79	Marquette	36.97	34.51	14.79
Manistee	36.97	34.51	14.79	Mackinac	34.48	32.18	13.79
Luce	34.48	32.18	13.79	Leelanau	38.02	35.49	15.21
Lake	34.48	32.18	13.79	Keweenaw	34.48	32.18	13.79
Kalkaska	36.97	34.51	14.79	Isabella	37.21	34.73	14.88

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I N N E S O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	36.59	34.15	14.64	St. Louis
Fargo-Moorhead, ND-MN MSA	36.97	34.50	14.79	Clay
Grand Forks, ND-MN MSA	35.33	32.98	14.13	Polk
La Crosse, WI-MN MSA	40.47	37.76	16.19	Houston
Minneapolis-St. Paul, MN-WI MSA	49.47	46.18	19.79	Carver, Anoka, Isanti, Hennepin, Dakota, Chisago, Wright Washington, Sherburne, Scott, Ramsey
Rochester, MN MSA	40.96	38.23	16.38	Olmsted
St. Cloud, MN MSA	37.69	35.18	15.08	Stearns, Benton

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Faribault	33.61	31.37	13.45	Douglas	33.61	31.37	13.45
Dodge	33.61	31.37	13.45	Crow Wing	33.61	31.37	13.45
Cottonwood	33.61	31.37	13.45	Cook	33.61	31.37	13.45
Clearwater	33.61	31.37	13.45	Chippewa	33.61	31.37	13.45
Cass	33.61	31.37	13.45	Carlton	33.61	31.37	13.45
Brown	33.61	31.37	13.45	Blue Earth	36.75	34.30	14.70
Big Stone	33.61	31.37	13.45	Beltrami	33.61	31.37	13.45
Becker	33.61	31.37	13.45	Aitkin	34.70	32.39	13.88
Yellow Medicine	33.61	31.37	13.45	Winona	34.08	31.81	13.63
Wilkin	33.61	31.37	13.45	Watonwan	33.61	31.37	13.45
Waseca	33.61	31.37	13.45	Wadena	33.61	31.37	13.45
Wabasha	33.61	31.37	13.45	Traverse	33.61	31.37	13.45
Todd	33.61	31.37	13.45	Swift	33.61	31.37	13.45
Stevens	33.61	31.37	13.45	Steele	36.67	34.23	14.67
Sibley	34.94	32.62	13.98	Roseau	33.61	31.37	13.45
Rock	33.61	31.37	13.45	Rice	37.77	35.25	15.11
Renville	35.26	32.91	14.10	Redwood	33.61	31.37	13.45
Red Lake	33.61	31.37	13.45	Pope	33.61	31.37	13.45
Pipestone	33.61	31.37	13.45	Pine	33.61	31.37	13.45
Pennington	33.61	31.37	13.45	Otter Tail	33.61	31.37	13.45
Norman	33.61	31.37	13.45	Nobles	33.61	31.37	13.45
Nicollet	35.41	33.05	14.17	Murray	33.61	31.37	13.45
Mower	33.61	31.37	13.45	Morrison	33.61	31.37	13.45
Mille Lacs	33.61	31.37	13.45	Meeker	35.26	32.91	14.10
Martin	33.61	31.37	13.45	Marshall	33.61	31.37	13.45
Mahnomen	33.61	31.37	13.45	Mcleod	35.26	32.91	14.10
Lyon	33.61	31.37	13.45	Lincoln	33.61	31.37	13.45
Le Sueur	34.94	32.62	13.98	Lake of the Woods	33.61	31.37	13.45
Lake	33.61	31.37	13.45	Lac qui Parle	33.61	31.37	13.45
Koochiching	33.61	31.37	13.45	Kittson	33.61	31.37	13.45
Kandiyohi	35.26	32.91	14.10	Kanabec	33.61	31.37	13.45

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Jackson	33.61	31.37	13.45
Hubbard	33.61	31.37	13.45
Goodhue	33.61	31.37	13.45
Fillmore	33.61	31.37	13.45
Itasca	33.61	31.37	13.45
Grant	33.61	31.37	13.45
Freeborn	36.67	34.23	14.67

M I S S I S S I P P I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	33.84	31.58	13.53	Hancock, Jackson, Harrison
Hattiesburg, MS MSA	33.84	31.58	13.53	Lamar, Forrest
Jackson, MS MSA	39.92	37.26	15.97	Madison, Hinds, Rankin
Memphis, TN-AR-MS MSA	37.90	35.38	15.16	Desoto

NONMETROPOLITAN COUNTIES	A	B	C
Alcorn	33.84	31.58	13.53
Warren	33.84	31.58	13.53
Union	33.84	31.58	13.53
Tishomingo	33.84	31.58	13.53
Tate	33.84	31.58	13.53
Sunflower	33.84	31.58	13.53
Smith	33.84	31.58	13.53
Sharkey	33.84	31.58	13.53
Quitman	33.84	31.58	13.53
Pontotoc	33.84	31.58	13.53
Perry	33.84	31.58	13.53
Panola	33.84	31.58	13.53
Noxubee	33.84	31.58	13.53
Neshoba	33.84	31.58	13.53
Monroe	33.84	31.58	13.53
Marion	33.84	31.58	13.53
Lincoln	33.84	31.58	13.53
Lee	33.84	31.58	13.53
Lawrence	33.84	31.58	13.53
Lafayette	33.84	31.58	13.53
Jones	33.84	31.58	13.53
Jefferson	33.84	31.58	13.53
Itawamba	33.84	31.58	13.53
Humphreys	33.84	31.58	13.53
Grenada	33.84	31.58	13.53
George	33.84	31.58	13.53
Adams	33.84	31.58	13.53
Walthall	33.84	31.58	13.53
Tunica	33.84	31.58	13.53
Tippah	33.84	31.58	13.53
Tallahatchie	33.84	31.58	13.53
Stone	33.84	31.58	13.53
Simpson	33.84	31.58	13.53
Scott	33.84	31.58	13.53
Prentiss	33.84	31.58	13.53
Pike	33.84	31.58	13.53
Pearl River	33.84	31.58	13.53
Oktibbeha	33.84	31.58	13.53
Newton	33.84	31.58	13.53
Montgomery	33.84	31.58	13.53
Marshall	33.84	31.58	13.53
Lowndes	33.84	31.58	13.53
Leflore	33.84	31.58	13.53
Leake	33.84	31.58	13.53
Lauderdale	33.84	31.58	13.53
Kemper	33.84	31.58	13.53
Jefferson Davis	33.84	31.58	13.53
Jasper	33.84	31.58	13.53
Issaquena	33.84	31.58	13.53
Holmes	33.84	31.58	13.53
Greene	33.84	31.58	13.53
Franklin	33.84	31.58	13.53

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Covington	33.84	31.58	13.53	Copiah	33.84	31.58	13.53
Coahoma	33.84	31.58	13.53	Clay	33.84	31.58	13.53
Clarke	33.84	31.58	13.53	Claiborne	33.84	31.58	13.53
Choctaw	33.84	31.58	13.53	Chickasaw	33.84	31.58	13.53
Carroll	33.84	31.58	13.53	Calhoun	33.84	31.58	13.53
Bolivar	33.84	31.58	13.53	Benton	33.84	31.58	13.53
Attala	33.84	31.58	13.53	Amite	33.84	31.58	13.53
Yazoo	33.84	31.58	13.53	Yalobusha	33.84	31.58	13.53
Winston	33.84	31.58	13.53	Wilkinson	33.84	31.58	13.53
Webster	33.84	31.58	13.53	Wayne	33.84	31.58	13.53
Washington	33.84	31.58	13.53				

M I S S O U R I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Columbia, MO MSA	33.59	31.34	13.44	Boone
Joplin, MO MSA	33.39	31.16	13.36	Newton, Jasper
Kansas City, MO-KS MSA	38.14	35.60	15.26	Clay, Cass, Platte, Lafayette, Jackson, Clinton, Ray
St. Joseph, MO MSA	33.39	31.16	13.36	Andrew, Buchanan
St. Louis, MO-IL MSA	39.24	36.61	15.70	Crawford-Sullivan (part), St. Charles, Lincoln, Jefferson Franklin, St. Louis city, Warren, St. Louis
Springfield, MO MSA	33.39	31.16	13.36	Christian, Webster, Greene

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Atchison	33.39	31.16	13.36	Adair	33.39	31.16	13.36
Hickory	33.39	31.16	13.36	Henry	33.39	31.16	13.36
Harrison	33.39	31.16	13.36	Grundy	33.39	31.16	13.36
Gentry	33.39	31.16	13.36	Gasconade	33.39	31.16	13.36
Dunklin	33.39	31.16	13.36	Douglas	33.39	31.16	13.36
Dent	33.39	31.16	13.36	Dekalb	33.39	31.16	13.36
Daviess	33.39	31.16	13.36	Dallas	33.39	31.16	13.36
Dade	33.39	31.16	13.36	Crawford	33.39	31.16	13.36
Cooper	33.39	31.16	13.36	Cole	33.39	31.16	13.36
Clark	33.39	31.16	13.36	Chariton	33.39	31.16	13.36
Cedar	33.39	31.16	13.36	Carter	33.39	31.16	13.36
Carroll	33.39	31.16	13.36	Cape Girardeau	33.39	31.16	13.36
Camden	33.39	31.16	13.36	Callaway	33.39	31.16	13.36
Caldwell	33.39	31.16	13.36	Butler	33.39	31.16	13.36
Bollinger	33.39	31.16	13.36	Benton	33.39	31.16	13.36
Bates	33.39	31.16	13.36	Barton	33.39	31.16	13.36

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	A	B	C
Barry	33.39	31.16	13.36
Wright	33.39	31.16	13.36
Wayne	33.39	31.16	13.36
Vernon	33.39	31.16	13.36
Taney	33.39	31.16	13.36
Stone	33.39	31.16	13.36
Shelby	33.39	31.16	13.36
Scott	33.39	31.16	13.36
Schuyler	33.39	31.16	13.36
St. Francois	33.39	31.16	13.36
St. Clair	33.39	31.16	13.36
Reynolds	33.39	31.16	13.36
Ralls	33.39	31.16	13.36
Pulaski	33.39	31.16	13.36
Pike	33.39	31.16	13.36
Pettis	33.39	31.16	13.36
Pemiscot	33.39	31.16	13.36
Osage	33.39	31.16	13.36
Nodaway	33.39	31.16	13.36
Morgan	33.39	31.16	13.36
Monroe	33.39	31.16	13.36
Mississippi	33.39	31.16	13.36
Mercer	33.39	31.16	13.36
Maries	33.39	31.16	13.36
Macon	33.39	31.16	13.36
Livingston	33.39	31.16	13.36
Lewis	33.39	31.16	13.36
Laclede	33.39	31.16	13.36
Johnson	33.39	31.16	13.36
Howell	33.39	31.16	13.36
Holt	33.39	31.16	13.36

NONMETROPOLITAN COUNTIES	A	B	C
Audrain	33.39	31.16	13.36
Worth	33.39	31.16	13.36
Washington	33.39	31.16	13.36
Texas	33.39	31.16	13.36
Sullivan	33.39	31.16	13.36
Stoddard	33.39	31.16	13.36
Shannon	33.39	31.16	13.36
Scotland	33.39	31.16	13.36
Saline	33.39	31.16	13.36
Ste. Genevieve	33.39	31.16	13.36
Ripley	33.39	31.16	13.36
Randolph	33.39	31.16	13.36
Putnam	33.39	31.16	13.36
Polk	33.39	31.16	13.36
Phelps	33.39	31.16	13.36
Perry	33.39	31.16	13.36
Ozark	33.39	31.16	13.36
Oregon	33.39	31.16	13.36
New Madrid	33.39	31.16	13.36
Montgomery	33.39	31.16	13.36
Moniteau	33.39	31.16	13.36
Miller	33.39	31.16	13.36
Marion	33.39	31.16	13.36
Madison	33.39	31.16	13.36
Mcdonald	33.39	31.16	13.36
Linn	33.39	31.16	13.36
Lawrence	33.39	31.16	13.36
Knox	33.39	31.16	13.36
Iron	33.39	31.16	13.36
Howard	33.39	31.16	13.36

M O N T A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Billings, MT MSA	45.29	42.27	18.12	Yellowstone
Great Falls, MT MSA	40.10	37.43	16.04	Cascade

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M O N T A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Beaverhead	39.94	37.28	15.98
Big Horn	37.63	35.12	15.05
Wheatland	37.63	35.12	15.05
Treasure	37.63	35.12	15.05
Teton	37.14	34.66	14.86
Stillwater	37.63	35.12	15.05
Sheridan	37.14	34.66	14.86
Rosebud	37.63	35.12	15.05
Richland	37.63	35.12	15.05
Prairie	37.63	35.12	15.05
Powder River	37.63	35.12	15.05
Phillips	37.14	34.66	14.86
Park	39.94	37.28	15.98
Missoula	40.76	38.05	16.31
Meagher	39.94	37.28	15.98
Mccone	37.63	35.12	15.05
Liberty	37.14	34.66	14.86
Lake	40.76	38.05	16.31
Jefferson	39.94	37.28	15.98
Granite	39.94	37.28	15.98
Glacier	37.14	34.66	14.86
Gallatin	44.80	41.81	17.92
Fergus	37.63	35.12	15.05
Deer Lodge	39.94	37.28	15.98
Daniels	37.14	34.66	14.86
Chouteau	37.14	34.66	14.86
Carbon	37.63	35.12	15.05

NONMETROPOLITAN COUNTIES	A	B	C
Blaine	37.14	34.66	14.86
Wibaux	37.63	35.12	15.05
Valley	37.14	34.66	14.86
Toole	37.14	34.66	14.86
Sweet Grass	37.63	35.12	15.05
Silver Bow	39.94	37.28	15.98
Sanders	40.76	38.05	16.31
Roosevelt	37.14	34.66	14.86
Ravalli	40.76	38.05	16.31
Powell	39.94	37.28	15.98
Pondera	37.14	34.66	14.86
Petroleum	37.63	35.12	15.05
Musselshell	37.63	35.12	15.05
Mineral	40.76	38.05	16.31
Madison	39.94	37.28	15.98
Lincoln	40.76	38.05	16.31
Lewis and Clark	46.45	43.35	18.58
Judith Basin	37.63	35.12	15.05
Hill	37.14	34.66	14.86
Golden Valley	37.63	35.12	15.05
Garfield	37.63	35.12	15.05
Flathead	40.76	38.05	16.31
Fallon	37.63	35.12	15.05
Dawson	37.63	35.12	15.05
Custer	37.63	35.12	15.05
Carter	37.63	35.12	15.05
Broadwater	39.94	37.28	15.98

N E B R A S K A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Lincoln, NE MSA	36.73	34.27	14.69	Lancaster
Omaha, NE-IA MSA	37.21	34.73	14.88	Washington, Sarpy, Douglas, Cass
Sioux City, IA-NE MSA	36.58	34.14	14.63	Dakota

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	33.16	30.95	13.27	Arthur	33.16	30.95	13.27
Antelope	33.16	30.95	13.27	Box Butte	33.16	30.95	13.27
Boone	33.16	30.95	13.27	Blaine	33.16	30.95	13.27
Banner	33.16	30.95	13.27	Rock	33.16	30.95	13.27
Richardson	33.16	30.95	13.27	Red Willow	33.16	30.95	13.27
Polk	33.16	30.95	13.27	Platte	33.16	30.95	13.27
Pierce	33.16	30.95	13.27	Phelps	33.16	30.95	13.27
Perkins	33.16	30.95	13.27	Pawnee	33.16	30.95	13.27
Otoe	33.16	30.95	13.27	Nuckolls	33.16	30.95	13.27
Nemaha	33.16	30.95	13.27	Nance	33.16	30.95	13.27
Morrill	33.16	30.95	13.27	Merrick	33.16	30.95	13.27
Madison	33.16	30.95	13.27	Mcpherson	33.16	30.95	13.27
Loup	33.16	30.95	13.27	Logan	33.16	30.95	13.27
Lincoln	33.16	30.95	13.27	Knox	33.16	30.95	13.27
Kimball	33.16	30.95	13.27	Keya Paha	33.16	30.95	13.27
Keith	33.16	30.95	13.27	Kearney	33.16	30.95	13.27
Johnson	33.16	30.95	13.27	Jefferson	33.16	30.95	13.27
Howard	33.16	30.95	13.27	Hooker	33.16	30.95	13.27
Holt	33.16	30.95	13.27	Hitchcock	33.16	30.95	13.27
Hayes	33.16	30.95	13.27	Harlan	33.16	30.95	13.27
Hamilton	33.16	30.95	13.27	Hall	33.16	30.95	13.27
Greeley	33.16	30.95	13.27	Grant	33.16	30.95	13.27
Gosper	33.16	30.95	13.27	Garfield	33.16	30.95	13.27
Garden	33.16	30.95	13.27	Gage	33.16	30.95	13.27
Furnas	33.16	30.95	13.27	Frontier	33.16	30.95	13.27
Franklin	33.16	30.95	13.27	Fillmore	33.16	30.95	13.27
Dundy	33.16	30.95	13.27	Dodge	33.16	30.95	13.27
Dixon	33.16	30.95	13.27	Deuel	33.16	30.95	13.27
Dawson	33.16	30.95	13.27	Dawes	33.16	30.95	13.27
Custer	33.16	30.95	13.27	Cuming	33.16	30.95	13.27
Colfax	33.16	30.95	13.27	Clay	33.16	30.95	13.27
Cheyenne	33.16	30.95	13.27	Cherry	33.16	30.95	13.27
Chase	33.16	30.95	13.27	Cedar	33.16	30.95	13.27
Butler	33.16	30.95	13.27	Burt	33.16	30.95	13.27
Buffalo	33.16	30.95	13.27	Brown	33.16	30.95	13.27
Boyd	33.16	30.95	13.27	York	33.16	30.95	13.27
Wheeler	33.16	30.95	13.27	Webster	33.16	30.95	13.27
Wayne	33.16	30.95	13.27	Valley	33.16	30.95	13.27
Thurston	33.16	30.95	13.27	Thomas	33.16	30.95	13.27
Thayer	33.16	30.95	13.27	Stanton	33.16	30.95	13.27

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Sioux	33.16	30.95	13.27	Sherman	33.16	30.95	13.27
Sheridan	33.16	30.95	13.27	Seward	33.16	30.95	13.27
Scotts Bluff	33.16	30.95	13.27	Saunders	33.16	30.95	13.27
Saline	33.16	30.95	13.27				

N E V A D A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	55.08	51.41	22.03	Nye, Clark
Reno, NV MSA	47.71	44.53	19.09	Washoe

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Churchill	48.10	44.90	19.24	Eureka	48.10	44.90	19.24
Esmeralda	48.10	44.90	19.24	Elko	48.10	44.90	19.24
Douglas	49.79	46.47	19.91	White Pine	48.10	44.90	19.24
Storey	48.10	44.90	19.24	Pershing	48.10	44.90	19.24
Mineral	48.10	44.90	19.24	Lyon	48.10	44.90	19.24
Lincoln	48.10	44.90	19.24	Lander	48.10	44.90	19.24
Humboldt	48.10	44.90	19.24	Carson City	48.10	44.90	19.24

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Boston, MA-NH PMSA	62.74	58.55	25.10	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	50.41	47.05	20.16	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	52.66	49.14	21.06	Hillsborough county towns of Pelham town
Manchester, NH PMSA	50.48	47.11	20.19	Rockingham county towns of Auburn town, Candia town Londonderry town Merrimack county towns of Allenstown town, Hooksett town Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town
Nashua, NH PMSA	53.63	50.05	21.45	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	52.27	48.79	20.91	Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Somersworth city Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Carroll	44.48	41.51	17.79	
Belknap	44.25	41.30	17.70	
Hillsborough	57.00	53.20	22.80	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Grafton	45.68	42.63	18.27	
Coos	40.27	37.59	16.11	
Cheshire	52.50	49.00	21.00	
Sullivan	42.90	40.04	17.16	
Strafford	50.76	47.38	20.30	Middleton town, New Durham town, Strafford town
Rockingham	55.05	51.38	22.02	Deerfield town, Northwood town, Nottingham town
Merrimack	56.18	52.43	22.47	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town

NEW JERSEY

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	56.05	52.32	22.42	Cape May, Atlantic
Bergen-Passaic, NJ PMSA	67.88	63.36	27.15	Passaic, Bergen
Jersey City, NJ PMSA	56.57	52.80	22.63	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	67.88	63.36	27.15	Hunterdon, Somerset, Middlesex
Monmouth-Ocean, NJ PMSA	66.45	62.01	26.58	Ocean, Monmouth
Newark, NJ PMSA	66.28	61.85	26.51	Morris, Essex, Warren, Union, Sussex
Philadelphia, PA-NJ PMSA	52.12	48.65	20.85	Burlington, Salem, Gloucester, Camden
Trenton, NJ PMSA	65.12	60.78	26.05	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	53.88	50.29	21.55	Cumberland

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E W M E X I C O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albuquerque, NM MSA	44.84	41.86	17.94	Bernalillo, Valencia, Sandoval
Las Cruces, NM MSA	35.59	33.21	14.24	Dona Ana
Santa Fe, NM MSA	53.07	49.53	21.23	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Catron	34.16	31.88	13.66	Otero	34.56	32.25	13.82
Mora	34.16	31.88	13.66	Mckinley	44.13	41.19	17.65
Luna	34.16	31.88	13.66	Lincoln	34.56	32.25	13.82
Lea	38.15	35.61	15.26	Hidalgo	34.16	31.88	13.66
Harding	34.16	31.88	13.66	Guadalupe	34.16	31.88	13.66
Grant	34.16	31.88	13.66	Eddy	38.15	35.61	15.26
Debaca	34.16	31.88	13.66	Curry	34.16	31.88	13.66
Colfax	34.16	31.88	13.66	Cibola	34.16	31.88	13.66
Chaves	34.56	32.25	13.82	Union	34.16	31.88	13.66
Torrance	34.16	31.88	13.66	Taos	36.43	34.00	14.57
Socorro	34.56	32.25	13.82	Sierra	34.56	32.25	13.82
San Miguel	34.16	31.88	13.66	San Juan	44.13	41.19	17.65
Roosevelt	34.16	31.88	13.66	Rio Arriba	34.16	31.88	13.66
Quay	34.16	31.88	13.66				

N E W Y O R K

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	45.43	42.40	18.17	Montgomery, Albany, Schoharie, Schenectady, Saratoga Rensselaer
Binghamton, NY MSA	39.65	37.00	15.86	Tioga, Broome
Buffalo-Niagara Falls, NY PMSA	39.08	36.48	15.63	Niagara, Erie
Dutchess County, NY PMSA	62.59	58.42	25.04	Dutchess
Elmira, NY MSA	40.37	37.67	16.15	Chemung
Glens Falls, NY MSA	43.01	40.14	17.20	Washington, Warren
Jamestown, NY MSA	37.39	34.90	14.96	Chautauqua
Nassau-Suffolk, NY PMSA	65.08	60.75	26.03	Nassau, Suffolk
New York, NY PMSA	56.57	52.80	22.63	Bronx, Queens, Putnam, New York, Kings, Rockland Richmond
Westchester County, NY	65.08	60.75	26.03	Westchester
Newburgh, NY-PA PMSA	58.14	54.27	23.26	Orange
Rochester, NY MSA	47.83	44.64	19.13	Ontario, Monroe, Livingston, Genesee, Wayne, Orleans
Syracuse, NY MSA	41.81	39.03	16.72	Madison, Cayuga, Oswego, Onondaga
Utica-Rome, NY MSA	38.28	35.73	15.31	Oneida, Herkimer

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E W Y O R K continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
St. Lawrence	39.17	36.56	15.67	Otsego	38.76	36.18	15.51
Lewis	41.08	38.34	16.43	Jefferson	43.01	40.14	17.20
Hamilton	38.12	35.58	15.25	Greene	43.89	40.97	17.56
Fulton	35.47	33.10	14.19	Franklin	38.12	35.58	15.25
Essex	38.12	35.58	15.25	Delaware	38.76	36.18	15.51
Cortland	43.18	40.30	17.27	Columbia	40.95	38.22	16.38
Clinton	39.65	37.00	15.86	Chenango	41.49	38.72	16.59
Cattaraugus	35.31	32.96	14.12	Allegany	35.31	32.96	14.12
Yates	39.32	36.70	15.73	Wyoming	39.17	36.56	15.67
Ulster	51.16	47.76	20.47	Tompkins	44.69	41.71	17.87
Sullivan	46.35	43.26	18.54	Steuben	39.57	36.92	15.83
Seneca	42.13	39.32	16.85	Schuyler	39.57	36.92	15.83

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Asheville, NC MSA	34.38	32.09	13.75	Madison, Buncombe
Charlotte-Gastonia-Rock Hill, NC-SC MSA	37.66	35.15	15.07	Gaston, Cabarrus, Union, Rowan, Mecklenburg, Lincoln
Fayetteville, NC MSA	34.94	32.62	13.98	Cumberland
Goldsboro, NC MSA	34.38	32.09	13.75	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	35.58	33.21	14.23	Davidson, Alamance, Randolph, Guilford, Forsyth, Davie Yadkin, Stokes
Greenville, NC MSA	34.38	32.09	13.75	Pitt
Hickory-Morganton, NC MSA	36.22	33.81	14.49	Alexander, Catawba, Caldwell, Burke
Jacksonville, NC MSA	34.38	32.09	13.75	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	43.35	40.46	17.34	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	41.07	38.33	16.43	Chatham, Franklin, Durham, Wake, Orange, Johnston
Rocky Mount, NC MSA	34.38	32.09	13.75	Edgecombe, Nash
Wilmington, NC MSA	34.38	32.09	13.75	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alleghany	34.38	32.09	13.75	Beaufort	34.38	32.09	13.75
Avery	34.38	32.09	13.75	Ashe	34.38	32.09	13.75
Anson	34.38	32.09	13.75	Granville	34.38	32.09	13.75
Graham	34.38	32.09	13.75	Gates	34.38	32.09	13.75
Duplin	34.38	32.09	13.75	Dare	34.38	32.09	13.75
Craven	34.38	32.09	13.75	Columbus	34.38	32.09	13.75
Cleveland	34.38	32.09	13.75	Clay	34.38	32.09	13.75
Chowan	34.38	32.09	13.75	Cherokee	34.38	32.09	13.75
Caswell	34.38	32.09	13.75	Carteret	34.38	32.09	13.75
Camden	34.38	32.09	13.75	Bladen	34.38	32.09	13.75

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N O R T H C A R O L I N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Bertie	34.38	32.09	13.75
Sampson	34.38	32.09	13.75
Rockingham	34.38	32.09	13.75
Richmond	34.38	32.09	13.75
Person	34.38	32.09	13.75
Pender	34.38	32.09	13.75
Pamlico	34.38	32.09	13.75
Moore	34.38	32.09	13.75
Mitchell	34.38	32.09	13.75
Macon	34.38	32.09	13.75
Lenoir	34.38	32.09	13.75
Jones	34.38	32.09	13.75
Iredell	37.51	35.01	15.00
Hoke	34.38	32.09	13.75
Henderson	34.38	32.09	13.75
Harnett	34.38	32.09	13.75
Greene	34.38	32.09	13.75
Wilson	34.38	32.09	13.75
Watauga	41.77	38.99	16.71
Warren	34.38	32.09	13.75
Tyrrell	34.38	32.09	13.75
Swain	34.38	32.09	13.75
Stanly	34.38	32.09	13.75

NONMETROPOLITAN COUNTIES	A	B	C
Scotland	34.38	32.09	13.75
Rutherford	34.38	32.09	13.75
Robeson	34.38	32.09	13.75
Polk	34.38	32.09	13.75
Perquimans	34.38	32.09	13.75
Pasquotank	34.38	32.09	13.75
Northampton	34.38	32.09	13.75
Montgomery	34.38	32.09	13.75
Martin	34.38	32.09	13.75
Mcdowell	34.38	32.09	13.75
Lee	34.70	32.38	13.88
Jackson	34.38	32.09	13.75
Hyde	34.38	32.09	13.75
Hertford	34.38	32.09	13.75
Haywood	34.38	32.09	13.75
Halifax	34.38	32.09	13.75
Yancey	34.38	32.09	13.75
Wilkes	35.02	32.68	14.01
Washington	34.38	32.09	13.75
Vance	34.38	32.09	13.75
Transylvania	34.38	32.09	13.75
Surry	34.38	32.09	13.75

N O R T H D A K O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bismarck, ND MSA	37.04	34.57	14.82	Morton, Burleigh
Fargo-Moorhead, ND-MN MSA	36.97	34.50	14.79	Cass
Grand Forks, ND-MN MSA	35.33	32.98	14.13	Grand Forks

NONMETROPOLITAN COUNTIES	A	B	C
Grant	33.10	30.89	13.24
Foster	33.10	30.89	13.24
Eddy	33.10	30.89	13.24
Divide	33.10	30.89	13.24
Cavalier	33.10	30.89	13.24
Bowman	33.10	30.89	13.24
Billings	33.10	30.89	13.24
Barnes	33.10	30.89	13.24

NONMETROPOLITAN COUNTIES	A	B	C
Golden Valley	33.10	30.89	13.24
Emmons	33.10	30.89	13.24
Dunn	33.10	30.89	13.24
Dickey	33.10	30.89	13.24
Burke	33.10	30.89	13.24
Bottineau	33.10	30.89	13.24
Benson	33.10	30.89	13.24
Adams	33.10	30.89	13.24

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Wells	33.10	30.89	13.24
Walsh	33.10	30.89	13.24
Towner	33.10	30.89	13.24
Steele	33.10	30.89	13.24
Slope	33.10	30.89	13.24
Sheridan	33.10	30.89	13.24
Rolette	33.10	30.89	13.24
Renville	33.10	30.89	13.24
Ramsey	33.10	30.89	13.24
Pembina	33.10	30.89	13.24
Nelson	33.10	30.89	13.24
Mercer	33.10	30.89	13.24
Mckenzie	33.10	30.89	13.24
Mchenry	33.10	30.89	13.24
Lamoure	33.10	30.89	13.24
Hettinger	33.10	30.89	13.24
Williams	33.10	30.89	13.24

NONMETROPOLITAN COUNTIES	A	B	C
Ward	33.10	30.89	13.24
Traill	33.10	30.89	13.24
Stutsman	33.10	30.89	13.24
Stark	33.10	30.89	13.24
Sioux	33.10	30.89	13.24
Sargent	33.10	30.89	13.24
Richland	33.10	30.89	13.24
Ransom	33.10	30.89	13.24
Pierce	33.10	30.89	13.24
Oliver	33.10	30.89	13.24
Mountrail	33.10	30.89	13.24
Mclean	33.10	30.89	13.24
Mcintosh	33.10	30.89	13.24
Logan	33.10	30.89	13.24
Kidder	33.10	30.89	13.24
Griggs	33.10	30.89	13.24

O H I O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Akron, OH PMSA	39.72	37.07	15.89	Portage, Summit
Brown County, OH	34.22	31.94	13.69	Brown
Canton-Massillon, OH MSA	34.22	31.94	13.69	Stark, Carroll
Cincinnati, OH-KY-IN	39.10	36.49	15.64	Hamilton, Clermont, Warren
Cleveland-Lorain-Elyria, OH PMSA	40.37	37.68	16.15	Ashtabula, Geauga, Cuyahoga, Medina, Lorain, Lake
Columbus, OH MSA	38.30	35.74	15.32	Delaware, Pickaway, Madison, Licking, Franklin, Fairfield
Dayton-Springfield, OH MSA	35.67	33.29	14.27	Clark, Miami, Greene, Montgomery
Hamilton-Middletown, OH PMSA	40.63	37.92	16.25	Butler
Huntington-Ashland, WV-KY-OH MSA	34.88	32.55	13.95	Lawrence
Lima, OH MSA	34.78	32.46	13.91	Allen, Auglaize
Mansfield, OH MSA	34.22	31.94	13.69	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	32.46	30.29	12.98	Washington
Steubenville-Weirton, OH-WV MSA	35.02	32.68	14.01	Jefferson
Toledo, OH MSA	40.13	37.46	16.05	Fulton, Wood, Lucas
Wheeling, WV-OH MSA	34.62	32.31	13.85	Belmont
Youngstown-Warren, OH MSA	34.78	32.46	13.91	Columbiana, Trumbull, Mahoning

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

O H I O continued

NONMETROPOLITAN COUNTIES	A	B	C
Defiance	35.18	32.84	14.07
Coshocton	34.22	31.94	13.69
Champaign	34.22	31.94	13.69
Ashland	34.22	31.94	13.69
Marion	34.22	31.94	13.69
Knox	34.22	31.94	13.69
Huron	34.22	31.94	13.69
Hocking	34.22	31.94	13.69
Henry	35.18	32.84	14.07
Hardin	34.22	31.94	13.69
Guernsey	34.22	31.94	13.69
Fayette	34.22	31.94	13.69
Wyandot	34.22	31.94	13.69
Wayne	34.38	32.09	13.75
Van Wert	34.22	31.94	13.69
Tuscarawas	34.22	31.94	13.69
Seneca	34.22	31.94	13.69
Sandusky	35.66	33.28	14.26
Putnam	34.22	31.94	13.69
Pike	34.22	31.94	13.69
Paulding	35.18	32.84	14.07
Noble	34.22	31.94	13.69
Morrow	34.22	31.94	13.69
Monroe	34.22	31.94	13.69
Meigs	34.22	31.94	13.69

NONMETROPOLITAN COUNTIES	A	B	C
Darke	34.22	31.94	13.69
Clinton	34.22	31.94	13.69
Athens	34.22	31.94	13.69
Adams	34.22	31.94	13.69
Logan	34.22	31.94	13.69
Jackson	34.22	31.94	13.69
Holmes	34.22	31.94	13.69
Highland	34.22	31.94	13.69
Harrison	34.22	31.94	13.69
Hancock	34.30	32.01	13.72
Gallia	34.22	31.94	13.69
Erie	35.66	33.28	14.26
Williams	35.18	32.84	14.07
Vinton	34.22	31.94	13.69
Union	38.13	35.60	15.25
Shelby	35.00	32.67	14.00
Scioto	34.22	31.94	13.69
Ross	34.22	31.94	13.69
Preble	34.30	32.01	13.72
Perry	34.22	31.94	13.69
Ottawa	35.98	33.57	14.39
Muskingum	34.22	31.94	13.69
Morgan	34.22	31.94	13.69
Mercer	34.22	31.94	13.69

O K L A H O M A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Enid, OK MSA	38.00	35.46	15.20	Garfield
Fort Smith, AR-OK MSA	33.03	30.83	13.21	Sequoyah
Lawton, OK MSA	34.38	32.09	13.75	Comanche
Oklahoma City, OK MSA	35.34	32.99	14.14	Mcclain, Logan, Cleveland, Canadian, Pottawatomie Oklahoma
Tulsa, OK MSA	34.38	32.09	13.75	Osage, Creek, Wagoner, Tulsa, Rogers

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

O K L A H O M A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adair	34.38	32.09	13.75
Caddo	34.38	32.09	13.75
Blaine	34.38	32.09	13.75
Beaver	34.38	32.09	13.75
Alfalfa	34.38	32.09	13.75
Harmon	34.38	32.09	13.75
Grant	34.38	32.09	13.75
Garvin	34.38	32.09	13.75
Dewey	34.38	32.09	13.75
Custer	34.38	32.09	13.75
Cotton	34.38	32.09	13.75
Cimarron	34.38	32.09	13.75
Cherokee	34.38	32.09	13.75
Woods	34.38	32.09	13.75
Washington	34.38	32.09	13.75
Texas	34.38	32.09	13.75
Seminole	34.38	32.09	13.75
Pushmataha	34.38	32.09	13.75
Pittsburg	34.38	32.09	13.75
Pawnee	34.38	32.09	13.75
Okmulgee	34.38	32.09	13.75
Nowata	34.38	32.09	13.75
Muskogee	34.38	32.09	13.75
Mayes	34.38	32.09	13.75
Major	34.38	32.09	13.75
Mccurtain	34.38	32.09	13.75
Lincoln	34.38	32.09	13.75
Latimer	34.38	32.09	13.75
Kingfisher	34.38	32.09	13.75
Johnston	34.38	32.09	13.75
Jackson	34.38	32.09	13.75
Haskell	34.38	32.09	13.75

NONMETROPOLITAN COUNTIES	A	B	C
Carter	34.38	32.09	13.75
Bryan	34.38	32.09	13.75
Beckham	34.38	32.09	13.75
Atoka	34.38	32.09	13.75
Harper	34.38	32.09	13.75
Greer	34.38	32.09	13.75
Grady	34.38	32.09	13.75
Ellis	34.38	32.09	13.75
Delaware	34.38	32.09	13.75
Craig	34.38	32.09	13.75
Coal	34.38	32.09	13.75
Choctaw	34.38	32.09	13.75
Woodward	34.38	32.09	13.75
Washita	34.38	32.09	13.75
Tillman	34.38	32.09	13.75
Stephens	34.38	32.09	13.75
Roger Mills	34.38	32.09	13.75
Pontotoc	34.38	32.09	13.75
Payne	34.38	32.09	13.75
Ottawa	34.38	32.09	13.75
Okfuskee	34.38	32.09	13.75
Noble	34.38	32.09	13.75
Murray	34.38	32.09	13.75
Marshall	34.38	32.09	13.75
Mcintosh	34.38	32.09	13.75
Love	34.38	32.09	13.75
Le Flore	34.38	32.09	13.75
Kiowa	34.38	32.09	13.75
Kay	34.38	32.09	13.75
Jefferson	34.38	32.09	13.75
Hughes	34.38	32.09	13.75

O R E G O N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	48.93	45.66	19.57	Lane
Medford-Ashland, OR MSA	48.61	45.36	19.44	Jackson
Portland-Vancouver, OR-WA PMSA	42.57	39.73	17.03	Yamhill, Washington, Multnomah, Columbia, Clackamas

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

O R E G O N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Salem, OR PMSA	45.71	42.67	18.29	Marion, Polk

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Baker	44.42	41.46	17.77	Lincoln	43.21	40.33	17.28
Lake	42.41	39.58	16.96	Klamath	42.41	39.58	16.96
Josephine	46.43	43.34	18.57	Jefferson	47.00	43.86	18.80
Hood River	47.00	43.86	18.80	Harney	42.41	39.58	16.96
Grant	44.42	41.46	17.77	Gilliam	44.42	41.46	17.77
Douglas	46.43	43.34	18.57	Deschutes	47.00	43.86	18.80
Curry	46.43	43.34	18.57	Crook	47.00	43.86	18.80
Coos	46.43	43.34	18.57	Clatsop	43.21	40.33	17.28
Benton	45.31	42.29	18.12	Wheeler	44.42	41.46	17.77
Wasco	47.00	43.86	18.80	Wallowa	44.42	41.46	17.77
Union	44.42	41.46	17.77	Umatilla	44.42	41.46	17.77
Tillamook	43.21	40.33	17.28	Sherman	47.00	43.86	18.80
Morrow	44.42	41.46	17.77	Malheur	42.41	39.58	16.96
Linn	45.31	42.29	18.12				

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	44.39	41.43	17.76	Lehigh, Carbon, Northampton
Altoona, PA MSA	38.44	35.88	15.38	Blair
Erie, PA MSA	44.16	41.21	17.66	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	45.43	42.40	18.17	Cumberland, Perry, Lebanon, Dauphin
Johnstown, PA MSA	37.33	34.84	14.93	Cambria, Somerset
Lancaster, PA MSA	46.14	43.07	18.46	Lancaster
Newburgh, NY-PA PMSA	53.24	49.69	21.30	Pike
Philadelphia, PA-NJ PMSA	52.12	48.65	20.85	Bucks, Philadelphia, Montgomery, Delaware, Chester
Pittsburgh, PA PMSA	36.38	33.95	14.55	Fayette, Butler, Beaver, Allegheny, Westmoreland Washington
Reading, PA MSA	43.29	40.41	17.31	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	35.27	32.92	14.11	Columbia, Wyoming, Luzerne, Lackawanna
Sharon, PA MSA	40.98	38.25	16.39	Mercer
State College, PA MSA	49.49	46.18	19.79	Centre
Williamsport, PA MSA	37.33	34.84	14.93	Lycoming
York, PA MSA	41.70	38.92	16.68	York

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams.....	41.70	38.92	16.68	Cameron.....	35.98	33.58	14.39
Bradford.....	35.50	33.13	14.20	Bedford.....	34.55	32.25	13.82
Armstrong.....	42.73	39.88	17.09	Mifflin.....	36.38	33.95	14.55
Mc Kean.....	35.98	33.58	14.39	Lawrence.....	36.46	34.03	14.58
Juniata.....	35.59	33.21	14.23	Jefferson.....	36.78	34.32	14.71
Indiana.....	42.73	39.88	17.09	Huntingdon.....	34.55	32.25	13.82
Greene.....	36.78	34.32	14.71	Fulton.....	34.55	32.25	13.82
Franklin.....	39.32	36.69	15.73	Forest.....	35.19	32.84	14.08
Elk.....	35.98	33.58	14.39	Crawford.....	36.46	34.03	14.58
Clinton.....	35.66	33.29	14.27	Clearfield.....	36.78	34.32	14.71
Clarion.....	35.19	32.84	14.08	Wayne.....	43.53	40.62	17.41
Warren.....	36.46	34.03	14.58	Venango.....	35.19	32.84	14.08
Union.....	41.62	38.84	16.65	Tioga.....	35.50	33.13	14.20
Susquehanna.....	35.50	33.13	14.20	Sullivan.....	35.50	33.13	14.20
Snyder.....	35.59	33.21	14.23	Schuylkill.....	39.71	37.06	15.88
Potter.....	35.98	33.58	14.39	Northumberland.....	36.78	34.32	14.71
Montour.....	36.78	34.32	14.71	Monroe.....	46.94	43.81	18.78

R H O D E I S L A N D

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA.....	54.86	51.20	21.94	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA.....	51.92	48.45	20.77	Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Bristol county towns of Barrington town, Bristol town Warren town Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Newport county towns of Jamestown town Little Compton tow, Tiverton town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Newport	61.14	57.06	24.45	Middletown town, Newport city, Portsmouth town
Washington	46.74	43.62	18.70	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	34.42	32.14	13.77	Aiken, Edgefield
Charleston-North Charleston, SC MSA	37.26	34.78	14.90	Berkeley, Dorchester, Charleston
Charlotte-Gastonia-Rock Hill, NC-SC MSA	37.66	35.15	15.07	York
Columbia, SC MSA	37.66	35.15	15.06	Lexington, Richland
Florence, SC MSA	33.36	31.13	13.34	Florence
Greenville-Spartanburg-Anderson, SC MSA	33.36	31.13	13.34	Cherokee, Anderson, Spartanburg, Pickens, Greenville
Myrtle Beach, SC MSA	33.36	31.13	13.34	Horry
Sumter, SC MSA	33.36	31.13	13.34	Sumter

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Abbeville	33.36	31.13	13.34	Bamberg	33.36	31.13	13.34
Allendale	33.36	31.13	13.34	Darlington	33.36	31.13	13.34
Colleton	33.36	31.13	13.34	Clarendon	33.36	31.13	13.34
Chesterfield	33.36	31.13	13.34	Chester	33.36	31.13	13.34
Calhoun	33.36	31.13	13.34	Beaufort	34.04	31.76	13.62
Barnwell	33.36	31.13	13.34	Orangeburg	33.36	31.13	13.34
Oconee	33.36	31.13	13.34	Newberry	33.36	31.13	13.34
Marlboro	33.36	31.13	13.34	Marion	33.36	31.13	13.34
Mccormick	33.36	31.13	13.34	Lee	33.36	31.13	13.34
Laurens	33.36	31.13	13.34	Lancaster	33.36	31.13	13.34
Kershaw	33.36	31.13	13.34	Jasper	33.36	31.13	13.34
Hampton	33.36	31.13	13.34	Greenwood	33.36	31.13	13.34
Georgetown	33.36	31.13	13.34	Fairfield	33.36	31.13	13.34
Dillon	33.36	31.13	13.34	Williamsburg	33.36	31.13	13.34
Union	33.36	31.13	13.34	Saluda	33.36	31.13	13.34

S O U T H D A K O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Rapid City, SD MSA	35.98	33.58	14.39	Pennington
Sioux Falls, SD MSA	38.42	35.86	15.37	Minnehaha, Lincoln

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Beadle	34.77	32.45	13.91
Campbell	34.77	32.45	13.91
Buffalo	34.77	32.45	13.91
Brown	34.77	32.45	13.91
Bon Homme	34.77	32.45	13.91
Gregory	34.77	32.45	13.91
Faulk	34.77	32.45	13.91
Edmunds	34.77	32.45	13.91
Dewey	34.77	32.45	13.91
Day	34.77	32.45	13.91
Custer	34.77	32.45	13.91
Codington	34.77	32.45	13.91
Clark	34.77	32.45	13.91
Tripp	34.77	32.45	13.91
Sully	34.77	32.45	13.91
Spink	34.77	32.45	13.91
Sanborn	34.77	32.45	13.91
Potter	34.77	32.45	13.91
Moody	34.77	32.45	13.91
Mellette	34.77	32.45	13.91
Marshall	34.77	32.45	13.91
Mccook	34.77	32.45	13.91
Lawrence	34.77	32.45	13.91
Kingsbury	34.77	32.45	13.91
Jerauld	34.77	32.45	13.91
Hyde	34.77	32.45	13.91
Hughes	37.77	35.25	15.11
Hanson	34.77	32.45	13.91
Hamlin	34.77	32.45	13.91
Ziebach	34.77	32.45	13.91
Walworth	34.77	32.45	13.91
Turner	34.77	32.45	13.91

NONMETROPOLITAN COUNTIES	A	B	C
Aurora	34.77	32.45	13.91
Butte	34.77	32.45	13.91
Brule	34.77	32.45	13.91
Brookings	34.77	32.45	13.91
Bennett	34.77	32.45	13.91
Grant	34.77	32.45	13.91
Fall River	34.77	32.45	13.91
Douglas	34.77	32.45	13.91
Deuel	34.77	32.45	13.91
Davison	34.77	32.45	13.91
Corson	34.77	32.45	13.91
Clay	34.77	32.45	13.91
Charles Mix	34.77	32.45	13.91
Todd	34.77	32.45	13.91
Stanley	37.77	35.25	15.11
Shannon	34.77	32.45	13.91
Roberts	34.77	32.45	13.91
Perkins	34.77	32.45	13.91
Miner	34.77	32.45	13.91
Meade	34.77	32.45	13.91
Mcpherson	34.77	32.45	13.91
Lyman	34.77	32.45	13.91
Lake	34.77	32.45	13.91
Jones	34.77	32.45	13.91
Jackson	34.77	32.45	13.91
Hutchinson	34.77	32.45	13.91
Harding	34.77	32.45	13.91
Hand	34.77	32.45	13.91
Haakon	34.77	32.45	13.91
Yankton	34.77	32.45	13.91
Union	34.77	32.45	13.91

T E N N E S S E E

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	37.74	35.22	15.10	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	38.40	35.84	15.36	Montgomery
Jackson, TN MSA	35.12	32.78	14.05	Madison

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E N N E S S E E continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA.....	35.12	32.78	14.05	Carter, Sullivan, Hawkins, Washington, Unicoi
Knoxville, TN MSA.....	35.36	33.00	14.14	Blount, Anderson, Union, Sevier, Loudon, Knox
Memphis, TN-AR-MS MSA.....	37.90	35.38	15.16	Tipton, Shelby, Fayette
Nashville, TN MSA.....	42.01	39.20	16.80	Cheatham, Wilson, Williamson, Sumner, Rutherford Robertson, Dickson, Davidson

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Bedford.....	35.12	32.78	14.05	Houston.....	35.12	32.78	14.05
Hickman.....	35.12	32.78	14.05	Henry.....	35.12	32.78	14.05
Henderson.....	35.12	32.78	14.05	Haywood.....	35.12	32.78	14.05
Hardin.....	35.12	32.78	14.05	Hardeman.....	35.12	32.78	14.05
Hancock.....	35.12	32.78	14.05	Hamblen.....	35.12	32.78	14.05
Grundy.....	35.12	32.78	14.05	Greene.....	35.12	32.78	14.05
Grainger.....	35.12	32.78	14.05	Giles.....	35.12	32.78	14.05
Gibson.....	35.12	32.78	14.05	Franklin.....	35.12	32.78	14.05
Fentress.....	35.12	32.78	14.05	Dyer.....	35.12	32.78	14.05
Dekalb.....	35.12	32.78	14.05	Decatur.....	35.12	32.78	14.05
Cumberland.....	35.12	32.78	14.05	Crockett.....	35.12	32.78	14.05
Coffee.....	35.12	32.78	14.05	Cocke.....	35.12	32.78	14.05
Clay.....	35.12	32.78	14.05	Claiborne.....	35.12	32.78	14.05
Chester.....	35.12	32.78	14.05	Carroll.....	35.12	32.78	14.05
Cannon.....	35.12	32.78	14.05	Campbell.....	35.12	32.78	14.05
Bradley.....	35.12	32.78	14.05	Bledsoe.....	35.12	32.78	14.05
Benton.....	35.12	32.78	14.05	White.....	35.12	32.78	14.05
Weakley.....	35.12	32.78	14.05	Wayne.....	35.12	32.78	14.05
Warren.....	35.12	32.78	14.05	Van Buren.....	35.12	32.78	14.05
Trousdale.....	35.12	32.78	14.05	Stewart.....	35.12	32.78	14.05
Smith.....	35.12	32.78	14.05	Sequatchie.....	37.74	35.22	15.10
Scott.....	35.12	32.78	14.05	Roane.....	35.12	32.78	14.05
Rhea.....	35.12	32.78	14.05	Putnam.....	35.12	32.78	14.05
Polk.....	35.12	32.78	14.05	Pickett.....	35.12	32.78	14.05
Perry.....	35.12	32.78	14.05	Overton.....	35.12	32.78	14.05
Obion.....	35.12	32.78	14.05	Morgan.....	35.12	32.78	14.05
Moore.....	35.12	32.78	14.05	Monroe.....	35.12	32.78	14.05
Meigs.....	35.12	32.78	14.05	Maury.....	35.12	32.78	14.05
Marshall.....	35.12	32.78	14.05	Macon.....	35.12	32.78	14.05
Mcnairy.....	35.12	32.78	14.05	Mcminn.....	35.12	32.78	14.05
Lincoln.....	35.12	32.78	14.05	Lewis.....	35.12	32.78	14.05
Lawrence.....	35.12	32.78	14.05	Lauderdale.....	35.12	32.78	14.05
Lake.....	35.12	32.78	14.05	Johnson.....	35.12	32.78	14.05

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	A	B	C
Jefferson	35.12	32.78	14.05
Humphreys	35.12	32.78	14.05
Jackson	35.12	32.78	14.05

T E X A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Abilene, TX MSA	33.32	31.10	13.33	Taylor
Amarillo, TX MSA	33.32	31.10	13.33	Potter, Randall
Austin-San Marcos, TX MSA	43.35	40.46	17.34	Bastrop, Williamson, Travis, Hays, Caldwell
Beaumont-Port Arthur, TX MSA	38.07	35.53	15.23	Orange, Jefferson, Hardin
Brazoria, TX PMSA	42.47	39.63	16.99	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	33.79	31.54	13.52	Cameron
Bryan-College Station, TX MSA	44.53	41.56	17.81	Brazos
Corpus Christi, TX MSA	38.85	36.26	15.54	San Patricio, Nueces
Dallas, TX	44.45	41.49	17.78	Ellis, Denton, Dallas, Collin, Rockwall, Kaufman, Hunt
El Paso, TX MSA	36.83	34.37	14.73	El Paso
Fort Worth-Arlington, TX PMSA	41.41	38.65	16.56	Tarrant, Parker, Johnson, Hood
Galveston-Texas City, TX PMSA	38.19	35.65	15.28	Galveston
Henderson County, TX	33.32	31.10	13.33	Henderson
Houston, TX PMSA	39.32	36.70	15.73	Fort Bend, Chambers, Waller, Montgomery, Liberty, Harris
Killeen-Temple, TX MSA	33.32	31.10	13.33	Coryell, Bell
Laredo, TX MSA	33.32	31.10	13.33	Webb
Longview-Marshall, TX MSA	37.37	34.87	14.95	Gregg, Upshur, Harrison
Lubbock, TX MSA	33.32	31.10	13.33	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	33.40	31.17	13.36	Hidalgo
Odessa-Midland, TX MSA	42.82	39.96	17.13	Midland, Ector
San Angelo, TX MSA	33.32	31.10	13.33	Tom Green
San Antonio, TX MSA	38.11	35.57	15.24	Bexar, Wilson, Guadalupe, Comal
Sherman-Denison, TX MSA	33.32	31.10	13.33	Grayson
Texarkana, TX-Texarkana, AR MSA	33.32	31.10	13.33	Bowie
Tyler, TX MSA	37.99	35.46	15.20	Smith
Victoria, TX MSA	46.17	43.08	18.47	Victoria
Waco, TX MSA	33.32	31.10	13.33	Mclennan
Wichita Falls, TX MSA	34.10	31.82	13.64	Wichita, Archer

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Andrews	33.32	31.10	13.33	Anderson	33.32	31.10	13.33
Colorado	33.40	31.17	13.36	Collingsworth	33.32	31.10	13.33
Coleman	33.32	31.10	13.33	Coke	33.32	31.10	13.33
Cochran	33.32	31.10	13.33	Clay	33.32	31.10	13.33
Childress	33.32	31.10	13.33	Cherokee	33.32	31.10	13.33
Castro	33.32	31.10	13.33	Cass	33.32	31.10	13.33
Carson	33.32	31.10	13.33	Camp	33.32	31.10	13.33
Callahan	33.32	31.10	13.33	Calhoun	33.32	31.10	13.33
Burnet	33.32	31.10	13.33	Burleson	33.32	31.10	13.33
Brown	33.32	31.10	13.33	Brooks	33.32	31.10	13.33
Briscoe	33.32	31.10	13.33	Brewster	33.32	31.10	13.33
Bosque	33.32	31.10	13.33	Borden	33.32	31.10	13.33
Blanco	33.32	31.10	13.33	Bee	33.32	31.10	13.33
Baylor	33.32	31.10	13.33	Bandera	33.32	31.10	13.33
Bailey	33.32	31.10	13.33	Austin	33.40	31.17	13.36
Atascosa	33.32	31.10	13.33	Armstrong	33.32	31.10	13.33
Aransas	33.32	31.10	13.33	Angelina	33.32	31.10	13.33
Zavala	33.32	31.10	13.33	Zapata	33.32	31.10	13.33
Young	33.32	31.10	13.33	Yoakum	33.32	31.10	13.33
Wood	33.32	31.10	13.33	Wise	33.40	31.17	13.36
Winkler	33.32	31.10	13.33	Willacy	33.32	31.10	13.33
Wilbarger	33.32	31.10	13.33	Wheeler	33.32	31.10	13.33
Wharton	33.40	31.17	13.36	Washington	33.32	31.10	13.33
Ward	33.32	31.10	13.33	Walker	35.45	33.09	14.18
Van Zandt	33.32	31.10	13.33	Val Verde	33.32	31.10	13.33
Uvalde	33.32	31.10	13.33	Upton	33.32	31.10	13.33
Tyler	33.32	31.10	13.33	Trinity	33.32	31.10	13.33
Titus	33.32	31.10	13.33	Throckmorton	33.32	31.10	13.33
Terry	33.32	31.10	13.33	Terrell	33.32	31.10	13.33
Swisher	33.32	31.10	13.33	Sutton	33.32	31.10	13.33
Stonewall	33.32	31.10	13.33	Sterling	33.32	31.10	13.33
Stephens	33.32	31.10	13.33	Starr	33.32	31.10	13.33
Somervell	33.32	31.10	13.33	Sherman	33.32	31.10	13.33
Shelby	33.32	31.10	13.33	Shackelford	33.32	31.10	13.33
Scurry	33.32	31.10	13.33	Schleicher	33.32	31.10	13.33
San Saba	33.32	31.10	13.33	San Jacinto	33.32	31.10	13.33
San Augustine	33.32	31.10	13.33	Sabine	33.32	31.10	13.33
Rusk	33.32	31.10	13.33	Runnels	33.32	31.10	13.33
Robertson	33.32	31.10	13.33	Roberts	33.32	31.10	13.33
Refugio	33.32	31.10	13.33	Reeves	33.32	31.10	13.33

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Red River	33.32	31.10	13.33	Real	33.32	31.10	13.33
Reagan	33.32	31.10	13.33	Rains	33.32	31.10	13.33
Presidio	33.32	31.10	13.33	Polk	33.32	31.10	13.33
Pecos	33.32	31.10	13.33	Parmer	33.32	31.10	13.33
Panola	33.32	31.10	13.33	Palo Pinto	33.32	31.10	13.33
Oldham	33.32	31.10	13.33	Ochiltree	33.32	31.10	13.33
Nolan	33.32	31.10	13.33	Newton	33.32	31.10	13.33
Navarro	33.32	31.10	13.33	Nacogdoches	33.86	31.61	13.55
Motley	33.32	31.10	13.33	Morris	33.32	31.10	13.33
Moore	33.32	31.10	13.33	Montague	33.32	31.10	13.33
Mitchell	33.32	31.10	13.33	Mills	33.32	31.10	13.33
Milam	33.32	31.10	13.33	Menard	33.32	31.10	13.33
Medina	33.32	31.10	13.33	Maverick	33.32	31.10	13.33
Matagorda	33.40	31.17	13.36	Mason	33.32	31.10	13.33
Martin	33.32	31.10	13.33	Marion	33.32	31.10	13.33
Madison	33.32	31.10	13.33	Mcmullen	33.32	31.10	13.33
Mcculloch	33.32	31.10	13.33	Lynn	33.32	31.10	13.33
Loving	33.32	31.10	13.33	Llano	33.32	31.10	13.33
Live Oak	33.32	31.10	13.33	Lipscomb	33.32	31.10	13.33
Limestone	33.32	31.10	13.33	Leon	33.32	31.10	13.33
Lee	33.32	31.10	13.33	Lavaca	33.32	31.10	13.33
La Salle	33.32	31.10	13.33	Lampasas	33.32	31.10	13.33
Lamb	33.32	31.10	13.33	Lamar	33.32	31.10	13.33
Knox	33.32	31.10	13.33	Kleberg	33.32	31.10	13.33
Kinney	33.32	31.10	13.33	King	33.32	31.10	13.33
Kimble	33.32	31.10	13.33	Kerr	33.32	31.10	13.33
Kent	33.32	31.10	13.33	Kenedy	33.32	31.10	13.33
Kendall	33.32	31.10	13.33	Karnes	33.32	31.10	13.33
Jones	33.32	31.10	13.33	Jim Wells	33.32	31.10	13.33
Jim Hogg	33.32	31.10	13.33	Jeff Davis	33.32	31.10	13.33
Jasper	33.32	31.10	13.33	Jackson	33.32	31.10	13.33
Jack	33.32	31.10	13.33	Irion	33.32	31.10	13.33
Hutchinson	33.32	31.10	13.33	Hudspeth	33.32	31.10	13.33
Howard	33.32	31.10	13.33	Houston	33.32	31.10	13.33
Hopkins	33.32	31.10	13.33	Hockley	33.32	31.10	13.33
Hill	33.32	31.10	13.33	Hemphill	33.32	31.10	13.33
Haskell	33.32	31.10	13.33	Hartley	33.32	31.10	13.33
Hardeman	33.32	31.10	13.33	Hansford	33.32	31.10	13.33
Hamilton	33.32	31.10	13.33	Hall	33.32	31.10	13.33
Hale	33.32	31.10	13.33	Grimes	33.32	31.10	13.33

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Gray	33.32	31.10	13.33	Gonzales	33.32	31.10	13.33
Goliad	33.32	31.10	13.33	Glasscock	33.32	31.10	13.33
Gillespie	33.32	31.10	13.33	Garza	33.32	31.10	13.33
Gaines	33.32	31.10	13.33	Frio	33.32	31.10	13.33
Freestone	33.32	31.10	13.33	Franklin	33.32	31.10	13.33
Foard	33.32	31.10	13.33	Floyd	33.32	31.10	13.33
Fisher	33.32	31.10	13.33	Fayette	33.32	31.10	13.33
Fannin	33.32	31.10	13.33	Falls	33.32	31.10	13.33
Erath	33.32	31.10	13.33	Edwards	33.32	31.10	13.33
Eastland	33.32	31.10	13.33	Duval	33.32	31.10	13.33
Donley	33.32	31.10	13.33	Dimmit	33.32	31.10	13.33
Dickens	33.32	31.10	13.33	Dewitt	33.32	31.10	13.33
Delta	33.32	31.10	13.33	Deaf Smith	33.32	31.10	13.33
Dawson	33.32	31.10	13.33	Dallam	33.32	31.10	13.33
Culberson	33.32	31.10	13.33	Crosby	33.32	31.10	13.33
Crockett	33.32	31.10	13.33	Crane	33.32	31.10	13.33
Cottle	33.32	31.10	13.33	Cooke	33.32	31.10	13.33
Concho	33.32	31.10	13.33	Comanche	33.32	31.10	13.33

U T A H

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Kane County, UT	40.05	37.37	16.02	Kane
Provo-Orem, UT MSA	36.34	33.92	14.54	Utah
Salt Lake City-Ogden, UT MSA	34.46	32.16	13.79	Weber, Salt Lake, Davis

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Beaver	40.05	37.37	16.02	Grand	45.55	42.51	18.22
Garfield	40.05	37.37	16.02	Emery	45.55	42.51	18.22
Duchesne	45.55	42.51	18.22	Daggett	45.55	42.51	18.22
Carbon	45.55	42.51	18.22	Cache	36.82	34.37	14.73
Box Elder	36.82	34.37	14.73	Wayne	40.05	37.37	16.02
Washington	43.35	40.46	17.34	Wasatch	45.55	42.51	18.22
Uintah	45.55	42.51	18.22	Tooele	36.82	34.37	14.73
Summit	47.15	44.00	18.86	Sevier	40.05	37.37	16.02
Sanpete	40.05	37.37	16.02	San Juan	45.55	42.51	18.22
Rich	36.82	34.37	14.73	Piute	40.05	37.37	16.02
Morgan	45.55	42.51	18.22	Millard	40.05	37.37	16.02
Juab	40.05	37.37	16.02	Iron	40.05	37.37	16.02

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V E R M O N T

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Burlington, VT MSA	54.64	50.99	21.85	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Grand Isle county towns of Grand Isle town South Hero town Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Bennington	45.05	42.05	18.02	
Addison	43.53	40.63	17.41	
Franklin	41.46	38.69	16.58	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Essex	36.99	34.52	14.79	
Chittenden	50.40	47.04	20.16	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Caledonia	36.99	34.52	14.79	
Windsor	47.60	44.43	19.04	
Windham	46.48	43.39	18.59	
Washington	44.57	41.60	17.83	
Rutland	48.08	44.88	19.23	
Orleans	36.99	34.52	14.79	
Orange	44.33	41.37	17.73	
Lamoille	44.73	41.74	17.89	
Grand Isle	36.99	34.52	14.79	Alburg town, Isle La Motte town, North Hero town

V I R G I N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Charlottesville, VA MSA	43.97	41.04	17.59	Charlottesville city, Greene, Fluvanna, Albemarle
Clarke County, VA	35.08	32.74	14.03	Clarke
Culpeper County, VA	36.55	34.11	14.62	Culpeper
Danville, VA MSA	33.74	31.49	13.50	Danville city, Pittsylvania
Johnson City-Kingsport-Bristol, TN-VA MSA	35.12	32.78	14.05	Bristol city, Washington, Scott
King George County, VA	40.91	38.18	16.36	King George
Lynchburg, VA MSA	35.00	32.67	14.00	Bedford city, Campbell, Bedford, Amherst, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	43.35	40.46	17.34	Gloucester, James City, Isle of Wight, Hampton city Chesapeake city, York, Mathews, Williamsburg city Virginia Beach city, Suffolk city, Portsmouth city

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V I R G I N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA	39.33	36.70	15.73	Poquoson city, Norfolk city, Newport News city Charles City, Richmond city, Petersburg city Hopewell city, Colonial Heights city, Prince George Powhatan, New Kent, Henrico, Hanover, Goochland Dinwiddie, Chesterfield
Roanoke, VA MSA	34.61	32.30	13.84	Salem city, Roanoke city, Roanoke, Botetourt
Warren County, VA	35.08	32.74	14.03	Warren
Washington, DC-MD-VA	63.93	59.67	25.57	Arlington, Loudoun, Fairfax, Alexandria city, Stafford Spotsylvania, Prince William, Manassas Park city Manassas city, Fredericksburg city, Fauquier Falls Church city, Fairfax city

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alleghany	33.82	31.56	13.53	Accomack	33.74	31.49	13.50
Floyd	33.74	31.49	13.50	Essex	33.74	31.49	13.50
Dickenson	33.74	31.49	13.50	Cumberland	33.74	31.49	13.50
Craig	33.74	31.49	13.50	Charlotte	33.74	31.49	13.50
Carroll	33.74	31.49	13.50	Caroline	40.91	38.18	16.36
Buckingham	33.74	31.49	13.50	Buchanan	33.74	31.49	13.50
Brunswick	33.74	31.49	13.50	Bland	33.74	31.49	13.50
Bath	33.82	31.56	13.53	Augusta	33.82	31.56	13.53
Appomattox	33.74	31.49	13.50	Amelia	33.74	31.49	13.50
Russell	33.74	31.49	13.50	Rockingham	35.00	32.67	14.00
Rockbridge	33.82	31.56	13.53	Richmond	33.74	31.49	13.50
Rappahannock	36.55	34.11	14.62	Pulaski	33.74	31.49	13.50
Prince Edward	33.74	31.49	13.50	Patrick	33.74	31.49	13.50
Page	33.89	31.64	13.56	Orange	36.55	34.11	14.62
Nottoway	33.74	31.49	13.50	Northumberland	33.74	31.49	13.50
Northampton	33.74	31.49	13.50	Nelson	33.74	31.49	13.50
Montgomery	40.99	38.26	16.40	Middlesex	33.74	31.49	13.50
Mecklenburg	33.74	31.49	13.50	Madison	35.87	33.47	14.35
Lunenburg	33.74	31.49	13.50	Louisa	35.32	32.96	14.13
Lee	33.74	31.49	13.50	Lancaster	33.74	31.49	13.50
King William	33.74	31.49	13.50	King and Queen	33.74	31.49	13.50
Highland	33.82	31.56	13.53	Henry	33.89	31.64	13.56
Halifax	33.74	31.49	13.50	Greensville	33.74	31.49	13.50
Grayson	33.74	31.49	13.50	Giles	33.74	31.49	13.50
Frederick	35.08	32.74	14.03	Franklin	33.74	31.49	13.50
Wythe	33.74	31.49	13.50	Wise	33.74	31.49	13.50
Westmoreland	33.74	31.49	13.50	Tazewell	33.74	31.49	13.50
Sussex	33.74	31.49	13.50	Surry	33.74	31.49	13.50

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Southampton	33.74	31.49	13.50
Shenandoah	35.08	32.74	14.03
Smyth	33.74	31.49	13.50

W A S H I N G T O N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bellingham, WA MSA	49.35	46.06	19.74	Whatcom
Bremerton, WA PMSA	45.92	42.86	18.37	Kitsap
Olympia, WA PMSA	47.44	44.27	18.97	Thurston
Portland-Vancouver, OR-WA PMSA	42.57	39.73	17.03	Clark
Richland-Kennewick-Pasco, WA MSA	40.11	37.42	16.04	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	51.99	48.51	20.79	Island, Snohomish, King
Spokane, WA MSA	39.94	37.28	15.98	Spokane
Tacoma, WA PMSA	44.15	41.21	17.66	Pierce
Yakima, WA MSA	41.70	38.91	16.68	Yakima

NONMETROPOLITAN COUNTIES	A	B	C
Adams	34.13	31.85	13.65
Asotin	44.00	41.07	17.60
Grant	34.13	31.85	13.65
Ferry	34.13	31.85	13.65
Cowlitz	35.40	33.04	14.16
Clallam	44.25	41.29	17.70
Walla Walla	44.00	41.07	17.60
Stevens	34.13	31.85	13.65
Skagit	45.12	42.11	18.05
Pend Oreille	34.13	31.85	13.65
Okanogan	37.39	34.90	14.96
Lincoln	34.13	31.85	13.65
Klickitat	41.06	38.32	16.42
Jefferson	44.25	41.29	17.70
Chelan	41.06	38.32	16.42
Grays Harbor	44.25	41.29	17.70
Garfield	44.00	41.07	17.60
Douglas	41.06	38.32	16.42
Columbia	44.00	41.07	17.60
Whitman	44.00	41.07	17.60
Wahkiakum	41.06	38.32	16.42
Skamania	41.06	38.32	16.42
San Juan	46.71	43.59	18.68
Pacific	44.25	41.29	17.70
Mason	44.25	41.29	17.70
Lewis	41.06	38.32	16.42
Kittitas	37.39	34.90	14.96

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Berkeley County, WV	35.26	32.90	14.10	Berkeley
Charleston, WV MSA	42.31	39.49	16.93	Kanawha, Putnam
Cumberland, MD-WV MSA	33.10	30.89	13.24	Mineral
Huntington-Ashland, WV-KY-OH MSA	34.88	32.55	13.95	Wayne, Cabell
Jefferson County, WV	35.40	33.03	14.16	Jefferson

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	32.46	30.29	12.98	Wood
Steubenville-Weirton, OH-WV MSA	35.02	32.68	14.01	Hancock, Brooke
Wheeling, WV-OH MSA	34.62	32.31	13.85	Ohio, Marshall

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Calhoun	33.13	30.92	13.25	Braxton	32.46	30.29	12.98
Boone	32.46	30.29	12.98	Barbour	32.46	30.29	12.98
Wyoming	32.46	30.29	12.98	Wirt	32.46	30.29	12.98
Wetzel	32.46	30.29	12.98	Webster	32.46	30.29	12.98
Upshur	32.46	30.29	12.98	Tyler	32.46	30.29	12.98
Tucker	32.46	30.29	12.98	Taylor	32.46	30.29	12.98
Summers	32.46	30.29	12.98	Roane	33.13	30.92	13.25
Ritchie	32.46	30.29	12.98	Randolph	32.46	30.29	12.98
Raleigh	32.46	30.29	12.98	Preston	35.64	33.26	14.26
Pocahontas	32.46	30.29	12.98	Pleasants	32.46	30.29	12.98
Pendleton	32.46	30.29	12.98	Nicholas	32.46	30.29	12.98
Morgan	32.46	30.29	12.98	Monroe	32.46	30.29	12.98
Monongalia	35.64	33.26	14.26	Mingo	32.46	30.29	12.98
Mercer	32.46	30.29	12.98	Mason	32.46	30.29	12.98
Marion	35.64	33.26	14.26	Mcdowell	32.46	30.29	12.98
Logan	32.46	30.29	12.98	Lincoln	32.46	30.29	12.98
Lewis	32.46	30.29	12.98	Jackson	33.13	30.92	13.25
Harrison	33.13	30.92	13.25	Hardy	32.46	30.29	12.98
Hampshire	32.46	30.29	12.98	Greenbrier	32.46	30.29	12.98
Grant	32.46	30.29	12.98	Gilmer	32.75	30.57	13.10
Fayette	32.46	30.29	12.98	Doddridge	32.46	30.29	12.98
Clay	32.46	30.29	12.98				

W I S C O N S I N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	35.61	33.24	14.24	Calumet, Winnebago, Outagamie
Duluth-Superior, MN-WI MSA	36.59	34.15	14.64	Douglas
Eau Claire, WI MSA	34.17	31.89	13.67	Chippewa, Eau Claire
Green Bay, WI MSA	35.44	33.09	14.18	Brown
Janesville-Beloit, WI MSA	39.24	36.63	15.70	Rock
Kenosha, WI PMSA	43.73	40.82	17.49	Kenosha
La Crosse, WI-MN MSA	40.47	37.76	16.19	La Crosse
Madison, WI MSA	47.07	43.94	18.83	Dane

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W I S C O N S I N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	42.29	39.47	16.92	Ozaukee, Milwaukee, Waukesha, Washington
Minneapolis-St. Paul, MN-WI MSA	49.47	46.18	19.79	St. Croix, Pierce
Racine, WI PMSA	38.63	36.05	15.45	Racine
Sheboygan, WI MSA	35.05	32.71	14.02	Sheboygan
Wausau, WI MSA	34.80	32.48	13.92	Marathon

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	34.65	32.34	13.86	Buffalo	34.09	31.82	13.64
Bayfield	34.09	31.82	13.64	Barron	34.09	31.82	13.64
Ashland	34.09	31.82	13.64	Wood	34.65	32.34	13.86
Waushara	34.09	31.82	13.64	Waupaca	34.09	31.82	13.64
Washburn	34.09	31.82	13.64	Walworth	37.43	34.93	14.97
Vilas	34.09	31.82	13.64	Vernon	34.09	31.82	13.64
Trempealeau	34.09	31.82	13.64	Taylor	34.09	31.82	13.64
Shawano	34.09	31.82	13.64	Sawyer	34.09	31.82	13.64
Sauk	34.65	32.34	13.86	Rusk	34.09	31.82	13.64
Richland	34.09	31.82	13.64	Price	34.09	31.82	13.64
Portage	34.73	32.41	13.89	Polk	34.09	31.82	13.64
Pepin	34.09	31.82	13.64	Oneida	34.09	31.82	13.64
Oconto	34.09	31.82	13.64	Monroe	34.09	31.82	13.64
Menominee	34.09	31.82	13.64	Marquette	34.09	31.82	13.64
Marinette	34.09	31.82	13.64	Manitowoc	34.09	31.82	13.64
Lincoln	34.09	31.82	13.64	Langlade	34.09	31.82	13.64
Lafayette	34.09	31.82	13.64	Kewaunee	34.09	31.82	13.64
Juneau	34.65	32.34	13.86	Jefferson	36.16	33.75	14.47
Jackson	34.09	31.82	13.64	Iron	34.09	31.82	13.64
Iowa	34.09	31.82	13.64	Green Lake	34.17	31.89	13.67
Green	34.09	31.82	13.64	Grant	34.09	31.82	13.64
Forest	34.09	31.82	13.64	Fond du Lac	35.76	33.38	14.31
Florence	34.09	31.82	13.64	Dunn	34.09	31.82	13.64
Door	34.09	31.82	13.64	Dodge	34.09	31.82	13.64
Crawford	34.09	31.82	13.64	Columbia	34.09	31.82	13.64
Clark	34.09	31.82	13.64	Burnett	34.09	31.82	13.64

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W Y O M I N G

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Casper, WY MSA	48.52	45.29	19.41	Natrona
Cheyenne, WY MSA	40.27	37.59	16.11	Laramie

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Albany	32.68	30.50	13.07	Campbell	32.10	29.96	12.84
Big Horn	32.10	29.96	12.84	Fremont	32.10	29.96	12.84
Crook	32.10	29.96	12.84	Converse	32.10	29.96	12.84
Carbon	32.10	29.96	12.84	Sheridan	43.43	40.53	17.37
Platte	32.10	29.96	12.84	Park	32.10	29.96	12.84
Niobrara	32.10	29.96	12.84	Lincoln	32.10	29.96	12.84
Johnson	32.10	29.96	12.84	Hot Springs	32.10	29.96	12.84
Goshen	32.10	29.96	12.84	Weston	32.10	29.96	12.84
Washakie	32.10	29.96	12.84	Uinta	32.10	29.96	12.84
Teton	47.85	44.66	19.14	Sweetwater	32.10	29.96	12.84
Sublette	32.10	29.96	12.84				

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Pacific Islands	63.80	59.55	25.52				

P U E R T O R I C O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Aguadilla, PR MSA	34.93	32.60	13.97	Aguada Municipio, Moca Municipio, Aguadilla Municipio
Arecibo, PR PMSA	38.35	35.79	15.34	Camuy Municipio, Arecibo Municipio, Hatillo Municipio
Caguas, PR PMSA	34.93	32.60	13.97	Caguas Municipio, Cidra Municipio, Cayey Municipio San Lorenzo Municipio, Gurabo Municipio
Mayaguez, PR MSA	34.93	32.60	13.97	Cabo Rojo Municipio, Anasco Municipio San German Municipio, Sabana Grande Municipio Mayaguez Municipio, Hormigueros Municipio
Ponce, PR MSA	37.54	35.03	15.01	Yauco Municipio, Villalba Municipio, Ponce Municipio Penuelas Municipio, Juana Diaz Municipio Guayanilla Municipio
San Juan-Bayamon, PR PMSA	37.54	35.03	15.01	Barceloneta Municipio, Aguas Buenas Municipio Yabucoa Municipio, Vega Baja Municipio Vega Alta Municipio, Trujillo Alto Municipio Toa Baja Municipio, Toa Alta Municipio San Juan Municipio, Rio Grande Municipio Naranjito Municipio, Naguabo Municipio, Morovis Municipio Manati Municipio, Luquillo Municipio, Loiza Municipio Las Piedras Municipio, Juncos Municipio

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH PAGE 55

P U E R T O R I C O continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
				Humacao Municipio, Guaynabo Municipio, Florida Municipio Fajardo Municipio, Dorado Municipio, Corozal Municipio Comerio Municipio, Ceiba Municipio, Catano Municipio Carolina Municipio, Canovanas Municipio Bayamon Municipio

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Barranquitas Municipio..	34.93	32.60	13.97	Arroyo Municipio.....	34.93	32.60	13.97
Aibonito Municipio.....	34.93	32.60	13.97	Adjuntas Municipio.....	34.93	32.60	13.97
Vieques Municipio.....	34.93	32.60	13.97	Utuado Municipio.....	34.93	32.60	13.97
Santa Isabel Municipio..	34.93	32.60	13.97	San Sebastian Municipio.	34.93	32.60	13.97
Salinas Municipio.....	34.93	32.60	13.97	Rincon Municipio.....	34.93	32.60	13.97
Quebradillas Municipio..	38.35	35.79	15.34	Patillas Municipio.....	34.93	32.60	13.97
Orocovis Municipio.....	34.93	32.60	13.97	Maunabo Municipio.....	34.93	32.60	13.97
Maricao Municipio.....	34.93	32.60	13.97	Las Marias Municipio....	34.93	32.60	13.97
Lares Municipio.....	34.93	32.60	13.97	Lajas Municipio.....	34.93	32.60	13.97
Jayuya Municipio.....	34.93	32.60	13.97	Isabela Municipio.....	34.93	32.60	13.97
Guayama Municipio.....	34.93	32.60	13.97	Guanica Municipio.....	34.93	32.60	13.97
Culebra Municipio.....	34.93	32.60	13.97	Coamo Municipio.....	34.93	32.60	13.97
Ciales Municipio.....	34.93	32.60	13.97				

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Virgin Islands.....	50.40	47.05	20.16				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

[FR Doc. 97–5925 Filed 3–11–97; 8:45 am]

BILLING CODE 4210–33–C

federal register

Wednesday
March 12, 1997

Part III

Department of Education

Strengthening Institutions Program; New Awards for Fiscal Year 1997; Notice

DEPARTMENT OF EDUCATION

[CFDA NO: 84.031A]

Strengthening Institutions Program; New Awards for Fiscal Year (FY) 1997

Purpose of Program: This program provides grants to eligible institutions of higher education to improve their academic quality, institutional management, and fiscal stability so they can become self-sufficient.

Applicant Information: The Secretary announces that he will make new awards under the Strengthening Institutions Program with Fiscal Year 1997 funds from among the highest-ranked unfunded applications that were submitted under the Strengthening Institutions Program biennial grant award competition for Fiscal Years 1995 and 1996. Thus, the Secretary will award grants to eligible institutions that submitted the highest-rated unfunded applications under that competition. This funding procedure will carry out the original intent of the biennial award process announced in the Federal Register of March 5, 1995 (60 FR 12543). The Department will soon contact by telephone those institutions being considered for new awards.

The Department developed the biennial award process to allow an institution to submit one grant application that could be considered for funding over two successive funding cycles, thereby eliminating the need for an institution to generate and submit a second application. However, this process was not implemented during FY 1996, the second year of the biennium, because the Strengthening Institutions Program appropriation for that year was insufficient to make new awards.

FOR INFORMATION CONTACT: Louis J. Venuto, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Suite CY–80, Washington, D.C. 20202–5335. Telephone: (202) 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1057.

Dated: March 6, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–6096 Filed 3–11–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
March 12, 1997

Part IV

The President

Presidential Determination No. 97–18—Certification for Major Narcotics Producing and Transit Countries

Federal Register
Vol. 62, No. 48
Wednesday, March 12, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 97–18 of February 28, 1997

Certification for Major Narcotics Producing and Transit Countries

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended, (''the Act''), I hereby determine and certify that the following major drug producing and/or major drug transit countries/dependent territories have cooperated fully with the United States, or taken adequate steps on their own, to achieve full compliance with the goals and objectives of the 1988 United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances:

Aruba, The Bahamas, Bolivia, Brazil, Cambodia, China, Dominican Republic, Ecuador, Guatemala, Haiti, Hong Kong, India, Jamaica, Laos, Malaysia, Mexico, Panama, Paraguay, Peru, Taiwan, Thailand, Venezuela, and Vietnam.

By virtue of the authority vested in me by section 490(b)(1)(B) of the Act, I hereby determine that it is in the vital national interests of the United States to certify the following major illicit drug producing and/or transit countries:

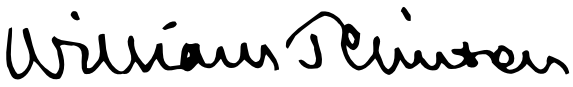
Belize, Lebanon, and Pakistan.

Analysis of the relevant U.S. vital national interests, as required under section 490(b)(3) of the Act, is attached. I have determined that the following major illicit drug producing and/or major transit countries do not meet the standards set forth in section 490(b) for certification:

Afghanistan, Burma, Colombia, Iran, Nigeria, and Syria.

In making these determinations, I have considered the factors set forth in section 490 of the Act, based on the information contained in the International Narcotics Control Strategy Report of 1997. Because the performance of each of these countries/dependent territories has differed, I have attached an explanatory statement for each of the countries/dependent territories subject to this determination.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, February 28, 1997.

STATEMENTS OF EXPLANATION

Aruba

Aruba is a major trafficking and staging point for international narcotics trafficking organizations which transship cocaine and heroin from Colombia, Venezuela and Suriname to the United States and Europe. Its key position near the Venezuelan coast with air and sea links to South America, Europe, Puerto Rico and other Caribbean locations makes it a prime transshipment point. Drug shipments are made primarily via containerized cargo, but commercial airlines and cruise ships are also used. Although USG law enforcement agencies estimate that about 155 mt of cocaine are transshipped through the Caribbean to the United States annually, and that more than 100 international trafficking organizations operate in that region, Aruba seized only about 170 kg of cocaine and about 2½ kg of heroin in 1996.

Money laundering organizations use legitimate companies as fronts to invest in land development and other construction projects. The Government of Aruba's (GOA) Free Trade Zone (FTZ), casinos and resort complexes are reported to be attractive venues for money laundering and smuggling. A joint Dutch-Aruban Commission in 1996 issued recommendations to improve regulation of the FTZ, and invited a U.S. Customs technical expert to help implement those recommendations. Legislation on the FTZ, casinos and off-shore corporations is pending.

Aruba is a part of the Kingdom of the Netherlands (GON), and has independent decision-making ability in many drug policy areas. The Kingdom of the Netherlands (GON), a party to the 1988 UN Drug Convention, has not yet extended it to Aruba. The Aruban legislature is in the final stages of considering comprehensive criminal law reform, expected to be adopted in 1997. The law would create a basis for the Kingdom's extension of the 1988 UN Drug Convention, for expanded investigative powers for local law enforcement, as well as for extradition of nationals subject to service of sentences in Aruba.

The GOA participated with the Netherlands, the Netherlands Antilles in the establishment of a joint Kingdom-Caribbean Coast Guard, designed to patrol the Kingdom's Caribbean coastal waters to interdict drug shipments. The GOA established money transaction monitoring entities to review unusual transactions in the banking sector. Aruban law enforcement officials participated in USG-sponsored training courses for drug enforcement during 1996. The GOA has taken limited steps to punish corrupt officials, and replaced senior police and justice officials in Aruba.

Corruption is a problem that hinders effective efforts against international narcotics traffickers. A joint Netherlands Antilles and Aruba court denied a USG extradition request for a Colombian narcotics trafficker in 1996. Despite these problems, Aruba generally cooperated with the USG to meet the goals and objectives of the 1988 UN Drug Convention.

The Bahamas

Over the past ten years, successful combined U.S./Bahamian counternarcotics efforts have dramatically reduced the amount of cocaine and marijuana transiting The Bahamas en route to the United States. This downward trend has continued over the last several years. Nevertheless, significant quantities of illicit drugs continue to pass through The Bahamas. The Bahamas is also a dynamic financial services center and a tax haven with bank secrecy laws, which are both factors conducive to money laundering. Some marijuana is grown in The Bahamas, but the country is not a major drug producer.

The Government of the Commonwealth of The Bahamas (GCOB) vigorously strives to combat drug trafficking and is extraordinarily cooperative with USG counterdrug efforts. The first country to ratify the 1988 UN Drug Convention, The Bahamas took further steps during 1996 to implement

it. Strong anti-money laundering legislation and implementing regulations entered into force in 1996. During the year, the GCOB continued its successful efforts to strengthen its justice system, with assistance from the USG. U.S. and Bahamian law enforcement officials continued to work closely together to apprehend drug traffickers. Domestic drug abuse remains a problem, but the number of new drug users has declined notably since the mid-1980s. Over the past several years, The Bahamas has prosecuted and convicted some middle and low-level officials on charges of narcotics corruption. The GCOB is also making some headway in its efforts to forfeit and dispose of trafficker assets.

Although enormous progress has been made, more can be done. In coming years, The Bahamas should continue to improve the effectiveness with which its justice system handles drug cases, further emphasize forfeiture of trafficker assets and effectively enforce its new anti-money laundering controls.

Bolivia

The Government of Bolivia sustained an intense counternarcotics effort again in 1996, cooperating fully with the USG, and took adequate steps toward full compliance with the goals and objectives of the 1988 UN Drug Convention.

Bolivia's coca crop is the third largest in the world, behind Peru and Colombia, but the high yield of Bolivian coca makes Bolivia second only to Peru in terms of the production of cocaine alkaloid. The vast majority of the coca for cocaine production is cultivated in Bolivia's Chapare region. Coca growers produce cocaine base in rudimentary laboratories, then sell it to more sophisticated organizations which convert cocaine base into cocaine hydrochloride. Bolivia is believed to be the world's second leading producer of refined cocaine hydrochloride.

During 1996, the Government of Bolivia (GOB) eradicated over 7,500 hectares of coca in the Chapare—the highest level of eradication since 1990. Despite the GOB's commitment to this program, eradication reduced Bolivia's coca crop by only one percent, as new coca cultivation, both within and outside of the Chapare, almost offset eradication. Total potential cocaine production in 1996 declined by an estimated 10 percent, however, from 240 metric tons in 1995 to some 215 metric tons of cocaine HCl. New coca does not become harvestable—and capable of producing the cocaine alkaloid—for two years.

In order to confront the problem of new planting, the government launched late in 1996 an expanded campaign to detect and destroy new coca and seedbeds. For the first time, the GOB also fully applied the letter of its own law, arresting several peasants for planting new coca.

The Minister of Justice produced a package of legislative reforms, designed to modernize Bolivia's criminal justice sector. Among the reforms were strong anti-money laundering provisions. The government presented the package to the Bolivian Congress in January 1997, and is seeking passage before the June 1997 presidential elections. In addition, a new extradition treaty between the United States and Bolivia, which allows for the extradition of Bolivian nationals, entered into force in November 1996.

Overall cocaine base and HCl seizures increased in 1996 compared to 1995, and HCl seizures in the second half of the year increased dramatically. The government established a Chemical Control Directorate. Meanwhile, an expanded and increasingly effective Chemical Police Unit, aided by counterdrug forces in the Chapare, made chemical seizures well above 1995 levels. The government's Seized Asset Directorate, created in December 1995, began operations, while asset seizures increased by some 36 percent over 1995.

In the coming year, the GOB must work to eliminate and prevent new coca cultivation, fully applying the Law 1008 prohibition on new planting, and reduce coca cultivation in the Chapare by at least 10 percent. The

GOB should press for the passage and rapid implementation of a money laundering law along with a revised Code of Criminal Procedures. Faced with an increasingly sophisticated group of Bolivian trafficking organizations, the GOB's enforcement strategy must more effectively target cocaine HCl processing and trafficking organizations, as well as Chapare-based cocaine base laboratories. In addition, we expect the GOB to ensure that the Blue Devils Riverine Task Force can fully exercise its drug enforcement authority and product results consistent with its resources.

Brazil

International narcotics traffickers use Brazil to transship cocaine primarily from Colombia, Peru and Bolivia to the United States and Europe. Brazil serves as an increasingly significant transit route for air shipments of cocaine base from Peru to cocaine labs in Colombia. Cocaine also transits the country by river and overland routes. Law enforcement agencies estimate that ten to twenty mt of cocaine transit Brazil annually, of which Brazilian authorities seized about three mt of cocaine in 1996, a decline from last year's almost six mt. Despite the decline, Brazil fully cooperated with the USG to advance the goals of bilateral agreements and the 1988 UN Drug Convention.

In 1996, the area of Brazil bordering Peru was heavily used as a staging area for air shipments of cocaine destined for the United States. Brazilian trafficking organizations reportedly provided fuel and airstrips for illicit trafficking purposes.

To address this threat, Brazilian authorities destroyed several airstrips, and commendably repeated operations when traffickers rebuilt those cratered airstrips. In a strong commitment to regional cooperation, Brazilian police cooperated with Peruvian and Colombian police to deter trafficking in the tri-border area between their respective countries.

Focussing on the maritime trafficking problems in Brazil's major seaports, which function as conduits for cocaine shipped to the United States, Brazil participated in one U.S. Customs port assessment visit to the major ports of Rio de Janeiro and nearby Santos. Brazil also tightened enforcement over its chemical companies.

Brazil entered into an agreement with the USG to train police-prosecutor-judge task forces to bolster the Government of Brazil's (GOB) counternarcotics effort and to enhance coordination between judges, prosecutors and police. Corruption is a problem in mid and lower levels of the DPF that hinders effective enforcement efforts to control drug trafficking through Brazil.

Authorities disrupted the Saavedra-Shapiama Organization, which trafficked cocaine from the Amazon region to the United States. With USG assistance, Brazilian authorities in good faith continue to investigate this and other narcotics trafficking organizations in the Amazon region. In May 1996, the Brazilian Senate approved the Amazon Surveillance System (SIVAM). SIVAM is a detection and monitoring system that will be used to protect the Amazon region, in part against illicit narcotics trafficking.

Although the Brazilian government did not sign a Letter of Agreement (LOA) that would have renewed counternarcotics cooperation with the USG in 1996, the GOB has demonstrated a strong interest in continuing its counternarcotics relationship with the USG. The almost $1 million of 1996 counternarcotics funding meant for Brazil instead funded the Organization of American States Anti-Drug Abuse Control Commission (OAS/CICAD). In addition to demonstrating a commitment to cooperate further with the USG on counternarcotics, Brazil participated in important multilateral counternarcotics initiatives, including an OAS/CICAD meeting in Uruguay.

Other efforts point of Brazil's achievements in 1996. It proposed a National Drug Enforcement Plan in 1996. It also hosted several meetings of the of the mini-Dublin Group in Brasilia to coordinate counternarcotics assistance from major donors, primarily European nations. Demand reduction and other multilateral efforts have successfully raised the profile of the danger of

drug trafficking and abuse in Brazil. Although bank secrecy remained a formidable obstacle in the battle against money laundering, and money laundering occurred in Brazil's banks and exchange houses, in 1996 the congress initiated debate on a bill to counter money laundering.

Cambodia

In 1996, Cambodia made significant efforts toward addressing drug trafficking and transit problems, which the Royal Government of Cambodia has acknowledged. There is a significant flow of heroin transiting Cambodia which affects the U.S. and other countries. The National Assembly passed a comprehensive counternarcotics law on December 3, 1996. The statute, drafted with UNDCP assistance and advice, includes tough anti-money laundering provisions and commits the government to becoming a party to the 1988 UN Drug Convention.

Other measures taken by the RGC, either separately or in cooperation with the U.S. and other governments and international organizations, include reorganizing its ill-trained and equipped 900-person National Anti-Narcotics Unit into a more effective 40-person National Anti-Drug Unit, participating in UNDCP conferences, and seeking other avenues to broaden cooperation with surrounding countries and the international community. Cambodian drug interdiction efforts resulted in the seizure of 40 kilograms of heroin and the arrest of 12 heroin couriers working for Nigerian trafficking organizations. The RGC also continued a program of marijuana eradication.

The skeletal nature of Cambodia's law enforcement infrastructure, coupled with an impoverished economy, continues to impede efforts as assembling comprehensive information about the drug trade in and through the country. These weaknesses have also made the task of providing appropriate assistance more critical and, at the same time, more difficult. The single most important issue Cambodia faces with regard to its drug trafficking problem, however, is the issue of drug-related corruption. After the publication in 1995 of allegations tying key political and business figures to the drug trade, the RGC publicly called for information which would aid in the prosecution of any such person. There have, however, been no results yet reported in connection with these charges. The U.S. will be looking for efforts to deal vigorously with drug-related corruption, which would otherwise eventually undermine Cambodia's credibility on the issue of narcotics control. USG efforts to assist Cambodia in building stronger law enforcement and judicial institutions are based on the premise that the upper levels of the RGC will thus have available the appropriate means for dealing with the issue.

China

China continues to play a key role as a major transit route for Southeast Asian heroin destined for the U.S. and other Western markets. Addiction and violent crime associated with China's proximity to the Golden Triangle and its flow of narcotics continue to engage the attention of Chinese authorities. In April 1996, China's Ministry of Public Security began a nationwide anti-crime campaign called ''Strike Hard,'' which placed special emphasis on drug interdiction efforts: opium seizures in the first ten months of 1996 were up 26 percent over all of 1995, and heroin seizures in the first ten months of 1996 were up 47 percent over the entire amount seized in 1995. China continues to be an active participant in the United Nations Drug Control Program and in 1996 signed mutual legal assistance treaties, with specific attention to narcotics trafficking, with Russia, Mexico and Pakistan. It is also a party to the 1988 UN Drug Convention.

Counternarcotics and law enforcement cooperation with the United States continues to be uneven, although senior U.S. and Chinese officials have publicly recognized the common interest in enhanced cooperation. Lower level officials continue to express a desire to expand cooperation, and working-level dialogue and information sharing have improved and expanded in some respects. Chinese officials participated in a two-week regional cooperation

seminar in Bangkok conducted by DEA and in a program to help law enforcement officials detect and prevent illegal transshipments of precursor chemicals. U.S. Customs representatives also taught interdiction techniques to Chinese officials in Sichuan Province. But China in 1996 also denied, ''for now,'' a USG request to be allowed to open a joint DEA/FBI office at the U.S. Embassy in Beijing.

China's continued strong stand against crime and official corruption has been widely publicized. Chinese leaders and law enforcement authorities have recognized that rapid economic growth has contributed to the spread of corruption, including among lower level officials. Penalties for such transgressions are severe and include execution.

China is a major chemical producer. The interest PRC officials have shown in techniques for controlling sales and shipments of chemical precursors indicates growing recognition of China's role as a target for criminals seeking to illegally procure or divert such chemicals. China's recognition of its susceptibility to money laundering also appears to be growing, but domestic mechanisms for assessing and addressing the problem are only beginning to catch up to the challenge.

Dominican Republic

In 1996, the Dominican Republic's attention was focused on election year politics. As a result, although the out-going government cooperated with counternarcotics operations, it has left the new administration with unresolved, long-term narcotics-related issues and an environment of public concern about corruption. Despite the absence of a master plan, the Government of the Dominican Republic (GODR) remains deeply committed to the war against narcotics trafficking and consumption.

Following its installation in August 1996, the Fernandez administration made an anti-corruption agenda and judicial reform high priorities of the GODR. However, the GODR lacks effective enforcement mechanisms to eliminate the corruption which undermines the country's fragile democratic institutions. Additionally, the country's largely unpatrolled coast, its porous border with Haiti, and poorly paid and under-equipped police and military make it attractive to Dominican and Colombian drug transshipment organizations and domestic drug traffickers. The majority of Dominicans condemn the use of illegal drugs and support GODR efforts to combat narcotics trafficking; drug consumption levels are considered low.

The Government of the Dominican Republic cooperated fully with the United States Government on counternarcotics objectives and goals. Among the GODR's accomplishments was the arrest of the Cali cartel's Rolando Florian-Feliz, the DR's most wanted narcotics trafficker.

Due to the absence of effective government supervision of exchange houses or remittance operations and the presence of large cash flows which could hide money laundering activity, it is believed that narcotics money continues to be laundered in the Dominican Republic. Money laundering is not likely to diminish until the GODR aggressively implements the money laundering legislation. Many Dominicans who have committed serious crimes in the United States continue to find refuge in the Dominican Republic, since local law bars extradition of nationals. While 1996 negotiations for a new extradition treaty with the former government did not reach a successful conclusion, the USG is currently assessing a resumption of talks with the Fernandez administration.

Neither the GODR itself nor senior government officials encourage, facilitate, or engage in drug trafficking or money laundering as a matter of government policy. No evidence exists that senior government officials are involved in drug distribution or money laundering. No senior government official has been indicted for drug-related corruption in 1996.

Ecuador

International narcotics traffickers from Colombia and Peru intensified their efforts to transship cocaine and coca base through Ecuador. Trafficking organizations ship about 20–40 metric tons (mt) of coca base from Peru through Ecuador to Colombia for refining into finished cocaine, and about 30–50 mt of cocaine through Ecuador to the United States and Europe. Ecuador seized almost nine mt of cocaine in 1996.

Traffickers continued to transship cocaine overland and by river, and to smuggle chemicals into Ecuador via the Pan American Highway and Ecuador's extensive river network, sometimes committing armed robberies of truck drivers transporting chemicals from petroleum companies in Ecuador's jungle region.

Ecuadoran authorities responded commendably to counter traffickers, placing emphasis on Guayaquil as a favored cocaine transshipment point. Authorities made a nearly seven mt seizure of cocaine from a fishing vessel, the Don Celso, and had it returned from international waters to search it in Guayaquil. Traffickers had loaded the cocaine into the fuel tanks of the 150-ft. fishing vessel.

The Ecuador National Policy (ENP), with USG assistance, identified a major cocaine processing facility just west of Quito in a town called Santo Domingo de los Colorados. Authorities dismantled the lab, but many said it demonstrated a shift in trafficker activity from neighboring countries to Ecuador.

The Government of Ecuador (GOE) demonstrated its commitment to regional counternarcotics cooperation efforts. In an unprecedented law enforcement cooperation effort with Peru, Ecuadoran police deported to Peru Willer Alvarado Linares, a.k.a. ''Champa,'' a Peruvian drug kingpin with close ties to the Cali Cartel. With USG assistance, the ENP dismantled a major drug trafficking organization in Ecuador reportedly run by a Cali-connected trafficker, Jose Castrillon Henao. Ecuadoran authorities continued the prosecution of Jorge Hugo Reyes Torres, a jailed drug kingpin, also tied to Cali.

Although police-military cooperation, maritime cooperation, and inadequate money laundering legislation remained problems, GOE officials made a good faith effort to resolve these issues. The GOE participated in drug enforcement and customs training courses, continued some information-sharing efforts, and attended a money laundering seminar.

The Ecuadoran Supreme Court entered into an agreement with the USG on administration of justice. The USG bought five computers and a laser printer in support of Ecuador's ambitious judicial reform effort. Allegations of corruption in the judiciary and in other branches of the government plagued the former Bacaram administration, and now plague the current administration of interim President Alarcon, hindering effective counternarcotics efforts.

Despite these problems, Ecuadoran government officials demonstrate continued interest in working with the USG to address more effectively narcotics trafficking problems that threaten to erode democratic institutions. Ecuador is a party to the 1988 UN Drug Convention and has bilateral agreements with the USG. Ecuador has fully cooperated with the USG to advance the goals and objectives of these agreements.

Guatemala

Despite the political distractions of the ongoing peace process, Guatemala continued to cooperate fully with U.S. counternarcotics goals and objectives. Law enforcement cooperation between Guatemala and the United States has been excellent. With USG support, Guatemalan government (GOG) counternarcotics officials seized almost four metric tons of cocaine, a significant increase over previous years.

GOG experts estimate that at least one out of four Guatemalan adults suffers from some sort of chemical dependency, principally alcohol abuse. Illicit drug use has not been effectively documented, but GOG officials believe it has increased steadily since 1990 and contributes to the extremely high level of violence in the country, especially in the capital city.

The Department of Anti-Narcotics Operations (DOAN), the country's principal counternarcotics organization, fully cooperated with USG agencies on information-sharing, joint operations, and special investigations targeting international drug trafficking networks. Also in 1996, a major corruption ring centered on customs tax evasion and extortion was uncovered, giving the GOG further impetus to criminalize money laundering and develop the capability to investigate suspect financial transactions.

Recent information indicates that significant quantities of precursor chemicals, mostly ephedrine, are being diverted through Guatemala to Mexico and the United States. The government has not yet taken steps to halt that traffic, which is not currently illegal in Guatemala. The GOG has, however, requested and will receive USG technical assistance on how to combat this illicit trafficking. In early 1997, Guatemala hosted a regional seminar to address the problem of the control and regulation of precursor chemicals.

The GOG does not, as a matter of government policy, encourage or facilitate illicit production or distribution of narcotic or psychotropic drugs or controlled substances, or the laundering of proceeds from illegal drug transactions. In addition, no senior government official facilitates or encourages the illicit production or distribution of such drugs or substances or the laundering of proceeds from illegal drug transactions.

Haiti

Haiti continues to cooperate with U.S. counternarcotics goals and objectives. The Government of Haiti (GOH) confronts a staggering array of issues that compete for the attention of its already stretched professional and managerial talent and consequently impedes rapid progress on counternarcotics issues. Despite these obstacles, the GOH made definite progress in counternarcotics issues in 1996.

The GOH began to reform its existing narcotics laws and to develop a national narcotics plan and money laundering legislation. With USG support, a Haitian Coast Guard (HCG) unit was established; a Counternarcotics Unit (CNU) was trained; and new chiefs for both units were installed. The changeover in leadership of the CNU proved particularly time-consuming and, despite sincere efforts, the CNU was not functioning in its permanent quarters at the airport by the end of 1996. Nevertheless, the commitment of the Haitian National Police (HNP) leadership to maintain high standards of performance within these two units is notable.

The HCG began operating in August 1996 and scored two major cocaine seizures amounting to 938 kgs. in its first two months of operation. The interdiction and maritime boarding experience in these two operations represented a training opportunity that contributed to the HCG's ability to eventually conduct independent operations.

The USG has made a strong commitment to assist Haiti in establishing stable democratic institutions. As a part of this effort, the USG intends to work with the GOH towards conclusion of a bilateral maritime agreement, and to continue its efforts to assist the GOH with its narcotics-related agenda and legal reform programs. The USG will also assist the HNP in establishing regional law enforcement contacts and continue to provide support for both the HCG and the CNU.

In 1996, the GOH continued to give USG officials high-level assurances of its commitment to drug control, and those assurances have been supported by concrete progress in establishing Haitian counter-drug institutions. However,

Haiti still has a number of major goals to achieve before it will be able to take significant, independent action in counternarcotics.

Hong Kong

Hong Kong's role as a money laundering base for the international drug trade continues to grow, while its role as a transit point for drugs appears to have lessened. There were no drug seizures in the United States in the first 10 months of 1996 unequivocally linking Hong Kong to the U.S. as a transit point for drugs. The overall pattern of drug trafficking in the region, however, continues to point to Hong Kong as a key transshipment point for drugs destined for the U.S. and other Western markets.

Hong Kong authorities continued to strengthen the legislative framework for combatting narcotics trafficking. They extended licensing controls to an additional 21 precursor chemicals, introduced implementing legislation for bilateral extradition agreements and proposed legislation establishing heavier sentences for drug traffickers who target the young. On December 20, 1996, the U.S. and Hong Kong signed an agreement for the surrender of fugitive offenders (an extradition agreement) and the two sides have initialled a Mutual Legal Assistance Agreement that will expand the basis for mutual legal assistance over a wide range of criminal activity, including that currently covered by a Bilateral Narcotics Agreement, which will be terminated by its terms on June 30, 1997.

Hong Kong's mature and experienced law enforcement structure is characterized by dedication and no reported narcotics-related corruption among senior officials. Cooperation between the United States and Hong Kong on matters relating to drug trafficking and money laundering continues to be excellent.

India

India is the sole producer of licit opium gum for the pharmaceutical industry, a significant cultivator of opium poppies in remote regions of northwest and northeast India and a transit country for opiates from both Southwest and Southeast Asia. Controls over the licit opium industry have been continuously tightened for the past five years but, due to the method of production, some diversion probably continues. The well-developed transportation infrastructure in India, combined with porous borders from neighboring source countries, has made India an attractive transit country for traffickers.

As a licit producer of opium, India must meet an additional certification requirement. In accordance with Section 490(c) of the Foreign Assistance Act, it must maintain licit production and stockpiles at levels no higher than those consistent with licit market demand and take adequate steps to prevent significant diversion of its licit cultivation and production into illicit markets and to prevent illicit cultivation and production.

In 1996, India continued to take steps to curtail diversion of licit opium, which remains a concern. The minimum qualifying yield (MQY) for relicensing to cultivate opium poppy was raised from 46 to 48 kilograms per hectare in most growing areas, and offenses related to cultivation and embezzlement of opium are now on par with other trafficking crimes. Sentences of up to 20 years' imprisonment can be imposed.

Although the Government of India (GOI) did not agree to direct USG participation in the 1996 opium yield survey, it did allow U.S. scientists to observe the survey and to work with Indian scientists to include new parameters in future opium yield surveys. A comprehensive opium yield survey verifies data on crop yields, establishes practicable levels of MQY, and better quantifies diversion.

Indian opium gum, a principal source of the baine and other alkaloids essential to certain pharmaceuticals, is in demand by U.S. and other pharmaceutical firms. India once again increased opium poppy cultivation because of the pharmaceutical demand and a desire to establish once again a stockpile

against a crop disaster. Opium production rose to 849 mt in 1996 from 833 mt in 1995 (all measures at ten percent moisture).

India has illicit opium poppy cultivation, primarily in areas such as Jammu and Kashmir, where GOI control is challenged by insurgent groups. USG remote sensing in 1996 indicated illicit cultivation on 3,400 hectares, with a theoretical yield of 47 metric tons of opium, a decrease from the previous year's estimate. However, despite efforts by the GOI based on suspect coordinates provided by the USG, it was able to find only small areas of poppy cultivation.

The GOI continues to make progress in controlling the production and export of precursor chemicals. The GOI has a cooperative relationship with the DEA, especially on precursor chemical issues, and has agreed not to allow any shipment unless DEA issues a letter of non-objection. Trafficking in illegally produced methaqualone (mandrax), a popular drug in Africa, is still believed to be a major problem, although seizures fell in 1996.

Authorities have had limited success in prosecuting major narcotics trafficking organizations because of the lack of enforcement funding and weaknesses in the investigations infrastructure. The GOI stresses cooperation among law enforcement entities. India cooperates in ''controlled deliveries'' that have resulted in arrests in six countries.

The USG receives reports of narcotics-linked corruption, but cannot independently verify the extent. No senior-level politician or bureaucrat has been accused of narcotics-related corruption.

India is party to the 1988 UN Drug Convention, and Indian officials state that it is drafting legislation needed on asset seizures and money laundering. In the meantime, its law enforcement agencies are without the tools to achieve fully the Convention's goals and objectives.

India fulfilled the requirements of FAA Section 490(c) to maintain licit production and stockpiles at levels no higher than consistent with market demand. It also continued to take steps to reduce diversion from the licit crop, although not agreeing to use a crop yield survey as the basis for setting the minimum qualifying yield for license renewal. The GOI, upon receipt of information on suspected illicit crops, acted promptly to seek out and destroy the plots. For 1996, India's efforts meet the additional certification requirements of FAA Section 490(c). The United States continues to work with the GOI in the following areas: taking effective action against major narcotics trafficking syndicates and kingpins; implementing effective measures on money laundering and asset seizure; permitting U.S. participation in opium crop surveys; and eradicating illicit poppy cultivation.

Jamaica

Jamaica produces marijuana and is a significant cocaine transit country. The Government of Jamaica (GOJ) made some progress during 1996 to achieve the goals and objectives of the 1988 UN Drug Convention, to which it became a party in December 1995. In December 1996, the Jamaican parliament passed a money laundering law, which, although somewhat limited in scope in that it criminalizes only the laundering of the proceeds of drug-related crime, is the beginning of a money laundering control regime. Although the GOJ has yet to prosecute asset forfeiture cases under the relevant 1994 act, it did establish a special unit which is currently investigating two such cases. Action on drafting a precursor chemical bill was deferred to 1997. GOJ–USG negotiations on a maritime counternarcotics cooperation agreement, which commenced in 1996, had been impeded by Jamaica's declaration of exclusive law enforcement authority in its exclusive economic zone (EEZ). In December 1996, the GOJ withdrew its EEZ declaration, and negotiations resumed in February 1997, in a spirit of cooperation and willingness to conclude an agreement. Although the rate of extraditions declined markedly, from six in 1995 to one (under a waiver of extradition) in 1996, partly attributable to new Jamaican legal procedures regarding appeals, the GOJ expelled or deported to the U.S. eight U.S.-citizen fugitives during

1996. However, a sizeable number of extradition requests to the GOJ remain open.

According to DEA, Jamaican police counternarcotics cooperation in 1996 remained at the high levels of 1995, but drug arrests, cocaine seizures, and cannabis eradication fell somewhat below the goals and objectives of our bilateral letter of agreement (LOA). Signed by the GOJ and USG, the 1996 LOA set an objective of significantly increasing drug arrests and cocaine and heroin seizures. Drug-related arrests in 1996 (3,263) were down slightly from the 1995 level (3,705). Cocaine seizures in 1996 (236 kg) were also reduced from the 1995 level (571 kg). Heroin seizures increased slightly in 1996 (1 kg) compared to 1995 (zero kg). Marijuana seizures, on the other hand, increased significantly (52.99 mt in 1996, compared to 37.20 mt in 1995), bolstered by one very large seizure late in 1996. The 1996 LOA set an eradication goal of 800 hectares of cannabis. During 1996, 473 hectares were eradicated, compared to 695 hectares in 1995, with the area under cultivation estimated to be the same both years. U.S.-provided helicopters used to assist eradication efforts were grounded for safety reasons for part of the year.

Jamaica's National Council on Drug Abuse (NCDA) continued its demand reduction efforts, becoming increasingly self-reliant and prominent. Jamaica's national drug control strategy has been drafted and is awaiting government approval for implementation. The GOJ has not formally charged any senior government official with drug-related activity, but several Jamaican policemen and court employees have been arrested and charged on drug and drug-related charges. The Jamaican media continues to report allegations of drug-related corruption among public officials including the police.

In 1997, in order to fully carry out the goals and objectives of the 1988 UN Drug Convention, the GOJ needs to strengthen its money laundering control law, pass a chemical control law, and continue to modernize its full range of drug control laws and penalties. Jamaica's greatest challenge will be decisive implementation of such laws. The GOJ also needs to conclude a maritime cooperation agreement, intensify its effort to respond to U.S. extradition requests, prosecute asset forfeiture cases, and increases the conviction rate of those arrested for drug-related crimes. On the bilateral level, in order to make better use of U.S. counter-drug and anti-crime assistance, Jamaica needs to intensify its drug law enforcement and marijuana eradication efforts, tighten the security of its export shipments to keep drugs out of them, and participate fully in combined maritime counterdrug operations. In addition, the GOJ needs to formally approve its national drug control strategy and systematically implement it. The GOJ should take decisive measures to root out drug-related corruption among public officials which undermines drug control efforts.

Laos

Laos is still a distant third, after Burma and Afghanistan, in world production of illicit opium. The 1995/96 growing cycle saw an estimated increase of 11% in opium production over the 1994/95 level; this was a little over 50% of the record level set in 1989. Regions of Laos covered by USG- and UNDCP-funded crop substitution projects, however, saw only low levels of poppy cultivation. In May, the Lao Government passed an amendment to its existing drug control law which banned opium production and increased penalties for trafficking. It believes, however, that rigorous enforcement of the provision outlawing opium production requires adequate programs to provide alternative sources of income to farmers and continues to press its case for adequate assistance from the international community to enable it to fully implement its anti-narcotics action plan.

Reservations about its ability to enforce the legislation banning opium production notwithstanding, the Government of Laos continued to participate actively in regional counternarcotics efforts. It signed a UNDCP-sponsored project document on regional law enforcement cooperation and hosted a regional working level conference on the trafficking of precursor chemicals

and the involvement of West African drug traffickers in Southeast Asia. Bilateral cooperation with the United States, however, remained at the center of Laos' counternarcotics endeavors. USG funding of the Houaphan crop control project continued, and the Lao formed two additional Special Counternarcotics Units, one in Savannakhet and one in Bokeo, with USG assistance. In November, the Lao Government approved the assignment of a DEA representative to the American Embassy in Vientiane. Overall Lao cooperation with the USG on counternarcotics matters remains excellent; while low-level corruption is assumed to exist, there is little to indicate high-level or systematic drug-related corruption in the Lao government. Laos' vigorous enforcement over the coming year of its newly enacted laws outlawing opium production and increasing the penalties for drug trafficking will be an important signal of its long-term commitment to controlling its drug problem.

Malaysia

Malaysia is a transit country for heroin bound for the U.S., Europe and other destinations. Malaysia's anti-trafficking laws include a mandatory death sentence for convicted traffickers. Law enforcement authorities are pressing for enactment of a conspiracy law to enable prosecution of traffickers who escape prosecution under existing criminal statutes. In addition, the Government of Malaysia has instituted a number of bureaucratic measures, including the establishment of a new interagency group headed by the Prime Minister, to bolster enforcement and demand reduction activities. Malaysia is also a party to the 1988 UN Drug Convention.

Cooperation between Malaysian law enforcement officials and DEA continued to expand in 1996. Negotiation of a bilateral Mutual Legal Assistance Treaty between Malaysia and the U.S. is proceeding smoothly. Both governments hope to conclude the treaty in 1997. Malaysia and the United States also cooperated on drug abuse prevention (demand reduction) programs, many of them directed at rehabilitation center inmates. These programs are of particular concern to the Malaysian Government in view of rising addiction rates. Existing rehabilitation centers have also been a focal point of the lower-level narcotics-related corruption which is known to exist: guard and treatment center employees have sold narcotics to inmates. The Malaysian Government has proposed an amendment to the Dangerous Drugs Act to strengthen the penalty for such activities.

Malaysia is also beginning to look toward money laundering as a vulnerable point in its overall legal and institutional structure. Senior government officials have publicly expressed concern about possible misuse of Malaysia's offshore financial center, Labuan, to launder money. Malaysia has now endorsed the Commonwealth Secretariat's efforts to produce model anti-money laundering legislation.

Mexico

The Government of Mexico's (GOM) 1996 counter-drug effort produced encouraging results and notable progress in bilateral cooperation. President Zedillo has declared the major drug trafficking organizations, and the corruption they foster within governmental structures, to be Mexico's principal national security threat. He has intensified the country's counter-drug effort, in keeping with international human rights norms, both through legal reforms and operationally, through the expanded participation of the nation's military services.

Drug seizures and arrests increased in 1996. Mexican authorities seized 23.8 mt of cocaine, 383 kgs of heroin, 1015 mt of marijuana, 171.7 kgs of methamphetamine and 6.7 mt of ephedrine (its chemical precursor), and destroyed 20 drug labs. Police arrested 11,283 suspects on drug-related charges. Authorities arrested a several major traffickers: Juan Garcia Abrego, Gulf cartel leader and one of the FBI's ''Ten Most Wanted'' fugitive; Jose Luis Pereira Salas, linked to the Cali and Juarez cartels; and Manuel Rodriguez Lopez, linked to the Castrillon maritime smuggling organization.

The Mexican Congress passed two critical pieces of legislation which have armed the GOM with a whole new arsenal of weapons to use to combat money laundering, chemical diversion and organized crime. The GOM established organized crime task forces in key locations in northern and western Mexico in cooperation with U.S. law enforcement. In an effort to confront widespread corruption within the nation's law enforcement agencies, former Attorney General Lozano dismissed over 1250 federal police officers and technical personnel for corruption or incompetence, although some have been rehired, and the GOM indicted two former senior GOM officials and a current Undersecretary of Tourism. He also sought to expand cooperation with the United States and other governments.

The United States and Mexico established the High-Level Contact Group on Narcotics Control (HLCG) to explore joint solutions to the shared drug threat and to coordinate bilateral anti-drug efforts. The HLCG met three times during 1996 and its technical working groups met throughout the year. Under the aegis of the HLCG, the two governments developed a joint assessment of the narcotics threat posed to both countries which will be used as the basis for a joint counter-drug strategy.

U.S.-Mexican bilateral cooperation on drug law enforcement continued to improve in 1996, particularly in the areas of money laundering, mutual legal assistance, and criminal investigations. The USG provided training, technical, and material support to personnel of the Office of the Mexican Attorney General (PGR), the National Institute to Combat Drugs (INCD), the Mexican Treasury, and the Mexican armed forces. The Government of Mexico established the important precedent of extraditing Mexican nationals to the United States under the provision of Mexico's extradition law permitting this in ''exceptional circumstances.'' This paves the way for further advances in bringing fugitives to justice. Both governments returned record numbers of fugitives in 1996.

Even with positive results, and good cooperation with the U.S. and other governments, the problems which Mexico faces remain daunting. The Zedillo Administration has taken important beginning steps against the major drug cartels in Mexico, and towards more effective cooperation with the United States and other international partners, but the strongest groups, such as the Juarez and Tijuana cartels, have yet to be effectively confronted. The level of narcotics corruption is very serious, reaching into the very senior levels of Mexico's drug law enforcement forces, as witnessed by the February 1997 arrest of the recently-appointed national counternarcotics coordinator. President Zedillo acted courageously to remove him as soon as the internal Mexican investigation revealed the problem, but this has been a set-back for Mexico's anti-drug effort, and for bilateral cooperation.

Mexican police, military personnel, prosecutors, and the courts need additional resources, training and other support to perform the important and dangerous tasks ahead of them. Progress in establishing controls on money laundering and chemical diversion must be further enhanced and implemented. New capabilities need to be institutionalized. Above all, the GOM will have to take system-wide action against corruption and other abuses of official authority through enhanced screening personnel in sensitive positions and putting into place ongoing integrity controls.

While there are still serious problems, and a number of areas in which the USG would like to see further progress, the two governments have agreed on the parameters of a joint approach to combat the narcotics threat, and are at work on developing this strategy. The drug issue will remain one of the top issues in the bilateral agenda and will be one of the main issues discussed during President Clinton's planned visit to Mexico in April.

Panama

Panama continued to cooperate with the United States to achieve our counternarcotics goals and objectives in 1996. The Government of Panama's (GOP) achievements in 1996 included an eradication campaign which resulted

in the elimination of the country's fledgling coca cultivation and significant damage to marijuana cultivation, aggressive and effective prevention and education campaigns, and the first-ever conviction of a major money launderer from the Colon Free Zone. In one of the region's most significant arrests, the GOP captured the Cali cartel's primary maritime smuggler, Jose Castrillon Henao, who is scheduled for trial in 1997. The USG provided six helicopters to the GOP in late 1996, for the express purpose of combatting narcotics.

Following up on full congressional certification for the past two years, and spurred on by last year's legislation tightening money laundering regulations, the Government of Panama made Latin America's first financial analysis unit operational, resulting in the presentation of patterns of money laundering to the GOP's National Security Council for eventual prosecution.

Panama continues to be a major financial and commercial center ideally positioned for narcotics smuggling and illicit financial transactions. Money laundering remains the primary problem in Panama. Local factors facilitating money laundering include bank secrecy, the Colon Free Zone, inadequate controls on cash and commodity imports/exports, lax incorporation regulations, and a dollar-based economy. The GOP has taken definite steps to address these problems, including the start-up of a financial analysis unit and the establishment of computerized data bases for tracking financial movements in the Colon Free Zone. The GOP also established a financial investigative unit which will prepare cases of money laundering for prosecution. Armed with more effective legal, policy, and institutional underpinnings, the GOP expects to counter money laundering activities more successfully in 1997.

The GOP needs to continue to crack down on both money laundering and drug trafficking, follow through on reports of suspicious transactions by arresting and convicting major money launderers, improve interdiction capabilities, and make effective use of the financial analysis unit.

Paraguay

The government of Juan Carlos Wasmosy cooperated fully with the United States in 1996. Government of Paraguay (GOP) anti-drug efforts improved substantially, and the government took adequate measures to further its compliance with the goals and objectives of the 1988 UN Drug Convention. Scarce resources, public corruption, and an only partially-reformed legal system remain obstacles to more effective counternarcotics action, but the GOP has demonstrated its commitment to combatting the drug trade.

President Wasmosy appointed an activist Director to the National Anti-drug Executive Secretariat (SENAD) in June, who immediately sought a closer, more productive relationship with the United States and with Paraguay's neighbors. Assuming the post with a reputation for honesty, Carlos Ayala made cocaine trafficking groups the SENAD's top priority. He has removed anti-drug officers implicated in corrupt practices, and focused Paraguay's investigative resources on Paraguay's top traffickers. Under Ayala's leadership, SENAD developed a comprehensive national anti-drug strategy, which President Wasmosy presented to the nation in late fall. Ayala also launched a new approach to combat drug abuse.

The Paraguayan Congress, with strong support from the executive branch, in December enacted an anti-money laundering law consistent with international standards. SENAD Chief Ayala initiated a revision of Paraguay's anti-narcotics statute which would explicitly authorize undercover operations and controlled deliveries. The GOP is pushing for congressional approval of the amendment early in 1997.

The SENAD continued large-scale marijuana eradication operations, worked closely with DEA on training and equipping the Anti-narcotics Police (DINAR) Special Intelligence and Investigative Unit, and assessed the threat of precursor chemical trafficking and diversion in Paraguay. Meanwhile, on the international front, the GOP signed agreements with Brazil and Argentina

to cooperate in combatting trans-border criminal activity, including drug trafficking, and Paraguayan officials initiated working-level coordination meetings with counterparts in these countries. The SENAD also agreed with Bolivian counterparts to share intelligence and to conduct joint operations.

In 1997, the GOP should secure passage of a strengthened anti-drug law and begin to forcefully implement its new money laundering statute. The USG will assist the GOP in creating an interagency financial crimes investigative unit. Paraguay also must improve its ability to investigate drug and other organized crime groups in the tri-border area, particularly in the cities of Pedro Juan Caballero and Ciudad del Este, and we expect the GOP to pursue key drug trafficking and corruption cases in the coming year.

Peru

Peru is the world's largest coca producer. The USG has consistently urged the Government of Peru (GOP) to fulfill its signatory obligations under the 1961 Single Convention and the 1988 UN Drug Convention, particularly with regard to reducing its coca production. In 1996, the GOP cooperated fully with the United States in efforts to achieve the goals and objectives of the UN drug conventions. Last year, total coca cultivation decreased by 18 percent, from 115,300 hectares in 1995 to 94,400 hectares in 1996. The level of cultivation in Peru was the lowest since 1986.

Contributing to the reduction was widespread abandonment of coca fields by farmers due to depressed cocaine base prices. Cocaine base prices were held below the break-even point by Peruvian National Police and Peruvian Air Force actions against the narcotics trafficking transportation infrastructure. During 1996, the joint USG–GOP alternative development program established a foothold to begin economic restructuring in coca cultivating areas. Some 226 communities signed agreements to reduce illicit coca cultivation by approximately 15,000 hectares over the next five years, in exchange for assistance to increase productivity and income from licit alternative crops.

Peruvian National Police operations seized greater amounts of cocaine base and coca leaf, but less cocaine hydrochloride (HCl) than in 1995. Efforts to arrest and prosecute major Peruvian traffickers maintained the GOP's stiff narcotics policy, and contributed to disarray among major trafficking organizations. Still, there was strong evidence that Peruvian traffickers continued to refine cocaine hydrochloride and ship it directly to Mexico for distribution in the United States. President Fujimori continued to take a tough public stance against narcotics corruption, and in 1996 created a special drug court system to handle drug offenses. The U.S. Embassy reported that incidents of military and police drug corruption were quickly addressed by the GOP.

In April 1996, the GOP passed Law 824, which established a civilian drug council (CONTRADROGAS). CONTRADROGAS was created to coordinate the efforts of the various GOP agencies involved in counternarcotics efforts, and to implement the Peruvian National Drug Strategy announced in 1994.

In 1997, the GOP must mount an aggressive effort to attract additional donor funding to expand alternative development efforts while coca farmers are still receptive to licit economic alternatives. The GOP must also ensure that the narcotics law enforcement effort which has suppressed cocaine base prices is intensified to address riverborne narcotics traffic and sustain the existing aerial intercept effort.

Taiwan

Taiwan's geographical location relative to the Golden Triangle and its importance as an advanced regional transportation and shipping center make it a major transit point for drugs destined for the U.S. and other markets. Taiwan authorities dispute this assessment, citing reduced seizures and arrests as a signal of the deterrent effect of their considerable counternarcotics

efforts. The pattern of trafficking in the region, however, suggests that because of its geographic location and its ports, Taiwan will remain a target for drug traffickers. Taiwan law enforcement authorities, in fact, recently expressed concern that Hong Kong-based drug traffickers may be collaborating with Taiwan organized crime groups to transfer their base of operations to Taiwan before Hong Kong reverts to Chinese sovereignty in July of 1997, and their cooperation with the U.S. on counternarcotics efforts continues to be good.

Taiwan's law enforcement cooperation with DEA (under the auspices of the American Institute in Taiwan) and other U.S. agencies expanded in 1996. Taiwan is setting up a new National Drug Intelligence Center; we envisage increased cooperation with U.S. law enforcement agencies resulting from this. The American Institute in Taiwan and the Taiwan Economic and Cultural Representative Office continue to negotiate a Memorandum of Understanding to provide a framework for even broader counternarcotics cooperation. Taiwan has been conducting an aggressive anti-crime campaign on other fronts, as well, including prosecuting cases of public corruption. There are, however, no known cases of official involvement in narcotics trafficking.

In 1996, Taiwan also passed money laundering legislation meant to bring it into closer conformity with the goals and objectives of the 1988 UN Drug Convention. While the law enhances the ability of law enforcement officials to deal with the problem, it requires a number of revisions to enable Taiwan to meet international standards.

Thailand

Thailand remains a major transit route for drugs destined for the U.S. and other markets and produces about one per cent of Southeast Asia's opiates. It continues to serve as a model for the region as a result of its successful efforts to control opium production and its commitment to prosecuting drug producers and traffickers. Opium production in the 1995/96 growing season increased from an estimated 25 metric tons in the previous season to 30 metric tons. The upsurge in opium and heroin prices shortly after the destabilization of Khun Sa's trafficking operations in Burma was largely responsible for more widespread opium cultivation. Thailand's actions to close off sections of the Thai border with Burma, however, had helped create the conditions leading to Khun Sa's decision to reach a settlement with the SLORC.

In January of 1996, Thailand extradited a former Member of Parliament to the United States for prosecution on drug trafficking charges. Two ''Operation Tiger Trap'' defendants (part of drug lord Khun Sa's trafficking operation) were also extradited to the U.S. later in the year. Thirteen individuals have been arrested thus far in connection with this major ''sweep.''

Thai cooperation with U.S. law enforcement officials remains excellent. Thailand's Office of the Narcotics Control Board and the Police Narcotics Suppression Bureau continue to exhibit a high degree of professionalism. Corruption continues to be a problem in the Police Department, which lacks an effective internal security apparatus to hold officers accountable for wrongdoing. Elements of the Royal Thai Army and Thai Customs have also been publicly accused of corruption. The Royal Thai Government as a whole, however, supports a policy of active measures against drug production and trafficking.

Thailand is vulnerable to money laundering. A bill to enact legislation has been stalled for a number of years. In late November, the newly-elected Prime Minister promised the President that the legislation would be given special handling to hasten its passage. Passage of appropriate anti-money laundering legislation would enable Thailand to become a party to the 1988 UN Drug Convention.

Like other countries in the region, Thailand may find itself becoming an even larger market for the region's opium, heroin and amphetamine

production as the region's economic expansion continues. We will be urging Thailand to enact a conspiracy law to further enhance its ability to mount effective counternarcotics efforts and to establish an amplified crop control program.

Venezuela

Venezuela continued to be a major transit country for cocaine shipped from Colombia to the United States, and for chemicals transhipped through Venezuelan ports, as well as a money laundering center. Law enforcement agencies estimate that between 100–200 metric tons (mt) of cocaine are shipped through Venezuela to the United States and Europe. The Government of Venezuela (GOV) seized only about six mt of cocaine, almost identical to the amount it seized in 1995. Heroin seizures declined by 27 percent, from 96 kilograms (kg) in 1995 to 70 kg in 1996.

A significant decision this year was President Caldera's appointment of a politically powerful drug czar and elevation of this position to a cabinet rank. However, the GOV must produce more concrete counternarcotics results to match this demonstration of political will during the next year.

Venezuela's main port, Puerto Cabello, is a favored point for illicit smuggling by narcotics trafficking syndicates. The same is true of other ports along Venezuela's long coastline. Venezuela's airspace offers further opportunities for trafficking. Traffickers transport cocaine by small aircraft primarily to Venezuela's border states of Tachira and Apure. Traffickers risk little by transporting cocaine through Venezuela due to weak and ineffectual law enforcement interdiction efforts.

The United States designated Venezuela as a recipient of more than $12 million worth of USG drawdown defense equipment. The Venezuelan Armed Forces adopted a counterdrug strategy, which defines its role as supporting the National Guard (GN) and police forces. The GOV is working with the United States to create a Joint Police/Military Counternarcotics Intelligence Center. However, much more needs to be done to improve communication and coordination between the GN and the Navy, Air Force and Army to implement the strategy.

Maritime cooperation was disrupted by GOV denials of four USG requests from United States Coast Guard Law Enforcement Detachments from third country vessels to board suspected Venezuelan narcotics trafficking vessels in international waters. However, USG and GOV authorities are currently seeking to broker a maritime agreement.

Although the GOV lacks effective controls over certain precursor chemicals, it made significant seizures of chemicals at Puerto Cabello. The GOV also continued to make significant progress against illicit cultivation. Venezuelan authorities identified replantings of about 500 hectares (ha) of coca and opium poppy fields in the Sierra de Perija region on the border with Colombia. With USG assistance, those replantings were eradicated. Since 1994, joint efforts have reduced estimated illicit plantings from 1,000 ha to 200 ha.

The GOV permitted the basing of United States military assets and personnel in Venezuela in an effort to cooperate on Operation Laser Strike, a United States Southern Command regional air interdiction operation.

Money laundering in Venezuela continued in its financial network of banks and non-bank institutions because of weak banking supervision and regulatory authority. Although Venezuela passed a drug law in 1993 that included provisions on money laundering, key provisions are lacking, including one on conspiracy.

Allegations of corruption plague the judicial branch and some elements of the GN. Law enforcement agencies believe that corruption in the GN is a problem, hobbling the effectiveness of counternarcotics efforts. These shortfalls have raised the USG's concern about trafficking through Venezuela to the United States. Venezuela must move swiftly to reform its judicial

branch, whose corruption threatens to prevent Venezuela from combatting its drug problem and from protecting its democratic institutions and national territory from international drug traffickers.

Despite such problems, eradication efforts, the elevated rank of the drug czar, Venezuela's first national epidemiological survey, and other counternarcotics efforts reflect the GOV's spirit of cooperation to advance the goals and objectives of the 1988 UN Drug Convention and bilateral agreements with the United States. However, the USG will scrutinize Venezuela's efforts in the coming year and will expect the GOV to be vigorously engaged in increased cooperation on drug interdiction, money laundering, chemical control, anti-corruption efforts and conclusion of a comprehensive bilateral maritime cooperation agreement.

Vietnam

Vietnam's increased trade and tourism have opened new routes for Southeast Asian heroin shipments to such consumer markets as Australia, North America and Europe. The SRV continues to battle against narcotics trafficking but has yet to overcome problems of corruption within the military and police. The SRV does, nonetheless, appear to be actively engaged on the counternarcotics issue, conducting a demand reduction media campaign as well as police operations and crop eradication programs. SRV statistics reflect cultivation of 1800 hectares of opium poppy during 1995/96. USG estimates, however, place the cultivation level at 3,150 hectares.

Vietnam created a Drug Control Master Plan in 1995 which calls for the eradication of opium cultivation by the year 2000. In October of 1996, the SRV promulgated implementing regulations for articles of the criminal code related to narcotics. The new regulations permit asset seizures in narcotics cases. Vietnam joined the Association of Southeast Asian Nations Drug Control Cooperation Program in 1996. Vietnam has also stated that it expects to ratify the 1988 UN Drug Convention in 1997. It is currently drafting a comprehensive narcotics control law, based on the tenets of the 1988 Convention, which is expected to go before the National Assembly in 1997. The law will include statutes related to the control of chemical precursors and provide for controlled shipments as an investigative technique.

SRV interdiction efforts resulted in 6,000 narcotics-related arrests in 1996, twice as many as in 1995. SRV law enforcement agencies are working with the UNDCP to create special counternarcotics squads across the country. U.S.–SRV cooperation on narcotics issues expanded throughout 1996. Training initiatives included DEA training for Ministry of Interior narcotics control teams in Hanoi and U.S. Customs Service training for Vietnamese customs officers in Ho Chi Minh City. Several senior Vietnamese narcotics officers also traveled to the United States for consultations with U.S. counterparts. The U.S. hopes to increase the level of its assistance to Vietnam. To that end, it plans to engage the SRV in drafting a Memorandum of Understanding on counternarcotics cooperation; a successful outcome, however, will depend to a great extent on the SRV's coming to grips with the conditionality involved in any expanded U.S. assistance.

VITAL NATIONAL INTERESTS JUSTIFICATIONS

Belize

Because of a significant increase in the detected activities of Colombian drug trafficking organizations in Belize in 1995, Belize was added to the list of major drug producing and transit countries for 1996. Belizean traffickers are also working with Mexican groups to move the Colombian cocaine north to the United States. These criminal activities continued throughout 1996, but the ability of the Government of Belize (GOB) to combat them was severely undermined by deeply-entrenched corruption, which reaches into senior levels of government.

The GOB's accomplishments weighed against those areas where progress was lacking have led to a decision to consider denial of certification of Belize. The GOB's accomplishments in 1996, such as its recent accession to the 1988 UN Drug Convention and passage of money laundering legislation, were achieved only after the United States and other countries exerted intense, coordinated pressure. Belizean cocaine seizures were down 36 percent and marijuana eradication decreased by 4 percent from 1995. Finally, the record of arrests and convictions of major drug dealers was, likewise, disappointing. During 1996, the GOB took no meaningful steps to uncover or punish official corruption.

Bungled investigations, along with several high-profile trials ending in acquittal, including the prosecution of the Home Minister's son-in-law for running an illegal airstrip and two immigration officials fired from their jobs and accused of corruption in an alien smuggling case, have, at a minimum, demonstrated the GOB's deficiencies in its efforts.

The USG urged the GOB to demonstrate its willingness to cooperate with the United States in achieving reasonable counternarcotics goals and objectives. The GOB, however, is not fully cooperating or taking adequate steps to meet the goals and objectives of the 1988 UN Drug Convention, especially promises made by the GOB toward the end of the year to complete a new extradition treaty and a mutual legal assistance treaty. The GOB has been operating under a US–UK extradition treaty.

Denial of certification would be contrary to U.S. vital national interests because it would require the U.S. to vote against multilateral development bank funding for Belize, an important element in supporting our long-term democracy and economic development goals for the country. Such multilateral support reinforces U.S. counternarcotics assistance which is designed to help Belize develop strong, independent and credible institutions capable of bringing traffickers to justice, stemming the flow of narcotics through the country and better guarding its own borders.

Although Belize's counternarcotics efforts fell short of full cooperation during 1996, the GOB did take steps which demonstrated an effort to work with the USG. It is in the vital national interests of the United States to improve the GOB's counternarcotics efforts and ensure that they are given the attention required.

Lebanon

Lebanon appears to have succeeded in the struggle against illicit crop cultivation due to the joint Lebanese-Syrian eradication efforts since 1992. There appears to be no cultivation of opium and the cannabis cultivation (for hashish production) also has all but disappeared. There are some small farms in the Baalbek-Hermel region which are still engaged in illicit cultivation, but they appear to be few in number. When such farms are discovered, arrests are made immediately and the crops are eradicated. Lebanese Internal Security Forces (LISF) and the Lebanese Armed Forces (LAF), with assistance from the Syrian Army, reported eradication of approximately 70,000 square meters of cannabis in the Baalbek-Hermel region of the Bekaa Valley during June and July. There were no other reported eradication efforts during the year.

However, Lebanon remains a significant transit country for the purposes of re-export of cocaine, and many small ''home''-type labs for processing opium into heroin are still reported to operate in the Bekaa Valley. Several areas of the Bekaa Valley are not under the effective control the Government of Lebanon (GOL), and these areas are vulnerable to the establishment of illegal labs.

Although local authorities deny money laundering is a serious problem, Lebanon still presents itself to narcotics traffickers as a venue for money laundering due to bank secrecy laws, which do not allow for official discovery. Corruption remains endemic through all levels of Lebanese society, reportedly including law enforcement bodies.

In March 1996, the GOL acceded to the 1988 UN Drug Convention, but with formal reservations regarding certain provisions of the Convention, including those which relate to bank secrecy. The United States has already indicated its intention to formally object to these reservations if Lebanon does not withdraw them. Parliament is studying a draft anti-drug code, which would make money laundering a crime.

The GOL has displayed a willingness to cooperate with USG agencies during 1996. Unfortunately, Lebanon's reservations to some of the provisions of the 1988 UN Drug Convention suggest that the political will is not yet sufficient to comply fully with world standards.

Lebanese trafficking continues to pose a threat to U.S. citizens and interests. On the other hand, the United States considers the provision of assistance which encourages the continued development of Lebanon's economy and infrastructure as critical to peace and stability in the Middle East, which is also of vital importance to U.S. interests and stability. These factors, combined with Lebanon's sustained positive performance in eradication and other anti-narcotics efforts, outweigh the threat posed by drug trafficking through Lebanon to the United States.

Pakistan

Pakistan is an important transit country for opiates from Afghanistan, a source country for approximately 75 metric tons of opium, and a processing country for domestic opium and opium from Afghanistan. Most opium poppy cultivation and most laboratory production of morphine base and heroin in Pakistan takes place in the Northwest Frontier Province (NWFP), which borders Afghanistan. Pakistan has a bilateral agreement with the United States that provides funding for law enforcement, roads and crop substitution in the NWFP, and demand reduction activities.

Under the government of Benazir Bhutto, Pakistan's counternarcotics efforts from January through October 1996 were seriously deficient. However, the interim government of Meraj Khalid, which replaced the Bhutto government in November, took a number of significant counternarcotics actions in accordance with the U.S.-Pakistani bilateral agreement and the 1988 UN Drug Convention.

The primary counternarcotics achievement of the Bhutto government was a reduction in the cultivation of opium poppy. USG estimates of land used for opium poppy decreased 51 percent to 3,400 hectares and the estimate of production decreased 52 percent to 75 metric tons from the previous year. The Bhutto government also extradited Sialek Jan, wanted by the USG on narcotics trafficking charges in March. However, under Bhutto, Pakistani authorities failed to act on DEA information on specific cases of trafficking, severely cut the budget of the Pakistani Anti Narcotics Force (ANF), failed to act on recommendations of the UN Drug Control Programs (UNDCP) for improvements to the Narcotics Substances Act, and failed to interdict trafficking caravans in Baluchistan Province. During Bhutto's tenure, corruption was a significant problem, with ANF officials suspected of perpetrating a hoax seizure of opium base in June, and subsequently covering up their actions.

Pakistani President Leghari November 5 dismissed the Bhutto government for corruption and mismanagement, an act subsequently upheld by the Pakistani Supreme Court. Corruption is a severe and chronic problem in the Pakistani government, including the ANF, which has no bureaucratic system, such as an internal affairs section for identifying, investigating and recommending action against corrupt officers. No one in a policy-making position in either the Bhutto or interim government has been accused of narcotics-related corruption. Sufficient legislation exists to control and punish public corruption but it is seldom enforced. The interim government in November initiated a comprehensive process for holding public officials accountable for corrupt practices.

The interim government in November and December 1996 promulgated changes to the Narcotics Substances Act as suggested by UNDCP, restored some funds to the ANF, conducted two major raids on heroin laboratories in NWFP, extradited to the United States accused trafficker Nasrullah Henjrah, and arrested another individual on the U.S. extradition request list, Nasir Ali Khan.

During the course of the year, the Government of Pakistan froze $3.5 million in assets from 21 traffickers and seized 5.4 metric tons of opium and 2.0 metric tons of heroin. These figures represent declines from those of 1995.

Pakistan is a party to the 1988 UN Drug Convention, which it ratified in October 1991, but implementing legislation on money laundering has not yet been drafted. The revisions to the Narcotic Substances Act approved by the interim government bring asset seizure and controlled delivery standards to the levels demanded by the Convention.

Vital U.S. national interests could be damaged if Pakistan, under the newly-elected government of Nawaz Sharif, were to be denied certification. Pakistan is a moderate Islamic state with a nuclear weapons capability. Pakistan is the largest contributor of troops for UN peacekeeping operations and has provided key cooperation in the international fight against terrorism. Denial of certification would be viewed in Pakistan as abandonment of a loyal ally and would endanger U.S.-Pakistani dialogue on vital issues. Denial of certification could also bring to a halt the counternarcotics momentum started in November by the caretaker government, and could negatively prejudice the newly elected government against counternarcotics cooperation with the United States.

Denial of certification would further endanger U.S. interests by requiring the United States to vote against Pakistan in multilateral development banks (MDBs). The United States has an interest in seeing that the MDBs continue their support of activities such as the GOP's Social Action Program and its Financial Sector Reform Project, which are essential to Pakistan's human and economic development. Pakistan is one of the largest beneficiaries of World Bank and Asian Development Bank programs.

These risks to vital U.S. interests outweigh any potential gain from denying certification to Pakistan. Pakistan is a primary conduit for opium and morphine base from Afghanistan, the second largest opium producer in the world. With continuing conflict and no central government in Afghanistan, Pakistan's cooperation is particularly important in stopping Southwest Asian drugs.

During the period of vital national interests certification, the United States will strive to work with senior officials of the new government to achieve the goals of the UN Drug Convention.

STATEMENTS OF EXPLANATION

Afghanistan

Afghanistan is second only to Burma as a producer of illicit opium, producing approximately 30 percent of the world illicit supply. Production flattened in 1996, after steep annual increases earlier in the decade. U.S. satellite surveys indicated a very small decrease in both cultivation and production, to 37,950 hectares and 1230 metric tons, respectively.

Civil war not only continued but intensified in Afghanistan during 1996. Between September and December, the Taliban, a movement started by religious students, expanded the territory it controls. The Taliban now control 90 percent of the land on which opium poppy is cultivated. The Taliban have now controlled the province producing the greatest quantity of opium for over two years. Both USG and UN Drug Control Program (UNDCP) surveys indicate that there were no concerted eradication efforts in 1996.

Law enforcement actions were virtually non-existent. None of the factions controlling territory made a serious attempt to disrupt narcotics trafficking. Granted that none of the factions has an effective law enforcement bureaucracy, the ease with which narcotics caravans and refineries continued open operations was nevertheless remarkable. In the few instances the USG knows of where arrests were made, most suspects were released upon payment of a bribe.

Taliban leaders, in particular, expressed a desire to cooperate on counternarcotics with U.S. and UNDCP officials. However, the major opium refining operations are located in Taliban-controlled territory, and the Taliban appear to have done nothing to date to discourage cultivation of opium poppy. The leaders state they cannot do so until international donors provide crop substitution and other assistance.

Many sources have reported that all major factions require farmers to pay a tax on their opium production. Some reports also indicate that deeper involvement in trafficking is also common among Afghan leaders.

The USG strongly promotes the UN Special Mission to Afghanistan's efforts to develop a broad-based national government that can address the problems of narcotics, terrorism and humanitarian concerns. We assist the peoples of Afghanistan, subject to resource availability, primarily through UN programs aimed at humanitarian relief, reconstruction, and counternarcotics.

Inasmuch as legislation makes special allowance for continuation of such assistance generally and of assistance for Afghanistan specifically, notwithstanding any other provision of law, denying certification to Afghanistan would have minimal effect in terms of implementation of this policy.

The continued large-scale cultivation and trafficking in Afghanistan, combined with the failure to initiate law enforcement actions, preclude a determination that Afghanistan has taken adequate counternarcotics steps on its own or that it has sufficiently cooperated with the USG in counternarcotics efforts, although Afghanistan is a party to the 1988 UN Drug Convention. Accordingly, denial of certification is appropriate.

Burma

Burma produced 84% of the opium cultivated in Asia in 1996 and remains the world's largest producer of opium and heroin. Continuing lack of resources and commitment to effective drug control policies led to near record levels of opium cultivation, totaling 163,000 hectares with a potential yield of 2,560 metric tons of opium gum, or enough to produce 250 tons of heroin. While the State Law and Order Restoration Council (SLORC) claimed an improvement in its record with regard to drug and precursor chemical seizures, these efforts were marginal, both in terms of results and in view of the overall level of opium production and trafficking in Burma. The drug lord Khun Sa continues to be exempt from prosecution or extradition. Ethnic drug trafficking armies such as the United Wa State Army (UWSA) and the Myanmar National Democratic Alliance Army (MNDAA), having negotiated ceasefires with the SLORC which permit them limited autonomy, remain armed and heavily involved in the heroin trade. Their leaders have used their relationship with Rangoon to increase their wealth, but prosperity has not filtered down to the ordinary people in the areas they control. Lack of enforcement against money laundering and an underdeveloped banking system have created an economic environment increasingly conducive to the use of drug profits in legitimate commerce. While there is no evidence that the government per se encourages or is involved in the drug trade, drug money is beginning to permeate the economy.

The SLORC announced no new drug control policy initiatives in 1996. It did conduct some counternarcotics activities in areas controlled by the Kachin Defense Army, the Kokang Army, the MNDAA and the UWSA,

seizing a total of 493 kilos of heroin, over three tons of ephedrine, 5,677,525 amphetamine tablets and 2668.4 gallons of acetic anhydride. These actions did not seriously threaten the drug trafficking activities of the organizations in question. The unprecedented chemical precursor and amphetamine seizures, however, have alarmed Burmese authorities because they signal a possible future stimulants problem for the Burmese.

Negotiations involving the Burmese Government, UNDCP, and Wa leaders on the ''Drug Control and Development in the Wa Region of Shan State'' project concluded in November. The goal is to bring about a gradual reduction of opium cultivation in the Wa area. The Burmese Cabinet has not yet formally approved the project. While the project is designed to incorporate a monitoring and evaluation component, donors have concerns about implementation.

USG engagement of the Burmese government on counternarcotics issues remains limited. DEA maintains a liaison operation with Burmese police and military units involved in drug enforcement activities. The Burmese have also invited USG participation in a third joint opium yield survey in the Shan State. The U.S. will consider further assistance only upon the Burmese Government's demonstration of a strong commitment to narcotics control, the rule of law and significant political reform.

Colombia

In 1996, as in previous years, Colombia remained the world's leading producer and distributor of cocaine and an important supplier of heroin and marijuana. In the same year, coca cultivation in the country increased by approximately 30 percent.

As in 1995, the Colombian Government made only limited progress in 1996 against the pervasive, narcotics-related corruption from which it suffers. In a process which can only be described as flawed, President Samper was exonerated of charges of corruption by the Colombian Congress. Moreover, Samper remained unwilling to confront fully the drug interests that contributed heavily to his Presidential campaign.

President Samper pledged to push for stricter sentencing laws in 1994, but there was only limited progress in 1996 to advance Congressional passage of legislation which would increase sentences for traffickers and money launderers. As an apparent consequence, the Rodriguez Orejuela brothers—the notorious Cali drug leaders—received very light prison sentences which were not commensurate with their crimes. The Colombian government did not respond to the USG's request for extradition of four major drug traffickers and for most of the year it took no action in response to reliable USG information that narcotics traffickers continue to run their operations from prison. Troubling also was Samper's promotion and public praise for a drug-tainted military general—behavior which reinforces USG concern about the credibility of his stated commitment to serious narcotics control for Colombia.

On the eradication front, the Colombian Government's strong opposition to testing more than one granular herbicide—in an effort to replace less effective liquid herbicides—is especially problematic in light of the significant expansion in coca cultivation.

On the positive side, the serious work on the part of the Colombian National Police (CNP) as well as select elements of the military to confront drug trafficking must be highlighted. Government agreement to expand coca and opium eradication was taken on with determination by the CNP despite significant challenges including physical threats and lack of proper resources. In this regard, the USG was encouraged by evidence of increased cooperation from the Colombian military for the CNP in support of illegal crop eradication. The CNP and military also worked closely to counter narco- and guerrilla-sponsored public demonstrations against eradication.

There were signs that newly appointed members of the cabinet are determined and committed to advance important counternarcotics objectives. A noteworthy achievement—pushed also by private Colombian citizens—was pressure on the Congress which resulted in passage, with retroactivity, of an asset forfeiture law. However, its constitutionality is already being challenged by those who would be affected by its implementation. In November, bilateral agreement was reached to expedite shipboarding procedures and a maritime agreement was signed in February 1997. The CNP and the Prosecutor General continued their efforts against corruption by firing corrupt police and prosecutors and by continuing investigations targetted against official corruption. However, without determined and committed leadership, much-needed legal reform and a supportive political environment, real drug control successes by the CNP and other entities will be thwarted.

Progress observed in some areas holds promise for serious drug control efforts in Colombia in the future. Nevertheless, because of high-level corruption, the privileged treatment accorded to major traffickers currently in jail, light sentencing of traffickers and the government's continued stand against extradition, the USG cannot certify Columbia as fully cooperating with the United States on drug control, or as having taken adequate steps on its own to meet the goals and objectives of the 1988 UN Drug Convention.

Iran

Iran remains an important transit country for opiates from Afghanistan and Pakistan destined primarily for processing in Turkey. The USG has no recent surveys of opium poppy cultivation in Iran, but other sources believe cultivation has decreased, possibly as a result of the influx of cheap Afghan opium.

The Government of Iran (GOI) has ratified the 1988 UN Drug Convention, but the USG remains unaware of the passage of implementing legislation that would bring Iran into compliance with the requirements of the Convention. According to UN Drug Control Program (UNDCP) and International Narcotics Control Board (INCB) missions that have visited the country, and reports received from countries with embassies in Iran, the GOI is attempting to meet at least some of the goals and objectives of the Convention. The USG cannot evaluate Iranian claims as we do not have diplomatic relations. There is no bilateral narcotics agreement or cooperation and Iran's performance is measured solely against the standards of the 1988 UN Drug Convention.

The GOI has, according to reports by other nations, begun reaching out to Western countries in a very tentative fashion, seeking to establish a working counternarcotics relationship. There are, however, countervailing pressures and we know of no working law enforcement relationship. The GOI, Pakistan and UNDCP participate in a tripartite UNDCP law enforcement project, to which Iran contributes important resources according to UNDCP. In 1995, the latest year on which Iran reported, it claims to have seized 126 mt of opium, 2 mt of heroin and 11 mt of morphine, as well as lost 133 citizens in battles against traffickers. The USG cannot verify these claims. The level of narcotics arriving in Turkey does not appear to have diminished according to USG sources.

Credible reports have been received that corruption remains a problem. There have been accusations of corruption against individuals with access to very high levels of power. Low-level corruption remains a problem judging by the number of caravans that successfully evade massive physical barriers at Iran's eastern border. We do not know how extensively or how equitably Iran administers its anti-corruption program.

Sentences imposed for narcotics trafficking are very harsh and 1,000 people have been executed for trafficking since 1989.

Nigeria

Nigeria is the focal point of West African narcotics trafficking. Narcotics producing and trafficking organizations in Asia, South America and, increasingly, Nigeria itself either use Nigeria as a transshipment point or rely on Nigerian courier networks to transport Asian heroin and South American cocaine destined for U.S. or European markets. Nigerian trafficking organizations are among the leading carriers of Southeast and Southwest Asian heroin into the United States. In addition, Nigerian traffickers ship cannabis—the only illicit drug produced in Nigeria—to Europe and other West African countries. The Government of Nigeria (GON) has failed to address corruption adequately among law enforcement and other government agencies, hindering counternarcotics efforts.

Although the Nigerian Drug Law Enforcement Agency (NDLEA), the one positive internal agency working against drug trafficking in Nigeria, has attempted to combat trafficking and corruption, the GON has left it woefully underfunded. Lack of coordination among police, intelligence and other law enforcement agencies also prevents effective progress against narcotraffickers.

Nigerian trafficking organizations operate sophisticated money laundering operations in addition to controlling courier networks. These organizations have been quick to adapt in response to vigorous international law enforcement, as well as to efforts made by the NDLEA within Nigeria. They have found new ways to evade detection and to alter and expand their narcotics smuggling routes and markets; as GON counternarcotics efforts have effectively reduced the amount of drugs shipped through international airports within Nigeria, courier networks have increasingly relied on overland shipments to transport narcotics. Nigerian trafficking organizations actively recruit couriers of diverse nationalities, backgrounds and ages.

Perhaps the most glaring omission by the GON is its failure to provide funding for its law enforcement employees, thus making them ever more vulnerable to bribery and related forms of corruption, and to provide funding for implementation of its laws and strategies. Most law enforcement employees are paid far less than is sufficient to feed, clothe and house their families. In addition, the GON has taken no meaningful steps towards cooperation with the United States on extraditions, information sharing or prosecution of arrested fraud suspects; nor has it moved significantly towards meeting the goals and objectives of the 1988 UN Drug Convention.

Syria

For several years, Syria has been an important transit country for drugs flowing into and out of Lebanon and, in many cases, on to Europe and the United States. The increase in seizures in 1996 over 1995 (especially of hashish) points to increased vigilance by Syrian authorities, but could imply as well that the total flow of drugs across Syria is increasing. Additionally, the presence of approximately 25,000 Syrian troops in the Lebanese Bekaa Valley makes Syrian cooperation with Lebanese officials a substantial element in the fight against drug production and trafficking there. Allegations of corruption against Syrian military officials stationed in Lebanon continued in 1996.

The Government of Syria (SARG) restructured its Syrian National Police force in 1996, thus creating a separate and independent Counter-Narcotics Division. The SARG continued to assist anti-narcotics efforts in Lebanon during 1996, donating more than a million fruit trees for the Lebanese crop substitution program. Though widespread reports claim that Syrian military and security personnel continue to profit from the drug trade, the SARG neither initiated corruption investigations nor brought anti-narcotics charges against any of these individuals in 1996.

Syria is a party to the 1988 UN Drug Convention. Though Syria made significant progress in some anti-narcotics efforts in 1996, including more aggressive seizures of hashish and various types of amphetamines, it did

not meet some of the other goals and objectives of the 1988 UN Drug Convention; specifically, the SARG did not move aggressively enough against narcotics transiting Syrian territory, especially to and from Lebanon, it did not take sufficient action towards locating and dismantling drug laboratories in Syrian-controlled areas of Lebanon, and it ignored serious allegations against Syrian officials of involvement with drug traffickers. Syria does not have a bilateral narcotics agreement with the United States.

[FR Doc. 97–6231
Filed 3–11–97; 8:45 am]
Billing code 4710–10–M

federal register

Wednesday
March 12, 1997

Part V

Federal Communications Commission

47 CFR Parts 22 and 90

Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act; Competitive Bidding; Final and Proposed Rules

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[WT Docket No. 96–18; PP Docket No. 93–253; FCC 97–59]

Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act; Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Second Report and Order* the Commission adopts rules governing geographic area licensing of Common Carrier Paging (CCP) and exclusive 929 MHz Private Carrier Paging (PCP), and competitive bidding procedures for auctioning mutually exclusive applications for these licenses. This action is necessary to promote efficient licensing and competition in paging services. The Commission's objectives in this proceeding are to ensure that the paging service rules are consistent with the rules for competing services, so that competitive success is dictated by the marketplace, rather than by regulatory distinctions, and to ensure that the licensing process promotes the goals of competition and efficient use of spectrum.

EFFECTIVE DATE: May 12, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Mika Savir, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620, or Frank Stilwell, Auctions Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This *Second Report and Order* in WT Docket 96–18 and PP Docket No. 93–252, adopted on February 19, 1997, and released on February 24, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037 (202) 857–3800.

Paperwork Reduction Act: The collection of information requirements have been approved by the Office of Management and Budget and assigned OMB control number 3060–0697. The FCC Form 175 is assigned OMB control number 3060–0600. The FCC Form 600 is assigned OMB control number 3060–0623.

Summary of Action

I. Background

1. In the *NPRM*, Revision of part 22 and part 90 of the Commission's rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *Notice of Proposed Rulemaking*, 61 FR 6199 (February 16, 1996) (*NPRM*), the Commission proposed a transition to geographic area licensing for CCP and PCP channels pursuant to the statutory objective of regulatory symmetry for all Commercial Mobile Radio Services (CMRS) set forth in the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, Title VI section 6002(b)(2) (A), (B), 107 Stat. 312 (largely codified at 47 U.S.C. 332 *et seq.*) (1993 Budget Act). The 1993 Budget Act mandated that substantially similar mobile services receive comparable regulatory treatment. In the *NPRM*, the Commission also proposed competitive bidding procedures for resolving mutually exclusive applications for these licenses pursuant to its statutory authority under the 1993 Budget Act, section 6002 (codified at 47 U.S.C. 309(j)).

2. In the *NPRM*, the Commission proposed a transition from site-by-site licensing to geographic area licensing for all exclusive, non-nationwide paging services. The Commission also proposed to adopt competitive bidding rules for the geographic area licenses. Due to the fundamental changes proposed in the *NPRM*, the Commission suspended acceptance of new applications for paging licenses as of February 8, 1996. The Commission observed that continuing to accept new applications after releasing the *NPRM* with the proposed rule changes would impair the objectives of the rulemaking proceeding. The Commission partially lifted the paging freeze for incumbent licensees by allowing incumbents to file applications for additional sites within 65 kilometers (40 miles) of operating sites in the *First Report and Order*, Revision of part 22 and part 90 of the Commission's rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *First Report and Order*, 61 FR 21380 (May 10, 1996); *reconsideration in Order on Reconsideration of First Report and Order*, 61 FR 34375 (July 2, 1996). Additionally, the *First Report and Order* exempted Basic Exchange Telecommunications Radio Service (BETRS), Rural Radiotelephone Service, and Special Emergency Radio Service (SERS) from the interim freeze.

3. In this *Second Report and Order*, the Commission adopts final rules governing geographic area licensing for channels in the 35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz, 929–930 MHz, and 931–932 MHz bands allocated for paging; competitive bidding rules for granting geographic area non-nationwide licenses; and a standard methodology for providing protection to incumbent licensees from co-channel interference for the 929–930 MHz and 931–932 MHz paging bands. All pending mutually exclusive paging applications will be dismissed, including those filed under the interim rules. As of the adoption date of this *Second Report and Order*, February 19, 1997, no further applications for site-by-site licenses, other than for shared channels will be accepted (with the exception of applications filed pursuant to 47 CFR 22.369, 90.177, 1.1301 *et seq.*, and applications filed for coordination with Mexico and Canada).

II. Second Report and Order

A. Geographic Area Licensing for Non-Nationwide Paging Channels

1. Geographic Area Licensing for Exclusive 929 MHz and 931 MHz Bands

4. The Commission observes that geographic area licensing provides flexibility for licensees and ease of administration, facilitates further build-out of wide-area systems, and enables paging operators to act quickly to meet the needs of their customers. The Commission finds, therefore, that converting the 931 MHz channels and the exclusive 929 MHz channels to geographic area licensing will further the goal of giving carriers offering substantially similar services more flexibility to compete, and will enhance regulatory symmetry between paging and narrowband personal communications services (PCS). The Commission states that exclusive 929 MHz and 931 MHz licensees will be extended the same flexibility as narrowband PCS licensees in terms of the location, design, construction, and modification of their facilities throughout their geographic areas.

5. The Commission is implementing geographic area licensing in lieu of the current site-by-site licensing, with Major Trading Areas (MTAs) as the geographic area for the 931 MHz and exclusive 929 MHz channels. The Commission is licensing these channels using 51 MTA geographic areas. In addition to the 47 Rand McNally MTAs, the Commission is adding three MTAs for the U.S. territories of (1) Guam and the Northern

Mariana Islands, (2) Puerto Rico and the U.S. Virgin Islands, and (3) American Samoa. The Commission is also licensing Alaska as a single area separate from the Seattle MTA.

6. Geographic area licensees will have the flexibility to construct transmitters at any place within their license area, subject to the co-channel interference rules and will not be required to file applications for additional sites or modifications with the Commission. Geographic area licensees may add or modify sites consistent with this *Second Report and Order.* Applications must be filed with the Commission for coordination with Mexico or Canada and where required by §§ 22.369, 90.177, or 1.1301 *et seq.* Geographic area licensees will be able to act quickly to add sites or make modifications of existing sites to meet the needs of their customers. Due to the prevalence of wide-area paging systems on these channels and the flexibility geographic area licensing will afford paging licensees, the Commission believes that geographic area licensing for exclusive 929 MHz and 931 MHz channels, with MTAs as the geographic area, is consistent with the public interest, convenience and necessity, and the purposes of the Communications Act of 1934, as amended (Communications Act), and fulfills the objectives of section 309(j)(4)(c).

7. Spectrum recovered by the Commission within a geographic area will revert automatically to the geographic area licensee. The Commission will consider transfers and assignments between a geographic area licensee and an incumbent to be presumptively in the public interest. The Commission is also eliminating finders' preferences immediately for paging services, and will no longer accept finders' preferences requests following adoption of the *Second Report and Order.*

8. Mutually exclusive applications for geographic area licenses will be processed pursuant to the competitive bidding rules adopted in this *Second Report and Order.* All incumbent licensees will continue to operate under the existing authorizations with full protection from co-channel interference, and will not be required to file applications for additional internal sites.

2. Geographic Area Licensing for Common Carrier Paging Services in the 35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz Bands

a. Common Carrier Paging Services

9. The Commission believes that the advantages of geographic licensing—flexibility, enhanced regulatory symmetry with other CMRS, and eliminating the inefficiencies in the licensing process—are applicable to these channels, particularly for regional and wide-area paging services. One of the Commission's goals in this proceeding is to revise the paging rules so that substantially similar mobile services receive comparable regulatory treatment, to the extent feasible, in a manner consistent with the public interest, convenience, necessity, and the purposes of the Communications Act. The Commission notes that paging providers on these CCP channels generally have smaller paging systems than the 931 MHz band paging services, and therefore smaller market areas would be more appropriate than MTAs for these bands. The Commission finds that Economic Areas (EAs) would be an appropriate size for geographic licensing on these bands. The Bureau of Economic Analysis of the Department of Commerce has divided the United States into 172 EAs. See Final Redefinition of the BEA Economic Areas, Department of Commerce, Docket No. 950–3020–64–5064–01, 60 FR 13114 (March 10, 1995). The Commission adopts EAs as the geographic area for paging licenses. Geographic area licensees will have the flexibility to construct transmitters at any place within their EA, subject to the co-channel interference rules; however, geographic area licensees must file applications with the Commission if such filing is necessary for coordination with Canada or Mexico, or is required by § 22.369, 90.177, or 1.1301 *et seq.* The EA geographic area licenses will be assigned pursuant to the competitive bidding rules.

b. Other Services in the 152–159 MHz and 454–460 MHz Bands

10. The Commission concludes that Rural Radiotelephone Service licensees, including BETRS licensees, can participate in the geographic area licensing framework adopted for paging. Additionally, these licensees may obtain site licenses and operate facilities on a secondary basis. If any geographic area licensee subsequently notifies the Rural Radiotelephone or BETRS licensee that a secondary site must be shut down because it may cause interference to the paging licensee's existing or planned facilities, the Rural Radiotelephone or BETRS licensee must discontinue use of the particular channel at that site no later than six months after such notice. Additionally, mobile two-way telephone service on the paging channels will also be subject to geographic area licensing and competitive bidding.

3. Shared Channels

11. The shared channels consist of five 929 MHz channels and thirteen Business Radio Service channels. The Commission concludes that the existing shared paging channels should continue to be licensed on a shared basis. The Commission is concerned about the consumer fraud and license application speculation issues and is seeking comment in a *Further Notice of Proposed Rulemaking* on changes in the license application and frequency coordination procedures. The Commission is eliminating the interim 40-mile rule for additional sites. Pending resolution of the fraud and speculation issues, the Commission is limiting applications for shared channels to (1) licensees expanding their commercial mobile radio systems; (2) applicants, including new applicants, for private, internal-use systems; and (3) Special Emergency Radio Services (SERS) providers on the shared channels.

4. Exempting Certain Incumbents From Competitive Bidding

12. The Commission believes that the market, not regulation, should determine participation in competitive bidding for geographic area licenses. Therefore, the Commission is adopting open eligibility for paging licenses. The Commission believes that this will be pro-competitive and potentially will result in further wide-area coverage of paging services.

B. Geographic Area Licensing for Nationwide Channels

13. Three 931 MHz channels, 931.8875 MHz, 931.9125 MHz, and 931.9375 MHz, were allocated for nationwide paging, and have been assigned to licensees on a nationwide basis. The Commission is granting nationwide geographic area licenses, without competitive bidding, to these three licensees. Additionally, 23 licensees have met requirements for nationwide exclusivity on 929 MHz channels under § 90.495 of the Commission's rules. The Commission is granting nationwide geographic area licenses, without competitive bidding, to those 929 MHz licensees who had constructed sufficient transmitters to obtain nationwide exclusivity under the

prior rules, and to those licensees who had sufficient authorizations as of February 8, 1996 and have since constructed sufficient transmitters to earn nationwide exclusivity. The Commission notes that these nationwide licensees have built out their paging systems to serve consumers, and the public interest would not be served in eliminating the nationwide authorizations that were previously granted by the Commission. Therefore, the Commission concludes that licensees on these channels will not be subject to competitive bidding for nationwide geographic area licenses.

14. The Commission declines to extend automatic nationwide geographic area licensing to MTel's 931.4375 MHz channel. The Commission notes that MTel has been extensively licensed on 931.4375 MHz; however, this channel has not been reallocated as a nationwide channel thus MTel has not built-out this channel in reliance on a grant of a nationwide license or nationwide exclusivity. The Commission notes that many paging carriers, including MTel, have extensive systems on channels that are not specifically designated as nationwide channels. Paging is a competitive industry, and to the extent that nationwide licensees not only compete with each other, but also with the paging carriers who provide local and regional service, the Commission does not believe it would be pro-competitive to automatically grant nationwide geographic area licenses to any additional licensees.

C. Protection for Incumbents

15. The Commission believes that the public interest would be served by allowing incumbent (non-geographic) paging licensees to continue to operate under their existing authorizations with full protection from co-channel interference, and similarly protecting the geographic area licensees from co-channel interference from the incumbent licensees. Therefore, consistent with the rules for 900 MHz Specialized Mobile Radio (SMR), the Commission will not allow incumbent (non-geographic) licensees to expand beyond their composite interference contour unless the incumbents and the geographic licensee have reached agreement on such modifications.

D. Coverage Requirements

16. The Commission notes that coverage requirements satisfy the mandate for performance requirements under section 309(j)(4)(B) of the Communications Act. The Commission is imposing the following coverage requirements: for each MTA or EA, the geographic licensee must provide coverage to one-third of the population within three years of the geographic area license grant and to two-thirds of the population within five years of the geographic area license grant. In the alternative, the MTA or EA licensee may provide substantial service to the geographic license area within five years of license grant. Substantial service is defined as service that is sound, favorable, and substantially above a level of mediocre service which would barely warrant renewal. The failure to meet these coverage requirements will result in automatic cancellation of the geographic license. The Commission will reinstate any licenses held prior to auction for sites that were authorized, constructed, and operating at the time of the cancellation of the geographic area license.

E. Co-Channel Interference Protection

1. Co-Channel Interference Protection—Incumbent Licensees

17. The Commission is persuaded that the advantages of adopting the formulas proposed in the NPRM are outweighed by the disadvantages noted by the commenters. As the commenters observed, changing from Tables E–1 and E–2 to the proposed formulas would, in most cases, reduce the service area and composite interference contour that incumbent licensees have relied on in developing their systems to date. Additionally, the proposed formulas may underestimate the actual reliable coverage of the paging systems. Using the fixed distances in Tables E–1 and E–2 in § 22.537 for the 929 MHz and 931 MHz channels would maintain the status quo for 931 MHz channels and conform 929 MHz channels to the current procedure for 931 MHz. Therefore, the Commission is adopting the fixed distances in Tables E–1 and E–2 in § 22.537 for the exclusive 929 MHz and 931 MHz channels. Geographic area licensees must provide co-channel protection to all incumbent licensees, including incumbents in other geographic areas. The Commission will allow geographic and incumbent licensees to use short-spaced locations pursuant to mutual written consent. The Commission will continue to use the current formulas for the CCP channels below 931 MHz.

2. Co-Channel Interference Protection—Adjacent Geographic Licensees

18. Geographic licensees generally are not required to file applications with the Commission, therefore it is possible that a geographic licensee with a transmitter at or close to the border of the MTA or EA could unknowingly cause interference to a neighboring geographic licensee. It is in the interest of the geographic licensees to find mutually beneficial ways to accommodate their needs in providing service within their respective MTAs and EAs. Instead of specifying a minimum distance a geographic licensee's transmission site must be from the geographic border, which may result in unserved areas, the Commission is allowing geographic licensees to negotiate mutually acceptable agreements with all adjacent geographic area licensees if the interfering contour of one geographic area licensee will extend into the adjacent geographic area or areas. Adjacent geographic area licensees have a duty to negotiate with each other in good faith regarding co-channel interference protection. The Commission believes that informal negotiations between parties in determining mutually agreeable arrangements between adjacent MTAs and EAs will achieve the most expeditious and effective resolution of co-channel interference. The lack of adequate service to the public due to failure to negotiate reasonable solutions to co-channel interference problems with adjacent geographic area licensees could reflect negatively on licensees seeking renewal.

3. Maximum Power and Height-Power Limit

19. The Commission believes that the 931 MHz and 929 MHz bands should operate under the same power and height-power rules. Conforming these rules will allow paging operators to design their systems in the most economical manner. Most of the commenters addressing this issue contend that the Commission should eliminate the disparity between the 931 and 929 MHz channels, and conform the maximum effective radiated power (ERP) limit and the height-power limit in these bands. The Commission is eliminating the height-power limit for 929 MHz systems, to conform them to the 931 MHz systems. The Commission is also increasing the permitted maximum ERP for all 929 MHz systems to 3500 Watts, to conform these systems with the nationwide 929 MHz systems and the 931 MHz systems. With respect to the CCP bands below 931 MHz, the Commission is maintaining the current power and height-power limits for these channels.

F. Licensing in Mexican and Canadian Border Areas

20. The Commission notes that commenters agree with the proposal that border areas should be treated like any other area for licensing purposes and carriers can determine whether spectrum is usable in border areas under applicable treaties and protocols. Therefore, the Commission will not distinguish between border and non-border areas in geographic licensing. Geographic licensees will be responsible for advising the Commission of any transmitter site changes or additions if site-by-site coordination is required by Canada or Mexico.

G. Eligibility to Participate in Competitive Bidding

21. The Commission believes that it is important to allow all parties to participate in the competitive bidding process for geographic area licenses, and accordingly, apart from foreign ownership limitations, eligibility will not be restricted. The Commission believes that non-incumbents should be allowed to bid for available spectrum, or to enter into joint ventures with incumbents for purposes of bidding in a geographic area. The competitive bidding process itself should deter speculation by those not genuinely interested in providing service to the public. In addition, the Commission believes that the open eligibility for the geographic area licenses will be pro-competitive and potentially will result in a diverse group of entities providing paging services to the public.

H. Channel Aggregation Limit

22. The Commission has imposed a spectrum aggregation cap of 45 MHz as the total amount of combined PCS, cellular, and SMR spectrum classified as CMRS in which an entity may have an attributable interest in any geographic area at any point in time. Narrowband radio services, including paging, are not included in the spectrum cap because it is highly unlikely that one entity could ever accumulate as much as 5 MHz in any given geographic market. The Commission now concludes that a channel aggregation limit is unnecessary for paging services. The paging market is highly competitive and diversified, making it unlikely that any one licensee could accumulate sufficient spectrum to dominate the paging market, much less the CMRS market as a whole. The Commission does not find any evidence that excessive channel aggregation has occurred in the paging industry; to the contrary, paging channel use is highly dispersed among numerous competing licensees. Additionally, the Commission anticipates that many applicants for geographic area paging licenses will be incumbents seeking to obtain geographic area licenses where their existing facilities reside. Thus, the Commission does not believe that geographic area licensing is likely to increase market concentration in the paging industry. Finally, the Commission believes that a cap could arbitrarily limit a carrier's capacity to provide services that may require multiple channels. Therefore, the Commission is not imposing a spectrum or channel aggregation cap on paging licenses at this time.

I. Competitive Bidding

1. Competitive Bidding Design

a. Bidding Methodology

23. Based on the record in this proceeding and its successful experience conducting simultaneous multiple round auctions for other services, the Commission believes this type of auction is most appropriate for paging licenses. The Commission believes that, for certain bidders, these licenses will be significantly interdependent because of the desirability of aggregation across spectrum blocks and geographic areas and because some licenses are likely to be substitutes. Given such interdependence, simultaneous multiple round bidding generates more information about license values during the course of the auction and provides bidders with more flexibility to pursue back-up strategies than if the licenses were auctioned separately or through sealed bidding. The Commission also expects the value of paging licenses to be sufficiently high to warrant simultaneous multiple round bidding. The Commission retains the discretion, however, to use a different methodology if that proves to be more efficient administratively. Prior to the auction, information will be provided about the bidding design to be used.

b. License Grouping

24. Although it may be desirable to hold a single simultaneous multiple round auction for all paging licenses, such an auction is not currently feasible from an operational standpoint because there will be more than 15,000 paging licenses available for auction. The Commission finds that there is significant interdependence among licenses in the 929 MHz and 931 MHz services, and similar interdependency among the licenses of the lower band paging services. The Commission also believes that grouping interdependent licenses and putting them up for bid at the same time promotes awarding licenses to bidders who value them most highly. The Commission therefore will award the paging licenses in a series of simultaneous multiple round auctions, grouping them based on interdependency and operational feasibility. The Commission reserves the discretion to decide on specific license groupings as administrative circumstances dictate.

c. Bidding Procedures

25. *Bid increments and tie bids.* The Commission will announce, by Public Notice prior to the auction, general guidelines for minimum bid increments. Minimum bid increments for individual paging licenses or groups of licenses may vary over the course of the auction and will be announced before or during the auction. In the case of a tie bid, the high bidder will be determined by the order in which the bids are received by the Commission.

26. *Stopping rules.* With more than ten times the largest number of licenses the Commission has ever auctioned simultaneously, there is an increased risk of an excessively prolonged auction if a significant proportion of the licenses are auctioned simultaneously using a simultaneous stopping rule. To reduce this risk and to promote expeditious service to the public, while at the same time preserving most of the efficiency benefits of a simultaneous stopping rule, the Commission adopts a hybrid simultaneous/license-by-license stopping rule. The hybrid rule has three phases. During Phase I, which lasts one month, or 100 rounds, whichever comes later, the Commission will employ its standard simultaneous stopping rule whereby bidding will remain open on all licenses until bidding stops on every license. The auction will close after one round passes in which no new valid bids or proactive activity rule waivers are submitted. This provides bidders some protection against the risk that bidding on a license will be closed before they have sufficient information to start bidding on it as a back up strategy. In Phase II, the Wireless Telecommunications Bureau will assess the extent to which bidders are pursuing back up strategies and implement a license-by-license stopping rule if the Bureau determines that the use of back up strategies is minimal. Under the license-by-license stopping rule, bidding on a license will close whenever 10 consecutive rounds pass with no new valid bids for that license. The remaining licenses will close according to the standard simultaneous stopping rule—when a round passes

with no new valid bids on any license. Phase III begins after two months and 100 rounds have passed. If the auction has not closed by then, the Commission intends to implement the license-by-license stopping rule that is discretionary in the second phase. This approach balances concerns about the time to complete the paging auction and the benefits of preserving back up strategies which give bidders the flexibility to acquire licenses that are consistent with their business plans. The Commission reserves the discretion not to employ this hybrid stopping rule in future paging auctions based on its experience in this auction and depending on the circumstances in future auctions with respect to factors such as the number of licenses and degree that licenses are encumbered.

27. The Commission further retains the discretion, in Phase III, to declare after 200 rounds that the auction will end after some specified number of additional rounds. If this method is employed, bids will be accepted only on licenses where the high bid has increased in the last three rounds. This will provide the Commission with a mechanism to end the auction in the unlikely event that a small number of bidders are continuing to bid on a few low value licenses solely to delay the closing of the auction. The Commission will declare the imminent end of the auction only in the case of extremely dilatory bidding.

28. *Revealing bidders' identities.* In the *Competitive Bidding Second Memorandum Opinion and Order*, 59 FR 44272 (August 26, 1994), because of the advantages of providing more information to bidders, and the difficulties involved in ensuring that bidder identities remain confidential, the Commission determined that it generally would release the identities of bidders before each auction. However, the Commission reserved the option to withhold bidder identities on an auction-by-auction basis if further experience showed that it would be feasible and desirable to do so.

29. In the case of the upcoming paging auctions, the Commission believes that shielding certain information from the bidders will help to speed the bidding since there will be less of an opportunity for strategic gaming practices to occur. The Commission will announce by Public Notice prior to the auction the precise information that will be revealed to bidders during the auction. This information may be limited to the high bids (no identities of bidders) and may also include the total number of bids on each license. The loss of efficiency from denying bidders the identities of likely winners of adjacent licenses should be minimal because, in contrast to broadband personal communications services, paging does not provide for roaming and there is little uncertainty about technologies (*i.e.*, GSM versus CDMA technology).

30. *Activity Rule.* The Commission will employ the Milgrom-Wilson activity rules for the paging auctions. These rules discourage delay by bidders and expedite simultaneous multiple round auctions in which a simultaneous stopping rule is used. Under the Milgrom-Wilson rules, the auction is divided into three stages and the minimum required activity level, measured as a fraction of the bidder's eligibility in the current round, will increase during the course of the auction.

31. In each round of Stage One, a bidder that wishes to maintain its current eligibility is required to be active on licenses encompassing at least 60 percent of the activity units for which it is currently eligible. The number of activity units for a given license is calculated by multiplying the amount of spectrum (in MHz) by the population of the market. A bidder's eligibility is determined by multiplying the activity units by a specified monetary figure. Failure to maintain the requisite activity level will result in a reduction in the amount of activity units upon which a bidder will be eligible to bid in the next round of bidding (unless an activity rule waiver is used). During Stage One, if bidding activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-thirds (5/3). Eligibility for each applicant at the start of the auction is determined by the amount of the upfront payment received and the licenses identified in its auction application.

32. In each round of Stage Two, a bidder that wishes to maintain its current eligibility is required to be active on at least 80 percent of the activity units for which it is eligible in the current round. During Stage Two, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

33. In each round of Stage Three, a bidder that wishes to maintain its current eligibility must be active on licenses encompassing at least 98 percent of the activity units for which it is eligible in the current round. In Stage Three, if activity in the current round is below 98 percent of current eligibility, eligibility in the next round will be calculated by multiplying the current round activity by fifty forty-ninths (50/49).

34. The Commission reserves the discretion to set and, by announcement before or during the auction, vary the requisite minimum activity levels (and associated eligibility calculations) for each auction stage. Retaining this flexibility will improve the Commission's ability to control the pace of the auction and help ensure that the auction is completed within a reasonable period of time.

35. For paging auctions, the Commission will use the following general transition guidelines. The auction will start in Stage One and typically will move to Stage Two when the auction activity level is below ten percent for three consecutive rounds in Stage One. In general, the auction will move from Stage Two to Stage Three when the auction activity level is below ten percent for three consecutive rounds in Stage Two. In no case can the auction revert to an earlier stage. The Commission retains the discretion to determine and announce during the course of an auction when, and if, to move from one auction stage to the next. These determinations will be based on a variety of measures of bidder activity including, but not limited to, the auction activity level defined above, the percentage of licenses (measured in terms of activity units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

36. To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission in a particular round, bidders will be provided with five activity rule waivers that may be used in any round during the course of the auction. If a bidder's activity level is below the required activity level, a waiver automatically will be applied. A waiver will preserve current eligibility in the next round, but cannot be used to correct an error in the amount bid. An activity rule waiver applies to an entire round of bidding and not to a particular service area.

37. Bidders will be afforded an opportunity to override the automatic waiver mechanism when they place a bid, if they wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility permanently will be reduced (according to the formulas specified above), and it will not be permitted to regain its bidding eligibility from a previous round. An automatic waiver invoked in a round in which there are no valid bids will not keep the auction

open. Bidders will have the option to proactively enter an activity rule waiver during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

38. The Commission retains the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control. The Commission also retains the flexibility to adjust, by Public Notice prior to an auction, the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction.

39. *Duration of bidding rounds.* The Commission retains the discretion to vary the duration of the bidding rounds or the interval at which bids are accepted in order to move the auction to closure more quickly. The duration of and intervals between bidding rounds will be announced either by Public Notice prior to the auction or by announcement during the auction.

2. *Procedural and Payment Issues*

a. *Pre-auction Application Procedures*

40. The Commission will use the pre-auction application procedures established in the *Competitive Bidding Second Report and Order,* 59 FR 22980 (May 4, 1994), for the paging services. A Public Notice announcing the auction will specify the licenses to be auctioned and the time and place of the auction in the event that mutually exclusive applications are filed. The Public Notice will also specify, *inter alia,* the short-form filing deadline.

41. The Commission adopts the same general bidding procedures used for the PCS, 900 MHz SMR, and Multipoint Distribution Service (MDS) auctions. Under these procedures, bidders will be able to submit bids remotely, either electronically or by telephone. The Commission has established a schedule of fees that participants in the competitive bidding process will be assessed for certain on-line computer services, bidding software, and Bidder Information Packages. Bidders will be permitted to bid electronically only if they have filed a short-form application electronically. Bidders who file their short-form applications manually may bid only telephonically.

b. *Short-form Applications*

42. Section 309(j)(5) of the Communications Act provides that no person may participate in an auction unless such bidder ''submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing.'' Moreover, ''[n]o license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to (section 309(a)) and sections 308(b) and 310'' of the Communications Act. 47 U.S.C. 309(j)(5). The Commission will, therefore, dismiss applications not meeting the requirements of its rules prior to the auction.

43. The Commission disagrees with commenters who state that it should not permit bidders to apply for all market areas by checking the ''all'' markets box on their FCC Form 175. The Commission believes bidders should have the flexibility to pursue back-up strategies if they are unable to obtain their first choice of licenses. Moreover, any potential problems associated with so-called blanket bidding will be cured through the Commission's eligibility rules and the submission of a corresponding upfront payment. Finally, because the Commission has permitted incumbents to expand their systems pending the commencement of the auction, it believes that current application rules will have no impact on planned expansions by incumbents. The Commission sees no reason to change its current application procedures at this time.

44. If only one application that is acceptable for filing is received for a particular market, and thus there is no mutual exclusivity, the Commission will issue a Public Notice cancelling the auction for that license and establish a date for the filing of a long-form application, the acceptance of which will trigger the procedures permitting petitions to deny.

c. Amendments and Modifications

45. Applicants for paging auctions will be provided with an opportunity to correct minor defects in their short-form applications prior to the auction. After review of the short-form applications, a Public Notice will be issued listing all defective applications. Applicants with minor defects in their applications will be given an opportunity to cure them and resubmit a corrected version.

d. *Upfront Payments*

46. The Commission believes that a specific upfront payment amount should be established for each license upon which bids are to be made. It is important, as commenters point out, to deter speculation and ensure, to the greatest extent practicable, that only sincere bidders participate in the auction. The Commission delegates to the Wireless Telecommunications Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population and the approximate amount of unencumbered spectrum in each geographic license area. The Commission expects that the Bureau will follow the guidelines laid out in the *Competitive Bidding Second Report and Order,* and establish upfront payments equal to approximately five percent of the expected amounts of winning bids for the various licenses. In no event will the upfront payment for any license be less than $2,500, the minimum suggested in the *Competitive Bidding Second Report and Order,* and the Bureau will retain the flexibility to modify this minimum if experience demonstrates that a higher amount would better deter speculative filings.

47. Prior to a paging license auction, the Bureau will issue a Public Notice listing the upfront payment amounts corresponding to the licenses to be auctioned. The number of activity units determines the amount of the upfront payment for a license. A prospective bidder must submit an upfront payment equal to the largest combination of activity units on which the bidder anticipates being active in any single round. Although a bidder may file applications for every license being auctioned, the total upfront payment submitted by each applicant will determine the combinations on which the applicant will actually be permitted to be active in any single round of bidding. Upfront payments will be due by a date specified by Public Notice, but generally no later than 14 days before the scheduled auction.

e. Down Payments

48. The Commission concludes that winning bidders (including winners that are small businesses, as discussed below) must supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). If the upfront payment amount on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default payments due, the additional monies will be refunded. If a bidder has withdrawn a bid or defaulted, but the amount of the withdrawal or default payment cannot yet be determined, the bidder will be required to make a deposit of up to 20 percent of the amount bid. When it becomes possible to calculate and assess the payment, any excess deposit will be refunded. Monies on account will be applied to bid withdrawal and default

payments due before being applied toward the bidder's down payment on licenses the bidder has won and seeks to acquire.

49. Winning bidders, except small businesses, must submit the required down payment by cashier's check or by wire transfer to the Commission's lock-box bank within 10 business days following release of a Public Notice announcing the close of bidding. All auction winners, except those that qualify for installment payments, will be required to make full payment of the balance of their winning bids within 10 business days following Public Notice that licenses are ready for grant.

f. Bid Withdrawal, Default, and Disqualification

50. The Commission will apply its general bid withdrawal, default, and disqualification rules in paging license auctions. If a license is re-offered by auction, the ''winning bid'' refers to the high bid in the auction in which the license is re-offered. If a license is re-offered in the same auction, the ''winning bid'' refers to the high bid amount made subsequent to the withdrawal in that auction. If a license which is the subject of withdrawal or default is offered to the highest losing bidders in the initial auction, as opposed to being re-auctioned, the ''winning bid'' refers to the bid of the highest bidder who accepts the offer. In the unlikely event that there is more than one bid withdrawal on the same license, the Commission will hold each withdrawing bidder responsible for the difference between its withdrawn bid and the amount of the winning bid the next time the licenses are offered for auction. If a license winner defaults or is otherwise disqualified after an auction is closed, the Commission will exercise its discretion to hold a new auction or offer the license to the second highest bidder.

51. If a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

52. The Wireless Telecommunications Bureau has recently instituted an additional procedure that warns bidders of the possibility of a mistaken bid, and this procedure will be utilized in the paging license auctions. The Commission also recently addressed the issue of how its bid withdrawal payment provisions apply to bids that are mistakenly placed and withdrawn. *See* Atlanta Trunking Associates, Inc. and MAP Wireless L.L.C. Request to Waive Bid Withdrawal Payment Provisions, 61 FR 25807 (May 23, 1996), *recon. pending.*

g. Long-form Applications

53. In the *Competitive Bidding Second Report and Order,* the Commission established rules requiring winning bidders to submit a long-form application. These procedures, which are set forth in § 1.2107 of the Commission's rules, 47 CFR 1.2107, will be followed if the winning bidder makes the down payment in a timely manner.

h. Petitions to Deny and Limitations on Settlements

54. The petition to deny procedures in §§ 22.130 and 90.163 of the Commission's rules, 47 CFR 22.130 and 90.163, will apply to the paging services. A party filing a petition to deny against a paging license application will be required to demonstrate standing and meet all other applicable filing requirements. Sections 90.162 and 22.129 of the Commission's rules, 47 CFR 90.162 and 22.129, prevent the filing of speculative applications and pleadings for purposes of extracting money from applicants. Thus, the Commission will limit the consideration that an individual or entity is permitted to receive for agreeing to withdraw an application or petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner. To the extent §§ 22.129 and 90.162 conflict with § 1.2105 of the Commission's rules, 47 CFR 1.2105, these provisions should not apply to paging licenses awarded through competitive bidding. Therefore, the Commission will amend these provisions to prohibit agreements to withdraw mutually exclusive applications, or pleadings filed by one applicant against another applicant for a license in the same geographic area, after the deadline for filing short-form applications.

3. *Regulatory Safeguards*

a. *Anti-Collusion Rules*

55. The Commission will require paging licensees to comply with the reporting requirements and rules prohibiting collusion embodied in §§ 1.2105 and 1.2107 of the Commission's rules, 47 CFR 1.2105 and 1.2107. Thus, after the FCC Form 175 filing deadline, applicants may not discuss the substance of their bids or bidding strategies with other applicants, other than those identified on their short-form applications, that are bidding in the same license areas, even if they are not bidding for the same spectrum blocks.

56. Where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws, in addition to any penalties they incur under the antitrust laws, or who are found to have violated the Commission's rules in connection with their participation in the auction process, may be subject to a variety of sanctions, including forfeiture of their down payment or their full bid amount, revocation of their license(s), and possible prohibition from participating in future auctions.

b. *Transfer Disclosure Requirements*

57. Section 1.2111(a), 47 CFR 1.2111(a), will apply to all paging licenses obtained through the competitive bidding process. The Commission sees nothing disruptive in requiring the disclosure of this information, and believes these disclosure requirements are necessary to the enforcement of its unjust enrichment provisions. The Commission also agrees with the Federal Trade Commission that speculation in connection with the acquisition of paging licenses is a major concern. By enabling the Commission to monitor license transfers, the disclosure requirements of §§ 1.2111(a), which implements section 309(j)(4)(E) of the Communications Act, (47 U.S.C. 309(j)(4)(E)), will assist in eliminating the problem of speculation while providing safeguards to those who might otherwise fall victim to deceptive practices used to induce them to invest in paging licenses.

4. *Treatment of Designated Entities*

a. *Small Businesses*

58. Congress specifically cited the needs of small businesses in enacting § 309(j) of the Communications Act, 47 U.S.C. 309(j), directing the Commission to promote economic opportunities for small businesses. While a number of small businesses are successfully participating in the paging industry, the Commission concludes that it is appropriate to establish special provisions in its paging rules for competitive bidding by small businesses.

b. *Minority- and Women-Owned Businesses*

59. In the paging service, as in other auctionable services, the Commission is committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including businesses owned by members of minority groups and women. Commenters failed to provide record evidence sufficient to support special provisions for minorities under the strict scrutiny standard of judicial review, which applies to federal race-based programs. The Commission is also concerned that the record would not support gender-based provisions under intermediate scrutiny, which is the standard of judicial review that applies to such provisions. Balancing its obligation to provide opportunities for women- and minority-owned businesses to participate in spectrum-based services against its statutory duties to facilitate the rapid delivery of new services to the American consumer and promote efficient use of the spectrum, the Commission concludes that it should not delay the paging service auctions for the amount of time it would take to adduce sufficient evidence to support race- and gender-based provisions. Moreover, the Commission believes that most minority- and women-owned businesses will be able to take advantage of the specific provisions adopted for small businesses.

c. *Bidding Credits*

60. While bidding credits do not guarantee the success of small businesses, the Commission believes that they at least provide such bidders with an opportunity to successfully compete against larger, well-financed bidders. The Commission also concludes that it is appropriate to adopt tiered bidding credits for paging auction participants based on the size of the small business. Such an approach will further the Commission's mandate under section 309(j) of the Communications Act to disseminate licenses to a variety of applicants.

61. The Commission therefore will define a small business as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. The Commission will give small businesses that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of not more than $3 million, a 15 percent bidding credit. The Commission will give small businesses that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of not more than $15 million, a bidding credit of 10 percent. These bidding credits take into account the difficulties smaller businesses have in accessing capital. Bidding credits at these levels also achieve a reasonable compromise between the arguments of commenters advocating greater credits and those of commenters advocating no credits.

62. For purposes of the definitions adopted here, the Commission will consider the gross revenues of the applicant, all controlling principals in the applicant, and affiliates of the applicant. The Commission chooses not to impose specific equity requirements on controlling principals but will require that, in order for an applicant to qualify as a small business, qualifying small business principals must maintain both *de jure* and *de facto* control of the applicant. For this purpose, the Commission will borrow from certain Small Business Administration (SBA) rules that are used to determine when a firm should be deemed an affiliate of a small business. Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains de facto control of the applicant: (1) The entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in all major management decisions. The Commission cautions that while it is not imposing specific equity requirements on small business principals, the absence of significant equity could raise questions about whether the applicant qualifies as a bona fide small business.

63. Eligible small businesses will be permitted to form consortia and not aggregate their gross revenues. Additionally, a small corporation that has dispersed voting stock ownership and no controlling affiliates will not be required to aggregate with its own revenues the revenues of each shareholder for purposes of small business status. Thus, the Commission clarifies that such an applicant may qualify—even in the absence of identifiable control being held by particular investors.

d. *Installment Payments and Down Payments*

64. The Commission adopts installment payments for small business winners in the paging license auctions. The Commission recognizes that small businesses, including those owned by women and minorities, face capital access difficulties not encountered by other firms. Thus, they require special measures to ensure their participation in the paging service. Licensees who qualify as small businesses in paging license auctions will be entitled to pay their winning bid amount in quarterly installments over the term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. The rate for ten-year U.S. Treasury obligations will be determined by taking the coupon rate of interest on the ten-year U.S. Treasury notes most recently auctioned by the Treasury Department before licenses are conditionally granted. These licensees will be able to make interest-only payments for the first two years of the license term. Timely payment of all installments will be a condition of the license grant, and failure to make such timely payments will be grounds for revocation of the license.

65. The Commission declines to adopt a second installment payment plan with a longer interest-only period for small businesses with average gross revenues of not more than $3 million. The Commission believes that the two-year interest-only period in the single plan it adopts will provide small businesses with the appropriate level of financing to overcome difficulties in attracting capital. Given that it is making additional financial assistance available to very small businesses in the form of a 15 percent bidding credit, the Commission does not think a longer interest-only period is justified.

66. The Commission also concludes that it should provide for late payment fees in connection with its installment payment plan for paging licensees. Therefore, when licensees are more than fifteen days late in their scheduled installment payments, a late payment fee equal to 5 percent of the amount of the past due payment will be charged. For example, if a $50,000 payment is due on June 1, then on June 16 $2,500 is due in addition to the payment. Without such a fee licensees may not have adequate financial incentives to

make installment payments on time and may attempt to maximize their cash flow at the government's expense by paying late. The 5 percent payment adopted is an approximation of late payment fees applied in typical commercial lending transactions. Payments will be applied in the following order: late charges, interest charges, principal payments.

67. The Commission believes that small businesses should be required to pay a down payment of 20 percent. Such a requirement is consistent with ensuring that winning bidders have the financial capability of building out their systems and will provide the Commission with stronger assurance against default than a 10 percent down payment. Increasing the amount of the bidder's funds at risk in the event of default discourages insincere bidding and therefore increases the likelihood that licenses are awarded to parties who are best able to serve the public. A 20 percent down payment should also cover the required payments in the unlikely event of default. Thus, small business licensees will be required to bring their deposit up to ten percent of the winning bid within ten business days of the close of the auction. Prior to licensing, they will be required to pay an additional ten percent. Specific procedures for payment will be provided in a Public Notice issued by the Wireless Telecommunications Bureau. The Commission declines to adopt reduced upfront payment rules for small businesses participating in paging license auctions. The Commission believes a uniform upfront payment provision for all bidders in the auction is necessary in order to deter speculation and to ensure that only sincere bidders participate in the auction.

e. *Partitioning*

68. Based on the strong support expressed by commenters for granting broad partitioning rights to paging licensees, the Commission will permit all MTA and EA paging licensees to partition to any party eligible to be a paging licensee. The Commission takes this action with respect to partitioning because of its conclusion that allowing holders of paging licenses to partition their geographic service areas will facilitate the provision of services in small markets and rural areas. Partitioning will also furnish providers of paging service with operational flexibility that will serve to promote the most efficient use of the spectrum and encourage participation by a wide variety of service providers. The Commission will permit partitioning of paging licenses awarded through competitive bidding based on any license area defined by the parties.

69. Due to the paucity of comments on the subject, and uncertainty as to whether it is technically feasible, the Commission will not, at this time, authorize spectrum disaggregation for the paging services. Instead, the Commission seeks information regarding the technical feasibility and appropriateness of spectrum disaggregation for the paging services in a *Further Notice of Proposed Rulemaking.*

70. Providers of paging service will be permitted to acquire partitioned licenses in either of two ways: (1) By forming bidding consortia to participate in auctions, and then partitioning the licenses won among consortium members; or (2) by acquiring partitioned licenses from other licensees through private negotiation and agreement either before or after the auction. Each member of a consortium will be required to file a long-form application, following the auction, for its respective mutually agreed-upon geographic area. With regard to partitioning by small businesses, the Commission seeks comment in the *Further Notice of Proposed Rulemaking* regarding the treatment of bidding credits and installment payments. In the event the Commission receives applications requesting FCC consent to partitioning transfers from small businesses to non-small businesses or to small businesses that qualify for less favorable bidding credits, action on such applications will be deferred until the adoption of rules governing the treatment of bidding credits and installment payments.

f. Unjust Enrichment Provisions for Full Transfers

71. The Commission adopts unjust enrichment rules for paging. These rules provide that, during the initial license term, licensees utilizing bidding credits and seeking to assign or transfer control of a license to an entity that does not meet the eligibility criteria for bidding credits will be required to reimburse the government for the value of the benefit conferred by the government, that is, the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before the assignment or transfer will be approved by the Commission. Licensees utilizing a bidding credit and seeking to assign or transfer control of a license to a small business that meets the eligibility standards for a lower bidding credit will be required to reimburse the U.S. government for the difference between the amount of the bidding credit obtained by the original licensee and the bidding credit for which the assignee, transferee or new licensee is eligible, plus interest at the rate imposed for installment financing at the time the license was awarded as a condition of Commission approval of such assignment or transfer. If a licensee that utilizes bidding credits seeks to make any change in ownership structure that would render the licensee ineligible for bidding credits, or eligible only for a lower bidding credit, the licensee must first seek Commission approval and reimburse the government for the amount of the bidding credit, or the difference between its original bidding credit and the bidding credit for which it is eligible after the ownership change, plus interest at the rate imposed for installment financing at the time the license was awarded. The amount of this payment will be reduced over time as follows: (1) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or the difference between the bidding credit obtained by the original licensee and the bidding credit for which the new licensee is eligible); (2) in year three of the license term the payment will be 75 percent; (3) in year four the payment will be 50 percent, and (4) in year five the payment will be 25 percent, after which there will be no required payment. These payments will have to be paid to the U.S. Treasury as a condition of approval of the assignment, transfer, or ownership change.

72. In addition, if a licensee that qualifies for installment payments seeks to assign or transfer control of its license during its term to an entity that does not meet the small business definition, the Commission will require payment of the remaining principal and any interest accrued through the date of assignment as a condition of the license assignment or transfer. Also, if an investor subsequently purchases an interest in the business and, as a result, the gross revenues of the business exceed the applicable financial caps, these unjust enrichment provisions will apply. The Commission will apply these payment requirements for the entire license term to ensure that small businesses look first to other small businesses when deciding to transfer their licenses. However, the Commission will not impose a holding period or other transfer restrictions on these licensees.

g. Spectrum Set-aside

73. The Commission will not adopt an entrepreneurs' block for paging licenses. The large number of licenses of different

sizes that will be available in the paging auctions should allow for extensive participation of small businesses without an entrepreneurs' block. Moreover, the special provisions for small businesses that the Commission adopts, including installment payments and tiered bidding credits, will give small businesses a significant opportunity to acquire paging licenses through the auctions.

III. Conclusion

74. The Commission concludes that the paging rules and geographic area licensing adopted in this *Second Report and Order* will facilitate future development of paging systems and foster competition between paging and other CMRS in general.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Analysis

75. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*) in WT Docket No. 96–18. The Commission sought written public comment on the proposals in the *NPRM*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis in this *Second Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996). (CWAA, Subtitle II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) codified at 5 U.S.C. 601 *et seq.*)

Need for and Purpose of This Action

76. In the *Second Report and Order*, in WT Docket No. 96–18, the Commission adopts rules to establish geographic area licensing and competitive bidding for Common Carrier Paging (CCP) and exclusive 929 MHz Private Carrier Paging (PCP) services. These rules are adopted to establish a flexible regulatory scheme for paging services, which will promote efficient licensing and competition in the Commercial Mobile Radio Services (CMRS) marketplace. The competitive bidding rules adopted in the *Second Report and Order* are pursuant to section 309(j) of the Communications Act of 1934, as amended (Communications Act), which grants authority to the Commission to use auctions to select among mutually exclusive applications for initial licenses for subscriber-based services.

Summary of Issues Raised in Response to the Initial Regulatory Flexibility Analysis

77. Several commenters submitted comments in response to the IRFA. These commenters contend that the Commission did not assess how the proposals for market area licensing and competitive bidding will impact small businesses; that market area licensing will alleviate some administrative burdens but the savings will mainly be seen by the largest paging operators; and that market area licensing will impose administrative burdens and additional costs on small businesses. In addition to the comments specifically submitted in response to the IRFA, several commenters raised issues in their comments to the *NPRM* regarding the effects of the proposals in the *NPRM* on small businesses. These commenters do not support geographic area licensing for the exclusive 929 MHz and 931 MHz paging channels. These commenters contend that geographic area licensing would be disruptive to existing licensees, as well as to the public, without providing any overriding benefit. The Commission addresses these issues in the *Second Report and Order*, and concludes that geographic area licensing using Major Trading Areas (MTAs) as the geographic area for these bands, is in the public interest. The Commission also observes that small businesses will be able to use bidding credits and installment payments in order to compete with larger entities in the auction process.

78. Additionally, several commenters are opposed to geographic area licensing for the 35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz bands and claim that geographic area licensing would prevent the continued growth of small paging businesses. Several commenters are also opposed to geographic area licensing for other services, such as Basic Exchange Telecommunications Radio Service (BETRS). Commenters argue that it is not in the public interest to use competitive bidding to select between applications for BETRS and paging, as this may leave some rural areas without any local exchange service. Commenters contend that requiring local exchange carriers to bid for BETRS spectrum would defy the requirements in the Communications Act for universal service and would jeopardize the Commission's goal to increase subscriber penetration. The Commission addresses these issues in the *Second Report and Order*, and concludes that geographic area licensing, using Economic Areas (EAs) as the geographic area for these bands, is in the public interest. The Commission notes that EAs, which are smaller than MTAs, will provide more opportunities for small paging businesses. The Commission also observes that small businesses will be able to use bidding credits and installment payments in order to compete with larger entities in the auction process. The Commission concludes that rural areas will not be deprived of service because existing BETRS systems will remain in place and the new partitioning rules adopted in the *Second Report and Order* will allow BETRS operators to enter into partitioning agreements with the geographic area paging licensees. Additionally, the Commission notes that BETRS operators will be able to obtain additional sites on a secondary basis.

79. Commenters are also opposed to geographic licensing for the shared channels and request that the Commission maintain the present system of site-by-site licensing for these channels. The commenters observe that these channels are predominantly used by small businesses. The Commission finds that the concerns raised by these commenters regarding the shared channels are well-founded and therefore declines to impose geographic area licensing for the shared channels.

Description and Number of Small Entities Involved

80. The rules adopted in this *Second Report and Order* will apply to current paging operators and new entrants into the paging market. Under these rules, exclusive 929 MHz paging licenses and licenses for all CCP channels will be granted on a market area basis, instead of site-by-site, and mutually exclusive applications will be resolved through competitive bidding procedures. In order to ensure the more meaningful participation of small business entities in the auction for mutually exclusive geographic area paging licenses the Commission has adopted a two-tier definition of small businesses. A small business will be defined for these purposes as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. The Small Business Administration (SBA) has not yet approved this definition for paging services. The Commission will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing less than 1,500

persons. *See* 13 CFR 121.201, Standard Industrial Classification Code 4812.

81. The Commission anticipates that a total of 16,630 non-nationwide geographic area licenses will be auctioned. The geographic area licenses subject to auction will consist of 2,550 MTA licenses and 14,080 EA licenses. In addition to the 47 Rand McNally MTAs, the Commission is adding three MTAs for the U.S. territories of (1) Guam and the Northern Mariana Islands, (2) Puerto Rico and the U.S. Virgin Islands, and (3) American Samoa. The Commission is also licensing Alaska as a single MTA separate from the Seattle MTA. There will be a total of 51 MTA licenses auctioned for each non-nationwide 931 MHz and exclusive 929 MHz channel. Auctions of paging licenses have not yet been held, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of prospective paging licensees can be made, the Commission assumes, for purposes of the evaluations and conclusions in this *Final Regulatory Flexibility Analysis,* that all the auctioned 16,630 geographic area paging licenses will be awarded to small entities, as that term is defined by the SBA. *See* U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC 92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

82. Geographic area paging licensees may be required to report information concerning the location of their transmission sites under some circumstances, although generally they will not be required to file applications on a site-by-site basis. Additionally, geographic area license applicants will be subject to reporting and recordkeeping requirements to comply with the competitive bidding rules. Specifically, applicants will apply for paging license auctions by filing a short-form application (FCC Form 175). Winning bidders will file a long-form application (FCC Form 600) at the conclusion of the auction. Additionally, entities seeking treatment as small businesses will need to submit information pertaining to the gross revenues of the small business applicant and its affiliates and controlling principals. Such entities will also need to maintain supporting documentation at their principal place of business.

83. Section 309(j)(4)(E) of the Communications Act directs the Commission to ''require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.'' 47 U.S.C. 309(j)(4)(E). The Commission adopted safeguards designed to ensure that the requirements of this section are satisfied, including a transfer disclosure requirement for paging licenses obtained through the competitive bidding process. An applicant seeking approval for a transfer of control or assignment of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license.

84. With respect to small businesses, the Commission has adopted unjust enrichment provisions to deter speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use the competitive bidding process to obtain a license at a lower cost than they would otherwise have to pay and to later sell it at a profit, and to ensure that large businesses do not become the unintended beneficiaries of measures meant to help small firms. Small business licensees seeking to transfer their licenses to entities which do not qualify as small businesses (or which qualify for a lower bidding credit), as a condition of approval of the transfer, must remit to the government a payment equal to a portion of the value of the benefit conferred by the government.

85. Finally, applicants and licensees claiming eligibility for competitive bidding as a small business are subject to audits by the Commission. Selection for audit may be random, on information, or on the basis of other factors. Consent to such audit is part of the certification included in the short-form application (FCC Form 175).

Steps Taken to Minimize Burdens on Small Entities

86. Section 309(j)(3)(B) of the Communications Act, 47 U.S.C. 309(j)(3)(B), provides that in establishing eligibility criteria and bidding methodologies the Commission shall, *inter alia*, promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Section 309(j)(4)(A) of the Communications Act, 47 U.S.C. 309(j)(4)(A), provides that in order to promote such objectives, the Commission shall consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods. In awarding geographic area paging licenses the Commission is committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. The Commission finds that it is appropriate to establish special provisions in the paging rules for competitive bidding by small businesses. The Commission believes that small businesses applying for paging licenses should be entitled to bidding credits and should be permitted to pay their bids in installments.

87. In order to ensure the more meaningful participation of small business entities in paging auctions, the Commission has adopted a two-tiered definition of small businesses. This approach will give qualifying small businesses bidding flexibility. A small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. The Commission will require that in order for an applicant to qualify as a small business, qualifying small business principals must maintain control of the applicant. The Commission has established bidding credits consistent

with the two-tiered definition of a small business. Small businesses that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of not more than $3 million will receive a 15 percent bidding credit. Small businesses that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of not more than $15 million will receive a bidding credit of 10 percent.

88. Additionally, licensees who qualify as small businesses in the geographic area paging license auction will be entitled to pay their winning bid amount in quarterly installments over the term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. Licensees who qualify for this installment payment plan will be permitted to make interest-only payments for the first two years of the license term. Timely payment of all installments will be a condition of the license grant, and failure to make such timely payments will be grounds for revocation of the license.

89. The Commission is also extending geographic partitioning of MTA and EA license areas to all entities eligible to be paging licensees. The Commission believes that this provision will allow paging licensees to tailor their business strategies and allow them to use the spectrum more efficiently, will allow more entities to participate in the provision of paging services, and will facilitate market entry by small entities that have the ability to provide service only to a limited population. Additionally, the Commission is maintaining the current site-by-site licensing procedure for the shared channels.

Significant Alternatives Considered and Rejected

90. The Commission considered and rejected a proposal for geographic area licensing using MTAs for all licenses. Commenters opposed this proposal, contending that MTAs were too large for the smaller paging systems. The Commission believes that the advantages of geographic area licensing—flexibility, enhanced regulatory symmetry with other CMRS, and eliminating the inefficiencies in the licensing process—are applicable to the UHF and VHF channels, particularly for regional paging services offered on these bands. Based on the record in this proceeding, the Commission concludes that EAs would be more appropriate than MTAs for the paging channels below 931 MHz. The Commission agrees with the commenters that the geographical definition used should correspond as much as possible to the geographic area that the paging licensees seek to serve, and concludes that EAs, which are smaller than MTAs, would facilitate the ability of paging operators of smaller systems to participate in geographic area licensing.

91. Additionally, the Commission considered and rejected converting all or some of the shared channels to exclusive use and implementing geographic area licensing. The Commission also considered and rejected limiting the number of licensees on the shared channels. In the *NPRM*, the Commission asked for comment on whether to (1) convert the shared channels to exclusive use and implement geographic licensing; (2) limit the number of licenses per shared channel and use competitive bidding to choose among applications once the limit is reached; or (3) retain the *status quo*. Most commenters opposed geographic area licensing for the shared channels, because paging systems on these channels are smaller paging systems, not wide-area systems. The Commission observed that smaller paging systems have been able to utilize these channels effectively on a shared basis. Most of the commenters requested that the Commission maintain the present system of site-by-site licensing. The Commission noted that attempting to superimpose a geographic licensing scheme on channels that have historically been shared could cause significant disruption to existing operations. Additionally, the Commission declined to adopt a cap on licensing shared channels, or to convert certain shared channels to exclusive licensing. The difficulty with a licensing cap, as noted by several commenters, is that it is the amount of time a paging channel is used and the transmission equipment and protocol used, not the number of licensees, that determines the capacity limits of a channel. The Commission was also concerned that picking certain shared channels to be designated as exclusive would only cause greater pressure on the remaining shared channels and therefore could limit opportunities for entry by smaller systems. The Commission concluded that the shared channels should not be converted to exclusive use, and the number of licensees should not be limited in order to provide continued opportunities for paging operators, particularly small businesses.

92. With respect to competitive bidding rules, the Commission considered using a market-by-market stopping rule, which many commenters favored in order to facilitate bringing an earlier end to the auction and permitting the earlier close of uncontested markets. The Commission adopted instead a hybrid simultaneous/license-by-license stopping rule, which combines the advantages of a simultaneous stopping rule and a license-by-license stopping rule. This approach will prevent the auction from being unreasonably long while also preserving bidders' flexibility to pursue back up strategies and acquire licenses that are consistent with their business plans.

93. The Commission also considered allowing small businesses that are winning bidders to pay a lower down payment than non-small businesses. The Commission concluded, however, that all winning bidders should pay a down payment of 20 percent of their winning bids. The Commission believes that a substantial down payment is necessary to ensure that winning bidders have the financial capability of building out their systems, and will provide stronger assurance against defaults than a reduced down payment. Increasing the amount of the bidder's funds at risk in the event of default discourages insincere bidding and therefore increases the likelihood that licenses are awarded to parties who are best able to serve the public. The Commission also believes that a 20 percent down payment should cover the required payments in the unlikely event of default.

94. The Commission requested comment on whether, in addition to small business provisions, separate provisions should be adopted for minority-and women-owned entities. Few comments were received on this issue, and commenters failed to provide record evidence of discrimination sufficient to support race-based provisions under the strict scrutiny standard of judicial review. The Commission is also concerned that the record would not support gender-based provisions under intermediate scrutiny. Balancing its obligation to provide opportunities for women- and minority-owned businesses to participate in spectrum-based services against its statutory duties to facilitate the rapid delivery of new services to the American consumer and promote efficient use of the spectrum, the Commission concluded that it should not delay paging service auctions for the amount of time it would take to adduce sufficient evidence to support race- and gender-based provisions. The Commission believes that most minority-and women-owned businesses will be able to take advantage of the

specific provisions that it has adopted for small businesses.

95. The Commission proposed, with respect to installment payments, that small businesses with not more than $3 million in average gross revenues for the preceding three years be permitted to make interest-only payments for the first five years of the license term, while small businesses with not more than $15 million in average gross revenues for the preceding three years be permitted to make interest-only payments during the first two years. The Commission concluded, however, that all licensees qualifying for installment payments should be allowed to make interest-only payments only for the first two years of the license term. The Commission declined to adopt a longer interest-only period for small businesses with average gross revenues of not more than $3 million. The Commission believes that the two-year interest-only period provides small businesses with the appropriate level of financing to overcome difficulties in attracting capital. Given that additional financial assistance is being made available to very small businesses in the form of a 15 percent bidding credit, the Commission does not think a longer interest-only period is needed.

96. The Commission sought comment on the need, if any, for a reduced upfront payment for entities qualifying as a small business. The Commission did not, however, adopt reduced upfront payment rules for small businesses participating in the paging license auction because it believes that a uniform upfront payment provision for all bidders in the auction is necessary in order to deter speculation and to ensure that only sincere bidders participate in the auction.

97. Finally, the Commission considered but elected not to adopt a spectrum set-aside for entrepreneurs. In the *NPRM*, the Commission tentatively concluded that it was not necessary to adopt an entrepreneurs' block for paging license auctions, and most commenters opposed the creation of an entrepreneurs' block or other form of spectrum set-aside for paging license auctions. The Commission believes that the large number of licenses of different sizes that will be available in the paging auctions should allow for extensive participation of small businesses without an entrepreneurs' block. Moreover, the Commission believes that the special provisions for small businesses that it has adopted, including installment payments and tiered bidding credits, will give small businesses a significant opportunity to acquire paging licenses through auctions.

Report to Congress

98. The Commission shall send a copy of this *Final Regulatory Flexibility Analysis*, along with this *Second Report and Order*, in a report to Congress pursuant to the *Small Business Regulatory Enforcement Fairness Act of 1996*, 5 U.S.C. 801(a)(1)(A).

B. Paperwork Reduction Act

99. This collection of information requirements have been approved by the Office of Management and Budget and assigned OMB control number 3060–0697. The FCC Form 175 is assigned OMB control number 3060–0600. The FCC Form 600 is assigned OMB control number 3060–0623.

C. Authority

100. The above action is authorized under the Communications Act, sections 4(i), 303(r), 309(c), 309(j), and 332, 47 U.S.C. 154(i), 303(r), 309(c), 309(j), and 332, as amended.

D. Ordering Clauses

101. Accordingly, it is ordered that, pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), part 22 of the Commission's rules, 47 CFR part 22, is amended as set forth below.

102. It is further ordered that, pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), part 90 of the Commission's rules, 47 CFR part 90, is amended as set forth in below.

103. It is further ordered that the rules adopted in this *Second Report and Order and Further Notice of Proposed Rulemaking* will be effective May 12, 1997.

104. It is further ordered that, pursuant to 47 U.S.C. 155(c), the Chief, Wireless Telecommunications Bureau, is granted delegated authority to implement and modify auction procedures in the part 22 and part 90 paging services, including the general design and timing of an auction, the number and grouping of authorizations to be offered in any particular auction, the manner of submitting bids, the amount of minimum opening bids and bid increments, activity and stopping rules, and application and payment requirements, including the amount of upfront payments, and to announce such procedures by Public Notice.

105. It is further ordered that, pursuant to 47 U.S.C. 155(c), the Chief, Wireless Telecommunications Bureau, is granted delegated authority to dismiss all mutually exclusive paging applications filed as of the adoption date of this *Second Report and Order* and grant or dismiss all non-mutually exclusive paging applications filed as of the adoption date of this *Second Report and Order.*

List of Subjects

47 CFR Part 22

Communication common carriers, Reporting and recordkeeping requirements.

47 CFR Part 90

Common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules Changes

1. Part 22 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 22—PUBLIC MOBILE SERVICES

The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 309, and 332, 48 Stat. 1066, 1082, as amended, 47 U.S.C 154, 303, 309, and 332, unless otherwise noted.

Section 22.99 is revised by adding the following definitions (in alphabetical order), and revising the definition for the term ''unserved areas'', to read as follows:

§ 22.99 Definitions.

* * * * *

Paging geographic area authorization. An authorization conveying the exclusive right to establish and expand one or more stations throughout a paging geographic area or, in the case of a partitioned geographic area, throughout a specified portion of a paging geographic area, on a specified channel allocated for assignment in the Paging and Radiotelephone Service. These are subject to the conditions that no interference may be caused to existing co-channel stations operated by other licensees within the paging geographic area and that no interference may be caused to existing or proposed co-channel stations of other licensees in adjoining paging geographic areas.

Paging geographic areas. Standard geographic areas used by the FCC for administrative convenience in the licensing of stations to operate on channels allocated for assignment in the

Paging and Radiotelephone Service. *See* § 22.503(b).

* * * * *

Unserved areas. With regard to a channel block allocated for assignment in the Cellular Radiotelephone Service: Geographic area in the District of Columbia, or any State, Territory or possession of the United States of America that is not within the CGSA of any cellular system authorized to transmit on that channel block. With regard to a channel allocated for assignment in the Paging and Radiotelephone Service: Geographic area within the District of Columbia, or any State, Territory or possession of the United States of America that is not within the service contour of any base transmitter in any station authorized to transmit on that channel.

* * * * *

The heading of Subpart B is revised to read as follows:

Subpart B—Licensing Requirements and Procedures

4. A new center heading preceding § 22.101 is added to read as follows:

Applications and Notifications

5. Section 22.115 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 22.115 Content of applications.

* * * * *

(a) *Site-specific requirements.* The following requirements apply to all Public Mobile Service applications that involve specific transmitting antenna sites.

* * * * *

6. Section 22.123 is amended by revising paragraphs (e)(1) and (e)(2), to read as follows:

§ 22.123 Classification of filings as major or minor.

* * * * *

(e) * * *

(1) Request that a paging geographic area authorization be issued to the filer on a requested channel;

(2) Request an authorization that would establish for the filer a new fixed transmission path or service area (a new station) on a requested channel, unless the new service area would be totally within a paging geographic area for which the filer holds the paging geographic area authorization for the requested channel;

* * * * *

7. Section 22.129 is amended by adding paragraph (e) to read as follows:

§ 22.129 Agreements to dismiss applications, amendments, and pleadings.

* * * * *

(e) Notwithstanding the provisions of this section, any payments made or received in exchange for withdrawing a short-form application for an FCC authorization awarded through competitive bidding shall be subject to the restrictions set forth in § 1.2105(c) of this chapter.

8. Section 22.131 is amended by revising paragraphs (c)(4)(ii)(A) and (c)(4)(ii)(B), and by adding a new paragraph (d)(2)(v), to read as follows:

§ 22.131 Procedures for mutually exclusive applications.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) If all of the mutually exclusive applications in a 30-day notice and cut-off filing group are applications for initial authorization, the FCC administers competitive bidding procedures in accordance with § 22.201 through § 22.227 and subpart Q of part 1 of this chapter, as applicable. After such procedures, the application of the successful bidder may be granted and the other applications may be dismissed without prejudice.

(B) If any of the mutually exclusive applications in a 30-day notice and cut-off filing group is an application for modification, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the FCC may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

* * * * *

(d) * * *

(2) * * *

(v) Any ''short-form'' application (filed on FCC Form 175) requesting a new paging geographic area authorization.

* * * * *

9. Section 22.165 is amended by revising paragraph (d)(1) to read as follows:

§ 22.165 Additional transmitters for existing systems.

* * * * *

(d) * * *

(1) The interfering contours of the additional transmitter(s) must be totally encompassed by the composite interfering contour of the existing station (or stations under common control of the applicant) on the same channel, except that this limitation does not apply to nationwide network paging stations or in-building radiation systems.

* * * * *

10. A new center heading consisting of §§ 22.201 through 22.227 is added to read as follows:

Competitive Bidding Procedures

Sec.
22.201 Scope of competitive bidding rules.
22.203 Competitive bidding design for paging licensing.
22.205 Competitive bidding mechanisms.
22.207 Withdrawal, default, and disqualification payments.
22.209 Bidding applications (FCC Form 175 and 175–S short-form).
22.211 Submission of upfront payments and down payments.
22.213 Long-form applications (FCC Form 600).
22.215 Authorization grant, denial, default, and disqualification.
22.217 Bidding credits for small businesses.
22.219 Installment payments for licenses won by small businesses.
22.221 Eligibility for partitioned licenses.
22.223 Definitions concerning competitive bidding process.
22.225 Certifications, discolsures, records maintenance and audits.
22.227 Petitions to deny and limitation on settlements.

Competitive Bidding Procedures

§ 22.201 Scope of competitive bidding rules.

Sections 22.201 through 22.227, inclusive (and, unless otherwise specified in this part, the procedures set forth in part 1, subpart Q, of this chapter), apply only to competitive bidding (''auction'') procedures for authorizations as follows:

(a) Paging geographic area authorizations issued pursuant to this part or to part 90 of this chapter.

(b) [Reserved].

§ 22.203 Competitive bidding design for paging licensing.

A simultaneous multiple round auction will be used to choose from among mutually exclusive initial applications for paging geographic area authorizations, unless the FCC specifies otherwise by Public Notice prior to the competitive bidding procedure.

§ 22.205 Competitive bidding mechanisms.

(a) *Sequencing.* The FCC will establish and may vary the sequence in which paging geographic area authorizations are auctioned.

(b) *Grouping.* The FCC will determine which licenses will be auctioned simultaneously or in combination based on interdependency and administrative circumstances.

(c) *Minimum Bid Increments.* The FCC may, by public announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(d) *Stopping Rules.* The FCC may establish stopping rules before or during an auction in order to terminate the auction within a reasonable time.

(e) *Activity Rules.* The FCC may establish activity rules which require a minimum amount of bidding activity. In the event that the FCC establishes an activity rule in connection with a simultaneous multiple round auction, each bidder may request waivers of such rule during the auction. The FCC may, by public announcement either before or during an auction, specify or vary the number of waivers available to each bidder.

§ 22.207 Withdrawal, default, and disqualification payments.

The FCC will impose payments on bidders who withdraw high bids during the course of an auction, who default on payments due after an auction terminates, or who are disqualified. When the FCC conducts a simultaneous multiple round auction, payments will be calculated as set forth in §§ 1.2104(g) and 1.2109 of this chapter. When the amount of such a payment cannot be determined, a deposit of up to 20 percent of the amount bid on the license will be required.

§ 22.209 Bidding applications (FCC Form 175 and 175–S Short-form).

Each applicant to participate in competitive bidding for paging geographic area authorizations must submit an application (FCC Forms 175 and 175–S) pursuant to the provisions of § 1.2105 of this chapter.

§ 22.211 Submission of upfront payments and down payments.

(a) The FCC will require applicants to submit an upfront payment prior to the start of a paging auction. The amount of the upfront payment for each geographic area license auctioned and the procedures for submitting it will be set forth by the Wireless Telecommunications Bureau in a Public Notice in accordance with § 1.2106 of this chapter.

(b) Each winning bidder in a paging auction must submit a down payment to the FCC in an amount sufficient to bring its total deposits up to 20 percent of its winning bid. All winning bidders except small businesses will be required to make such payment within ten business days following the release of a Public Notice announcing the close of bidding. Small businesses must bring their deposits up to 10 percent of their winning bids within ten business days following the release of a Public Notice announcing the close of bidding, and must pay an additional 10 percent prior to licensing, by a date and time to be specified by Public Notice.

§ 22.213 Long-form applications (FCC Form 600).

Each successful bidder for a paging geographic area authorization must submit a ''long-form'' application (FCC Form 600) within ten business days after being notified by Public Notice that it is the winning bidder. Applications for paging geographic area authorizations on FCC Form 600 must be submitted in accordance with § 1.2107 of this chapter, all applicable procedures set forth in the rules in this part, and any applicable Public Notices that the FCC may issue in connection with an auction. After an auction, the FCC will not accept long-form applications for paging geographic area authorizations from anyone other than the auction winners and parties seeking partitioned licenses pursuant to agreements with auction winners under § 22.221.

§ 22.215 Authorization grant, denial, default, and disqualification.

(a) Each winning bidder, except those eligible for installment payments, will be required to pay the full balance of its winning bid within ten business days following Public Notice that the FCC is prepared to award the authorization.

(b) A bidder that withdraws its bid subsequent to the close of bidding, defaults on a payment due, or is disqualified, is subject to the payments specified in § 22.207, § 1.2104(g), or § 1.2109 of this chapter, as applicable.

§ 22.217 Bidding credits for small businesses.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(i) may use a bidding credit of 15 percent to lower the cost of its winning bid. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(ii) may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) Unjust Enrichment:

(1) If a small business that utilizes a bidding credit under this section seeks to transfer control or assign an authorization to an entity that is not a small business under § 22.223(b)(1), or seeks to make any other change in ownership that would result in the licensee losing eligibility as a small business, the small business must seek FCC approval and reimburse the U.S. government for the amount of the bidding credit (plus interest at the rate imposed for installment financing at the time the license was awarded), as a condition of approval of such assignment, transfer, or other ownership change.

(2) If a small business that utilizes a bidding credit under this section seeks to transfer control or assign an authorization to a small business meeting the eligibility standards for a lower bidding credit, or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek FCC approval and reimburse the U.S. government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee, or licensee is eligible under this section (plus interest at the rate imposed for installment financing at the time the license was awarded), as a condition of the approval of such assignment, transfer, or other ownership change.

(3) The amount of payments made pursuant to paragraphs (b)(1) and (b)(2) of this section will be reduced over time as follows: A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or the difference between the bidding credit obtained by the original licensee and the bidding credit for which the post-transfer licensee is eligible); in year 3 of the license term the payment will be 75 percent; in year 4 the payment will be 50 percent; and in year 5 the payment will be 25 percent, after which there will be no assessment.

§ 22.219 Installment payments for licenses won by small businesses.

(a) Each licensee that qualifies as a small business under § 22.223(b)(1) may pay the remaining 80 percent of the net auction price for the license in installment payments over the term of the authorization. Interest charges shall be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. An eligible licensee may make interest-only payments for two years. Payments of interest and principal shall be amortized over the remaining eight years of the license term.

(b) Late Installment Payment.

(1) Any licensee that submits a scheduled installment payment more than 15 days late will be charged a late payment fee equal to 5 percent of the amount of the past due payment.

(2) Payments will be applied in the following order: late charges, interest charges, principal payments.

(c) Unjust Enrichment:

(1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment financing, the licensee must seek FCC approval and make full payment of the remaining unpaid principal and unpaid interest accrued through the date of assignment or transfer as a condition of FCC approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek FCC approval before making such a change in ownership structure and must make full payment of the remaining unpaid principal and unpaid interest accrued through the date of such change in ownership structure as a condition of FCC approval.

§ 22.221 Eligibility for partitioned licenses.

If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures—

(a) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among other entities to partition the license pursuant to this section, if won at auction (*see* 47 CFR 1.2105(a)(2)(viii));

(b) Each party to an agreement to partition the license must file a long-form application (FCC Form 600) for its respective, mutually agreed-upon geographic area together with the application for the remainder of the MTA or EA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the MTA or EA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 22.137.

§ 22.223 Definitions concerning competitive bidding process.

(a) *Scope.* The definitions in this section apply to §§ 22.201 through 22.227, unless otherwise specified in those sections.

(b) *Small business; consortium of small businesses.* (1) A small business is an entity that either:

(i) Together with its affiliates and controlling principals has average gross revenues that are not more than $3 million for the preceding three years; or

(ii) Together with its affiliates and controlling principals has average gross revenues that are not more than $15 million for the preceding three years.

(2) For purposes of determining whether an entity meets either the $3 million or $15 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, and controlling principals shall be considered on a cumulative basis and aggregated.

(3) A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small business in paragraph (b)(1) of this section. Each individual member must establish its eligibility as a small business, as defined in this section. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(c) *Gross Revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold). Gross revenues are evidenced by audited financial statements for the relevant number of calendar or fiscal years preceding the filing of the applicant's short-form application. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(d) *Affiliate.*—(1) *Basis for Affiliation.* An individual or entity is an affiliate of an applicant if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties who also control or have the power to control the applicant, or

(iv) Has an ''identity of interest'' with the applicant.

(2) *Nature of control in determining affiliation.* (i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (d)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions if the voting stock is so widely distributed that no effective control can be established.

Example for paragraph (d)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him/her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are controlling principals of the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

(i) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by

other immediate family members. In this context ''immediate family member'' means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father, or -mother, step-brother, or -sister, step-son, or -daughter, half-brother or -sister. This presumption may be rebutted by showing that:

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (d)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has a controlling interest in a paging geographic area authorization application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.* (i) An applicant is presumed to control or have the power to control a concern if he/she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he/she owns, controls, or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he/she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (d)(5). If company B holds an option to purchase a controlling interest in company A, who holds a controlling interest in a paging geographic area authorization application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (d)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds a controlling interest in a paging geographic area authorization application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (d)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

§ 22.225 Certifications, disclosures, records maintenance and audits.

(a) *Short-form applications: certifications and disclosure.* In addition to certifications and disclosures required by part 1, subpart Q, of this chapter, each applicant for a paging license which qualifies as a small business or consortium of small businesses shall append the following information as an exhibit to its FCC Form 175:

(1) The identity of the applicant's controlling principals and affiliates, and, if a consortium of small businesses, the members in the joint venture; and

(2) The applicant's gross revenues, computed in accordance with § 22.223.

(b) *Long form applications: certifications and disclosure.* Each applicant submitting a long-form application for a paging geographic area authorization and qualifying as a small

business shall, in an exhibit to its long-form application:

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with § 22.223, for each of the following: the applicant, the applicant's affiliates, the applicant's controlling principals, and, if a consortium of small businesses, the members of the joint venture;

(2) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under §§ 22.217 through 22.223, including the establishment of *de facto* and *de jure* control; such agreements and instruments include, but are not limited to, articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements, including letters of intent, oral or written; and

(3) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(c) *Records maintenance.* All winning bidders qualifying as small businesses shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish eligibility as a small business and/or consortium of small businesses under § 22.223. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(d) *Audits.* (1) Applicants and licensees claiming eligibility as a small business or consortium of small businesses under §§ 22.217 through 22.223 shall be subject to audits by the Commission. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (FCC Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed paging service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(e) *Definitions.* The terms affiliate, small business, consortium of small businesses, and gross revenues, used in this section are defined in § 22.223.

§ 22.227 Petitions to deny and limitations on settlements.

(a) Procedures regarding petitions to deny long-form applications in the paging service will be governed by §§ 1.2108(b) through 1.2108(d) of this chapter, § 22.130, and § 90.163.

(b) The consideration that an individual or an entity will be permitted to receive for agreeing to withdraw an application or a petition to deny will be limited by the provisions set forth in § 22.129, § 90.162, and § 1.2105(c) of this chapter.

11. Section 22.313 is amended by revising paragraphs (a)(4), (a)(5) and adding new paragraph (a)(6) to read as follows:

§ 22.313 Station identification.

* * * * *

(a) * * *

(4) Stations using Basic Exchange Telephone Radio Systems in the Rural Radiotelephone Service;

(5) Nationwide network paging stations operating on 931 MHz channels; or,

(6) Stations operating pursuant to paging geographic area authorizations.

* * * * *

12. Section 22.352 is amended by revising the introductory paragraph to read as follows:

§ 22.352 Protection from interference.

Public Mobile Service stations operating in accordance with FCC rules that provide technical channel assignment criteria for the radio service and channels involved, all other applicable FCC rules, and the terms and conditions of their authorizations are normally considered to be non-interfering. If the FCC determines, however, that interference that significantly interrupts or degrades a radio service is being caused, it may, in accordance with the provisions of sections 303(f) and 316 of the Communications Act of 1934, as amended, (47 U.S.C. 303(f), 316), require modifications to any Public Mobile station as necessary to eliminate such interference.

* * * * *

13. A new § 22.503 is added, to read as follows:

§ 22.503 Paging geographic area authorizations.

The FCC considers applications for and issues paging geographic area authorizations in the Paging and Radiotelephone Service in accordance with the rules in this section. Each paging geographic area authorization contains conditions requiring compliance with paragraphs (h) and (i) of this section.

(a) *Channels.* The FCC may issue a paging geographic area authorization for any channel listed in § 22.531 of this part or for any channel pair listed in § 22.561 of this part.

(b) *Paging geographic areas.* The paging geographic areas are as follows:

(1) The Nationwide paging geographic area comprises the District of Columbia and all States, Territories and possessions of the United States of America.

(2) The Major Trading Areas (MTAs) as defined in the Rand McNally *1992 Commercial Atlas & Marketing Guide,* 123rd Edition, at pages 38–39, with the following changes and additions:

(i) The Seattle paging geographic area does not include Alaska.

(ii) Alaska is a paging geographic area.

(iii) Guam and the Northern Mariana Islands (combined) are a paging geographic area.

(iv) Puerto Rico and the United States Virgin Islands (combined) are a paging geographic area.

(v) American Samoa is a paging geographic area.

(3) The Economic Areas (EAs), as defined by the Department of Commerce, Bureau of Economic Analysis.

(c) *Availability.* The FCC may determine whether to issue a paging geographic area authorization for any specific channel or channel pair in any specific paging geographic area. The FCC may replace existing site specific authorizations for facilities on a channel or channel pair located in a paging geographic area with a paging geographic area authorization for that channel or channel pair, if in its sole discretion, the FCC determines that the public interest would be served by such replacement.

(d) *Filing windows.* The FCC accepts applications for paging geographic area authorizations only during filing windows. The FCC issues Public Notices announcing in advance the dates of the filing windows, and the

specific paging geographic areas and channels for which applications may be accepted.

(e) *One grant per geographic area.* The FCC may grant one and only one application for a paging geographic area authorization for any specific channel or channel pair in any specific paging geographic area defined in paragraph (b) of this section. Selection from among mutually exclusive applications for a paging geographic area authorization will be made in accordance with the procedures in §§ 22.131 and 22.200 through 22.299. If after the selection process but prior to filing a ''long form'' application, a successful bidder decides to partition the paging geographic area, the FCC may require and accept multiple ''long form'' applications from the consortium members.

(f) *Exclusive right to expand.* During the term of a paging geographic area authorization, the FCC does not accept, from anyone other than the paging geographic area licensee, any major application for authorization to operate a facility that would serve unserved area within the paging geographic area specified in that paging geographic area authorization, on the channel specified in that paging geographic area authorization, unless any extension of the interfering contour of the proposed facility falls:

(1) Within the composite interfering contour of another licensee; or,

(2) Into unserved area and the paging geographic area licensee consents to such extension.

(g) *Subsequent applications not accepted.* During the term of a paging geographic area authorization, the FCC does not accept any application for authorization relating to a facility that is or would be located within the paging geographic area specified in that paging geographic area authorization, on the channel specified in that paging geographic area authorization, except in the following situations:

(1) FCC grant of an application authorizing the construction of the facility could have a significant environmental effect as defined by § 1.1307 of this chapter. *See* § 22.115(a)(5).

(2) Specific international coordination procedures are required, prior to assignment of a channel to the facility, pursuant to a treaty or other agreement between the United States government and the government of Canada or Mexico. *See* § 22.169.

(3) The paging geographic area licensee or another licensee of a system within the paging geographic area applies to assign its authorization or for FCC consent to a transfer of control.

(h) *Adjacent geographic area coordination required.* Before constructing a facility for which the interfering contour (as defined in § 22.537 or § 22.567, as appropriate for the channel involved) would extend into another paging geographic area, a paging geographic area licensee must obtain the consent of the relevant co-channel paging geographic area licensee, if any, into whose area the interfering contour would extend. In the event that there is no co-channel paging geographic area licensee from whom to obtain consent in the area into which the interfering contour would extend, the facility may be constructed and operated subject to the condition that, at such time as the FCC issues a paging geographic area license for that adjacent geographic area, either consent must be obtained or the facility modified or eliminated such that the interfering contour no longer extends into the adjacent geographic area.

(i) *Protection of existing service.* All facilities constructed and operated pursuant to a paging geographic area authorization must provide co-channel interference protection in accordance with § 22.537 or § 22.567, as appropriate for the channel involved, to all co-channel facilities of other licensees within the paging geographic area that were authorized on May 12, 1997 and have remained authorized continuously since that date.

(j) *Site location restriction.* The transmitting antenna of each facility constructed and operated pursuant to a paging geographic area authorization must be located within the paging geographic area specified in the authorization.

(k) *Coverage requirements.* Failure by a paging geographic area licensee to meet either of the coverage requirements in paragraphs (k)(1) and (k)(2) of this section, or alternatively, the substantial service requirement in paragraph (k)(3) of this section, may result in automatic termination or non-renewal of a paging geographic area license. For the purpose of this paragraph, to ''cover'' area means to include geographic area within the composite of the service contour(s) determined by the methods of §§ 22.537 or 22.567, as appropriate for the particular channel involved. Licensees may determine the population of geographic areas included within their service contours using either the 1990 census or the 2000 census, but not both.

(1) No later than three years after the initial grant of a paging geographic area authorization, the licensee must construct or otherwise acquire and operate sufficient facilities to cover one third of the population in the paging geographic area. The licensee must notify the FCC (FCC Form 489), no later than 15 days after the end of the three year period, either that it has satisfied this requirement or that it plans to satisfy the alternative requirement to provide substantial service in accordance with paragraph (k)(3) of this section.

(2) No later than five years after the initial grant of a paging geographic area authorization, the licensee must construct or otherwise acquire and operate sufficient facilities to cover two thirds of the population in the paging geographic area. The licensee must notify the FCC (FCC Form 489), no later than 15 days after the end of the five year period, either that it has satisfied this requirement or that it has satisfied the alternative requirement to provide substantial service in accordance with paragraph (k)(3) of this section.

(3) As an alternative to the coverage requirements of paragraphs (k)(1) and (k)(2) of this section, the paging geographic area licensee may demonstrate that, no later than five years after the initial grant of its paging geographic area authorization, it provides substantial service to the paging geographic area. ''Substantial service'' means service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal.

14. Section 22.507 is revised to read as follows:

§ 22.507 Number of transmitters per station.

This section concerns the number of transmitters licensed under each station authorization in the Paging and Radiotelephone Service, other than paging geographic area authorizations.

(a) *Operationally related transmitters.* Each station must have at least one transmitter. There is no limit to the number of transmitters that a station may comprise. However, transmitters within a station should be operationally related and/or should serve the same general geographical area. Operationally related transmitters are those that operate together as a system (*e.g.*, trunked systems, simulcast systems), rather than independently.

(b) *Split of large systems.* The FCC may split wide-area systems into two or more stations for administrative convenience. Except for nationwide paging and other operationally related transmitters, transmitters that are widely separated geographically are not licensed under a single authorization.

(c) *Consolidation of separate stations.* The FCC may consolidate separately authorized stations upon request (FCC

Form 600) of the licensee, if appropriate under paragraph (a) of this section.

(d) *Replacement of site-by-site authorizations with single authorization.* After a paging geographic area authorization for a channel has been issued, the FCC may, on its own motion, replace the authorization(s) of any other licensee (for facilities located within that paging geographic area on that channel) with a single replacement authorization.

15. Section 22.529 is revised to read as follows:

§ 22.529 Application requirements for the Paging and Radiotelephone Service.

In addition to information required by Subparts B and D of this part, applications for authorization in the Paging and Radiotelephone Service must contain the applicable information and data described in this section.

(a) *Administrative information.* The following information, associated with Form FCC 600, Schedule A, is required as indicated. Each application of any type, including applications for paging geographic area authorizations, must contain one and only one Schedule A.

(1) The purpose of the filing is required for each application of any type.

(2) The geographic area designator, channel and geographic area name are required only for each application for a paging geographic area authorization.

(3) The FCC control point number, if any, the location (street address, city or town, state), the telephone number and an indication of the desired database action are required only for each application proposing to add or delete a control point.

(4) The FCC location number, file number and location (street address, city or town, state) of authorized facilities that have not been constructed are required only for each application requesting an extension of time to construct those facilities.

(b) *Technical data.* The following data, associated with FCC Form 600, Schedule B, are required as indicated for each application that is not an application for a paging geographic area authorization. Applications for a paging geographic area authorization must not contain Schedule B. Other type of applications may contain as many Schedule Bs as are necessary for the intended purpose.

(1) For each transmitting antenna site to be added, deleted or modified, the following are required: An indication of the desired database action, the FCC location number, if any, the street address or other description of the transmitting antenna site, the city, county and state, the geographical coordinates (latitude and longitude), correct to ±1 second, of the transmitting antenna site (NAD 27 required, NAD 83 optional), and in the case of a proposed relocation of a transmitting antenna, the FCC location number and geographical coordinates, correct to ±1 second, of the current transmitting antenna site, and an indication of the datum (NAD 27 or NAD 83) to which the geographical coordinates of the current location are referenced.

(2) For each transmitting antenna site to be added, deleted or modified, the following supplementary information is required: An indication as to whether or not the transmitting antenna site is within 200 kilometers (124 miles) of the U.S.-Mexico border, and an indication as to whether or not the transmitting antenna site is North of Line A or East of Line C. Line A and Line C are defined in § 2.1 of this chapter. For each adjacent geographic area within 200 kilometers (124 miles) of each transmitting antenna site to be added, deleted or modified, the geographic area designator and name, and the shortest distance (in kilometers) to the boundary of that geographic area.

(3) For each antenna to be added, deleted or modified, the following is required: An indication of the desired database action, an indication of whether the antenna already exists or is merely proposed, the FCC antenna number, if any, the type of antenna (*e.g.*, collinear, Yagi, half-wave, corner reflector, panel, etc.), the name of the antenna manufacturer and the model number of the antenna, the height (in meters) above average terrain of the center of radiation of the antenna, the beamwidth of the main lobe of the horizontal radiation pattern of the electric field of the antenna, the height (in meters) to the tip of the antenna above ground level, a polar plot of the horizontal gain pattern of the antenna, the antenna gain in the maximum lobe and the electric field polarization of the wave emitted by the antenna when installed as proposed.

(i) For each transmitter to be added, deleted or modified, the following is required: the FCC transmitter number, if any, an indication of the desired database action, the center frequency of the requested channel, the transmitter classification (e.g. base, fixed mobile), the designator for any non-standard emission type to be used, including bandwidth and modulation type, and the maximum effective radiated power.

(ii) For each of the eight cardinal radials, the antenna height above the average elevation along the radial, and the effective radiated power of each transmitter in the direction of the radial.

(iii) For each transmitter proposed to transmit on a channel reserved for point-to-multipoint operation involving transmission to four or more points of communications (i.e. base transmitters), the following is required for each point of communication: an indication of the desired database action, the FCC transmitter number or other key indicator (*e.g.*, I, II, III, IV), the location (city or town, state), and the geographical coordinates (latitude and longitude, NAD 27).

16. Section 22.531 is amended by revising the preceding centered heading, the section heading and introductory text, and adding a new paragraph (f), to read as follows:

Paging Operation

§ 22.531 Channels for paging operation.

The following channels are allocated for assignment to base transmitters that provide paging service, either individually or collectively under a paging geographic area authorization. Unless otherwise indicated, all channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

* * * * *

(f) For the purpose of issuing paging geographic area authorizations, the paging geographic areas used for the UHF channels are the MTAs (*see* § 22.503(b)(2)), and the paging geographic areas used for the low and high VHF channels are the EAs (*see* § 22.503(b)(3)).

17. Section 22.539 is amended by revising paragraph (e) to read as follows:

§ 22.539 Additional channel policies.

* * * * *

(e) *Additional transmitters on same channel.* Notwithstanding other provisions of this section, the following applications are not considered to be requests for an additional paging channel:

(1) Applications for transmitters to be located in the same geographic area as an authorized station controlled by the applicant, and to operate on the same paging channel;

(2) Applications for transmitters to be located within a paging geographic area for which the applicant holds the paging geographic area authorization for the requested channel; and,

(3) Applications for paging geographic area authorizations.

* * * * *

Section 22.551 is revised to read as follows:

§ 22.551 Nationwide network paging service.

The rules in this section govern the application for and provision of nationwide network paging service on the channels reserved specifically for such service in § 22.531(b).

(a) *Nationwide network providers; organizers.* If and when a nationwide network paging channel becomes available for assignment, the FCC will issue a Public Notice inviting applications from eligibles seeking to provide or organize a nationwide network paging service. The Public Notice will provide complete details regarding application requirements and procedures.

(b) *Licensing.* The FCC may issue a paging geographic area authorization to the nationwide network provider or organizer. All transmissions of nationwide network messages on the channels reserved for such service in § 22.531(b) are authorized solely under the authorization(s) of the nationwide network provider or organizer, notwithstanding whether or not the messages pass through facilities owned, operated or licensed to affiliated local carriers.

Section 22.559 is amended by revising the heading and introductory text to read as follows:

§ 22.559 Paging application requirements.

In addition to information required by Subparts B and D and § 22.529, applications for authorization to operate a paging transmitter on the channels listed in § 22.531, other than applications for a paging geographic area authorization, must contain the applicable supplementary information described in this section.

* * * * *

Section 22.561 is amended by revising the introductory text to read as follows:

§ 22.561 Channels for one-way or two-way mobile operation.

The following channels are allocated for paired assignment to transmitters that provide (or support other transmitters that provide) one-way or two-way public land mobile service, either individually or collectively under a paging geographic area authorization. The paging geographic areas used for these channels are the EAs (*see* § 22.503(b)(3)). These channels may be assigned for use by mobile or base transmitters as indicated, and or by fixed transmitters (including control, repeater or other fixed transmitters). The mobile channels may also be assigned for use by base or fixed transmitters under certain circumstances (*see* § 22.567(h)). Unless otherwise indicated, all channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

* * * * *

Section 22.569 is amended by revising paragraph (d) to read as follows:

§ 22.569 Additional channel policies.

* * * * *

(d) *Additional transmitters on same channel.* Notwithstanding other provisions of this section, the following applications are not considered to be requests for an additional channel:

(1) Applications for transmitters to be located in the same geographic area as an authorized station controlled by the applicant, and to operate on the same paging channel;

(2) Applications for transmitters to be located within a paging geographic area for which the applicant holds the paging geographic area authorization for the requested channel; and,

(3) Applications for paging geographic area authorizations.

* * * * *

Section 22.589 is amended by revising the introductory text to read as follows:

§ 22.589 One-way or two-way application requirements.

In addition to information required by subparts B and D and § 22.529, applications for authorization to operate a paging transmitter on the channels listed in § 22.531, other than applications for a paging geographic area authorization, must contain the applicable supplementary information described in this section.

* * * * *

§ 22.717 [Amended]

Section 22.717 is amended by removing paragraph (c).

A new § 22.721 is added to read as follows:

§ 22.721 Geographic area authorizations.

Eligible persons may apply for a paging geographic area authorization in the Rural Radiotelephone Service, on the channel pairs listed in § 22.725, by following the procedures and requirements set forth in § 22.503 for paging geographic area authorizations.

25. A new § 22.723 is added to read as follows:

§ 22.723 Secondary site-by-site authorizations.

Authorizations for new facilities (including new sites and additional channel pairs for existing sites) in the Rural Radiotelephone Service (including BETRS facilities) may be granted after May 12, 1997 only on the condition that such authorizations shall be secondary to any existing or future co-channel paging geographic area authorization in the Paging and Radiotelephone Service or the Rural Radiotelephone Service. If the paging geographic area licensee notifies the Rural Radiotelephone Service licensee that operation of a co-channel secondary facility must be discontinued because it may cause interference to existing or planned facilities, the Rural Radiotelephone Service licensee must discontinue operation of that facility on the particular channel pair involved no later than six months after such notice.

II. Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 90 continues to read as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Authority: Sec. 4, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C 154, 303, 309, and 332, unless otherwise noted.

2. Section 90.162 is amended by adding paragraph (f) to read as follows:

§ 90.162 Agreements to dismiss applications, amendments, or pleadings

* * * * *

(f) Notwithstanding the provisions of this section, any payments made or received in exchange for withdrawing a short-form application for an FCC authorization awarded through competitive bidding shall be subject to the restrictions set forth in section § 1.2105(c) of this chapter.

3. A new § 90.493 is added to read as follows:

§ 90.493 Paging operations on exclusive channels in the 929–930 MHz band.

Paging operations on the exclusive channels in the 929–930 MHz band are subject to the rules set forth in this section.

(a) *Exclusive channels.* The center frequencies of the channels in the 929–930 MHz band that may be assigned on an exclusive basis are as follows: 929.0125, 929.1125, 929.1375, 929.1875, 929.2125, 929.2375, 929.2875, 929.3125, 929.3375, 929.3625, 929.3875, 929.4125, 929.4375, 929.4625, 929.4875, 929.5125, 929.5375, 929.5625, 929.5875, 929.6125, 929.6375, 929.6625, 929.6875, 929.7125, 929.7375, 929.7625, 929.7875, 929.8125, 929.8375, 929.8625, 929.8875, 929.9125, 929.9375, 929.9625, and 929.9875 MHz.

(b) *Part 22 licensing, construction and operation rules apply.* Licensing, construction and operation of paging stations on the exclusive channels in the 929–930 MHz band are subject to the application filing, licensing procedure, auction procedure, construction, operation and notification rules and requirements that are set forth in part 22

of this chapter for paging stations operating in the 931–932 MHz band, instead of procedures elsewhere in this part.

(c) *Part 22 power limits apply; type acceptance required.* Paging operations on the exclusive channels in the 929–930 MHz band are subject to the transmitting power limits set forth in part 22 of this chapter for paging stations operating in the 931–932 MHz band, instead of power limits elsewhere in this part. Transmitters used on the exclusive channels in the 929–930 MHz band must be of a type accepted under either part 22 of this chapter or this part (or both).

4. Section 90.494 is amended by revising the heading, paragraphs (a), (f) and (g), to read as follows:

§ 90.494 Paging operations on shared channels in the 929–930 MHz band.

(a) This section applies to licensing of paging stations on the shared (non-exclusive) channels in the 929–930 MHz band. The center frequencies of these channels are listed in paragraph (b) of this section.

* * * * *

(f) The effective radiated power for base stations providing paging service on the shared channels must not exceed 3500 Watts.

(g) Licenses may be granted on these shared paging channels only for expansion (addition of new sites or relocation of existing sites) or other modification, assignment or transfer of control of existing, licensed private (including Special Emergency Radio Service) or commercial paging systems, and for new private (including Special Emergency Radio Service), internal-use paging systems. Any application for authority to operate a new commercial paging system on any of these shared channels is unacceptable for filing.

§ 90.495 [Removed]

5. Section 90.495 is removed.

§ 90.496 [Removed]

6. Section 90.496 is removed.

[FR Doc. 97–6092 Filed 3–11–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[WT Docket No. 96–18; PP Docket No. 93–253; FCC 97–59]

Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this *Further Notice of Proposed Rulemaking (FNPRM),* in WT Docket No. 96–18 and PP Docket No. 93–253, the Commission seeks comment on coverage requirements for nationwide geographic area licenses, partitioning and disaggregation for geographic area paging licenses (including nationwide licenses), and the application procedure for the shared channels. The Commission seeks to eliminate or reduce paging license application fraud by providing applicants with information about the risks of telecommunications investment and the warning signs of possible investment fraud. The Commission's objective is to provide paging licensees the flexibility they need to tailor their service offerings to meet market demands and facilitate greater participation by small businesses.

DATES: Comments must be filed on or before April 17, 1997. Reply comments are to be filed on or before May 1, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mika Savir, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620, or Frank Stilwell, Auctions Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This *Further Notice of Proposed Rulemaking* in WT Docket No. 96–18 and PP Docket No. 93–253, adopted on February 19, 1997 and released on February 24, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Synopsis of the Further Notice of Proposed Rulemaking

I. Background

1. In the *Second Report and Order* in WT Docket No. 96–18, the Commission adopted rules governing geographic area licensing for paging licenses and competitive bidding procedures for auctioning mutually exclusive applications for these licenses. Further comment is needed on several issues such as coverage requirements for nationwide geographic area licenses, partitioning and disaggregation for geographic area licenses, and possible modifications to the application procedure for shared channels.

II. Further Notice of Proposed Rulemaking

A. Nationwide Channels

2. In the *Second Report and Order* in WT Docket No. 96–18, the Commission concluded that the three nationwide 931 MHz channels and twenty-three 929 MHz PCP nationwide channels will not be subject to competitive bidding. The Commission did not impose coverage requirements on the nationwide geographic area paging licenses. The Major Trading Area (MTA) and Economic Area (EA) geographic area licensees, which are not exempt from competitive bidding, are required to provide coverage to one-third of the geographic area population within three years of license grant, and to two-thirds of the geographic area population within five years of license grant. In the alternative, the MTA or EA licensee may provide substantial service to the geographic area within five years of license grant. In this *Further Notice of Proposed Rulemaking* (*FNPRM*), the Commission seeks comment on whether coverage requirements should be imposed on nationwide licenses, and the appropriate coverage area. The Commission seeks comment on whether the entire nationwide license, or just a portion of the license, should be auctioned if the nationwide licensee fails to meet the coverage requirements.

B. Partitioning and Disaggregation

1. Partitioning

a. In General

In the *Second Report and Order,* the Commission adopted geographic partitioning provisions for MTA and EA geographic area paging licensees. In this *FNPRM,* the Commission seeks comment on whether nationwide paging licensees should be permitted to partition their license area. Commenters should note that the three 931 MHz nationwide channels and twenty-three 929 MHz nationwide channels are not subject to competitive bidding, whereas the MTA and EA geographic area licenses are subject to competitive bidding.

4. The Commission believes that partitioning can be an effective means of providing paging licensees with the flexibility they need to tailor their service offerings to meet market demands. Partitioning may be used to create smaller licenses and thus also facilitate greater participation by small businesses and rural telephone companies. The Commission did not, however, seek comment in the *NPRM* in WT Docket No. 96–18 on the treatment of MTA and EA geographic area paging licensees that receive competitive bidding benefits, the license term of partitioned licenses, or build-out requirements. The Commission seeks comment on these issues with respect to geographic area paging licenses.

b. Licensees With Competitive Bidding Benefits

5. Providing licensees with the flexibility to partition their geographic service areas will create smaller areas that can be licensed to small businesses, including those entities without the resources to participate successfully in spectrum auctions. The competitive bidding rules for paging include provisions for installment payments and bidding credits for small businesses. The Commission has also adopted rules to prevent unjust enrichment by small businesses seeking to transfer licenses obtained with installment payments or bidding credits. The Commission seeks comment on how to adjust installment payments owed by partitioning licensees. Parties are invited to comment on whether a small business partitioner should be required to repay, on an accelerated basis, a portion of the outstanding principal balance owed under an installment payment plan. The Commission seeks comment on how this payment should be calculated. The Commission seeks comment on whether the partitionee should be required to guarantee payment of a portion of the partitioner's obligation.

6. The Commission tentatively concludes that partitionees that would qualify as small businesses should be permitted to pay their *pro rata* share of the remaining government obligation through installment payments. The Commission seeks comment on this tentative conclusion. Commenters should address the mechanisms for apportioning the remaining government obligation between the parties. The Commission proposes using population as the objective measure to calculate the

relative value of the partitioned area, and seeks comment on this proposal.

7. The Commission proposes applying unjust enrichment rules to small businesses that partition to non-small businesses or to small businesses qualifying for a lower bidding credit. The Commission seeks comment on this proposal. These unjust enrichment provisions would include accelerated payment of bidding credits, unpaid principal, and accrued unpaid interest. The Commission seeks comment on how such unjust enrichment amounts should be calculated. Commenters should address how to calculate unjust enrichment amounts and how to enforce unjust enrichment payments. The Commission seeks comment on whether the price paid by the partitionee should be considered in determining the percentage of the outstanding principal balance to be repaid. Commenters should address whether the unjust enrichment payments should be calculated on a proportional basis, using population of the partitioned area as the objective measure.

8. The Commission seeks comment on whether each party to a partitioning transfer should be required to guarantee all or a portion of the partitioner's original auctions-related obligation in the event of default or bankruptcy by any of the parties to the partitioning transfer. The Commission seeks comment on whether the partitioner (the original licensee) should continue to be responsible, with respect to the auctions-related obligation, for the entire initial geographic area.

c. Build-out requirements

9. In the *Second Report and Order*, the Commission adopted coverage requirements for MTA and EA geographic area licensees. Specifically, each MTA or EA geographic area licensee must provide coverage to one-third of the geographic area population within three years of the license grant, and to two-thirds of the geographic area population within five years of the license grant. In the alternative, the MTA or EA licensee may provide substantial service to the geographic area within five years of license grant. The Commission tentatively concludes that both the partitioner and the partitionee should be subject to coverage requirements that ensure that both portions of the license area will receive service. The Commission proposes that a partitionee will be obligated to satisfy the same build-out requirements as the original licensee within its partitioned area, regardless of when the license was acquired. A partitionee of an MTA or EA would provide coverage to one-third of the population in its partitioned area within three years of the license grant, and to two-thirds of the population within its partitioned area within five years of the license grant. In the alternative, the partitionee may provide substantial service to the partitioned geographic area within five years of license grant. Parties are invited to comment on this proposal. Commenters should also address build-out requirements for partitioned nationwide licenses. Commenters are also invited to address what build-out requirements should apply where a licensee partitions a portion of its license area after the initial ten-year license term has expired.

d. License term

10. A geographic area paging licensee is authorized to provide service for no more than ten years from the date of license grant. A licensee may submit an application to renew the license for an additional license term, and is afforded a renewal expectancy if it can demonstrate that it has provided substantial service during the past license term and has substantially complied with the applicable Commission rules, policies, and the Communications Act. Substantial service is service which is sound, favorable, and substantially above a mediocre level of service which might just minimally warrant renewal.

11. The Commission proposes that a partitionee (including a nationwide license partitionee) be authorized to hold its license for the remainder of the partitioner's original ten-year term. The Commission tentatively concludes that this approach is reasonable because a partitioner-licensee should not be able to confer greater rights than it was awarded under the terms of its license grant. The Commission seeks comment on this tentative conclusion. The Commission also proposes that a partitionee be afforded the same renewal expectancy as a geographic area licensee. The Commission proposes to grant a partitionee a preference at a renewal proceeding if it can demonstrate that it has provided substantial service during its past license term and has substantially complied with the applicable Commission rules, policies, and the Communications Act. The Commission seeks comment on these proposals.

2. Disaggregation

a. In General

12. In the NPRM, the Commission asked parties to comment on whether paging spectrum disaggregation should be allowed. The Commission did not receive sufficient comment on this issue to adopt disaggregation for paging services. The Commission seeks further comment on the feasibility of spectrum disaggregation for paging. Commenters should provide technical justifications and other relevant support in responding to this issue. Commenters should address whether minimum disaggregation standards are necessary for paging services. Commenters should also address whether nationwide licensees should be permitted to disaggregate spectrum.

b. Licensees With Competitive Bidding Benefits

13. The Commission also seeks comment on what the respective obligations of the participants in a disaggregation transfer should be, and whether each party should be required to guarantee a proportionate amount of the disaggregator's original auctions-related obligation in the event of default or bankruptcy by any of the parties to the disaggregation transfer. The Commission seeks comment on whether the disaggregator (the original licensee) should have a continuing obligation with respect to the entire initial license. Alternatively, should the parties have available a choice of options, ranging from an accelerated payment based on purchase price to a guarantee for a larger payment by one party in the event another party defaults? Parties are invited to comment on whether the disaggregating parties should be able to determine which party has a continuing obligation with respect to the original license area.

14. The Commission proposes to allow all small business licensees to disaggregate to similarly qualifying parties as well as parties not eligible for small business provisions. The Commission tentatively concludes that if a qualified small business licensee is permitted to disaggregate to a non-small business entity, the disaggregating licensee should be required to repay any benefits it received from the small business special provisions on a proportional basis. This would include accelerated payment of bidding credits, unpaid principal, and accrued unpaid interest. The Commission seeks comment on how such repayment amounts should be calculated. The Commission also seeks comment on whether we should consider the price paid by the disaggregatee in determining the percentage of the outstanding principal balance to be repaid.

15. The Commission tentatively concludes that if a small business licensee is permitted to disaggregate to

another qualified small business that would not qualify for the same level of bidding credit as the disaggregating licensee, the disaggregating licensee should be required to repay a portion of the benefit it received. The Commission seeks comment on how that amount should be calculated. Finally, the Commission seeks comment on what provisions, if any, should be adopted to address the situation of a small business licensee's disaggregation followed by default in payment of a winning bid at auction.

c. Build-Out Requirements

16. The Commission requires each MTA or EA geographic area licensee to provide coverage to one-third of the geographic area population within three years of the license grant, and to two-thirds of the geographic area population within five years of the license grant. In the alternative, the MTA or EA licensee may provide substantial service to the geographic area within five years of license grant. The Commission proposes adopting a flexible approach for construction requirements on both the disaggregator and disaggregatee for their respective spectrum portions. The Commission proposes that either the disaggregator or the disaggregatee entering the geographic market should be obligated to provide coverage to one-third of the population within three years of the license grant, and to two-thirds of the population within five years of the license grant. In the alternative, either the disaggregator or the disaggregatee may provide substantial service to the geographic area within five years of license grant. The Commission seeks comment on this proposal. Commenters should also address the appropriate build-out requirements for the parties to disaggregation of nationwide paging licenses. The Commission proposes that if a licensee fails to meet the construction requirements, the license reverts back to the Commission. The Commission seeks comment on this proposal.

d. License Term

17. The Commission proposes a similar license term for disaggregation as for partitioning, *i.e.*, a disaggregatee would be authorized to hold its license for the remainder of the disaggregator's original ten-year license term. The Commission proposes that a disaggregatee would be afforded a renewal expectancy if it can demonstrate that it has provided substantial service during the past license term and has substantially complied with the applicable Commission rules, policies, and the Communications Act. The Commission seeks comment on these proposals, and on how to apply the renewal standard in cases where the disaggregatee has acquired the disaggregated license near the end of the license term.

3. Combination of Partitioning and Disaggregation

18. The Commission tentatively concludes that combinations of partitioning and disaggregation should be permitted, subject to the rules proposed for each. The Commission seeks comment on this proposal. Commenters should address any conflicts in the partitioning and disaggregation rules and whether the Commission should implement the partitioning rules in such cases. Commenters should also address whether the Commission should allow the combination of partitioning and disaggregation for nationwide paging licenses.

C. Shared Channels

19. The issue of paging license application fraud was initially raised in the comments filed by the Federal Trade Commission (FTC). According to the FTC, telecommunications investment frauds are of two basic types: (1) ''Application mills,'' where telemarketers sell application preparation services for wireless licenses for thousands of dollars to consumers, by claiming that telecommunications businesses will seek to lease or sell the licenses for many times the telemarketers' applications fees; and (2) ''build-out'' schemes, where telemarketers sell, again for thousands of dollars, interests in limited liability companies or partnerships that supposedly will acquire wireless licenses, build and operate telecommunications systems, and pay the consumers high dividends. The FTC argued that awarding licenses on a geographic basis through competitive bidding would likely reduce the incidence of ''application mills'' for paging licenses. The FTC explained that awarding licenses on an unlimited, shared basis is especially prone to abuse, because the constant availability of such licenses allows telemarketers to guarantee licenses to unsuspecting consumers. The transition of the exclusive paging channels to geographic area licensing might make the shared channels even more inviting to the fraudulent application mills. The Commission seeks comment on how to eliminate or reduce this problem.

20. Specifically, the Commission seeks comment on how the current FCC Form 600 application could be revised to provide applicants with information regarding the risks of telecommunications investment and warning signs of possible investment fraud. In addition, the Commission seeks comment on whether application preparation services should be required to sign the FCC Form 600, and to certify that the applicant has received in writing pertinent information regarding the Commission's rules and the obligations of licensees. Commenters are also invited to address whether PCIA should be required to implement additional procedures in the coordination process to reduce fraudulent or speculative applications.

II. Conclusion

21. The Commission believes that the proposals in the *FNPRM* will provide paging licensees the flexibility needed to tailor their service offerings to meet market demands, and facilitate greater participation by small businesses. Additionally, a revision to the application process for shared channels to provide applicants with information regarding the risks of telecommunications investment and the warning signs of possible investment fraud may reduce fraudulent or speculative applications.

III. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

Summary

22. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *FNPRM.* Written public comments on the IRFA are requested.

Reason for Action

23. This rulemaking proceeding in WT Docket No. 96–18 was initiated to secure comment on proposals for establishing a regulatory scheme for the common carrier paging (CCP) and private carrier paging (PCP) services which would promote efficient licensing and competition in the commercial mobile radio marketplace. The Commission seeks further comment on several issues: whether nationwide licenses should be subject to coverage requirements, how bidding credits and installment payments should be treated in cases where small businesses wish to partition their licenses, how build-out requirements and license term are affected in cases of geographic partitioning by paging market area

licensees, whether spectrum disaggregation is feasible for paging licensees, and revisions to the current FCC Form 600 and the application procedures for licenses on the shared channels to reduce paging application fraud.

Objectives

24. The *Second Report and Order* grants 26 nationwide geographic area licenses to nationwide paging licensees, but does not impose any additional coverage beyond what the nationwide licensees have already achieved. In the *FNPRM,* the Commission seeks comment on whether coverage requirements are appropriate.

25. In the *Second Report and Order* the Commission allows all licensees, including small business licensees, to partition at any time to another eligible entity. In the *FNPRM* the Commission proposes that unjust enrichment provisions should apply when a small business licensee has benefitted from the small business provisions in the auction rules and then partitions a portion of the license area to another entity that would not qualify for such benefits, or would qualify for a lower bidding credit. Without the unjust enrichment provisions on such transactions, a small business could benefit from special bidding provisions and then become unjustly enriched by immediately partitioning a portion of the license area to parties that do not qualify for such benefits. The objective of this proposal is to prevent unjust enrichment.

26. In the *FNPRM* the Commission seeks comment on build-out requirements and license term for partitioned geographic area licenses (including nationwide licenses). The Commission also seeks comment on whether nationwide licensees should be permitted to partition their license area, build-out requirements for partitioned nationwide licenses, and the license term of partitioned nationwide licenses.

27. In the *FNPRM* the Commission seeks comment on whether spectrum disaggregation would be feasible for paging, and how much spectrum a paging licensee should be permitted to disaggregate. The Commission seeks comment on build-out requirements and license term for disaggregated geographic area licenses. If spectrum disaggregation is feasible in paging it may facilitate the efficient use of spectrum, increase competition, and expedite service to the public.

28. The Commission also seeks comment on paging application fraud, an issue raised by the Federal Trade Commission. Specifically, the Commission seeks comment on whether the current FCC Form 600 should be revised to warn paging applicants of the risk of application fraud, and whether application preparation services should be required to certify that the applicant has received information regarding the Commission's rules and the obligations of licensees. Additionally, commenters are invited to address whether the frequency coordinator should implement additional procedures to reduce fraudulent or speculative paging applications. The objective of these proposals is to inform consumers of the rules and the prevalence of paging application fraud and thus reduce fraud and speculation.

Legal Basis

29. The proposed action is authorized under sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

Reporting, Recordkeeping, and Other Compliance Requirements

30. *Nationwide Channels.* The proposals in the *FNPRM* include the possibility of imposing reporting and recordkeeping requirements for the nationwide geographic area licensees to establish compliance with the coverage requirements, if coverage requirements are adopted.

31. *Geographic Partitioning and Spectrum Disaggregation.* The proposals in the *FNPRM* include the possibility of imposing reporting and recordkeeping requirements for small businesses seeking licenses through the proposed partitioning and disaggregation rules. The information requirements would be used to determine if the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. This information will be a one-time filing by any applicant requesting such a license. The information will be submitted on the FCC Forms 490 (or 430 and/or 600 filed as one package under cover of the Form 490) which are currently in use and have already received OMB clearance. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that 75 percent of the respondents (which may include small businesses) will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information. Applicants (including small businesses) filing the package under cover of FCC Form 490 electronically will incur a $2.30 per minute on-line charge. On-line time would amount to no more than 30 minutes. The Commission estimates that 75 percent of the applicants may file electronically. The Commission estimates that applicants contracting out the information would use an attorney or engineer (average of $200 per hour) to prepare the information.

32. It is also possible that small business partitioners and disaggregators will be required to repay, on an accelerated basis, a portion of the outstanding principal balance owed under an installment payment plan. If unjust enrichment rules are applied to small businesses that partition or disaggregate to non-small businesses, or to small businesses qualifying for a lower bidding credit, small businesses may be required to reimburse the United States government for all or a portion of the special competitive bidding benefits they have received. This could include accelerated payment of bidding credits, unpaid principal, and accrued unpaid interest. It is also possible that each party to a partitioning or disaggregation transfer could be required to guarantee all or a portion of the partitioner's or disaggregator's original auctions-related obligation in the event of default or bankruptcy by any of the parties.

33. *Shared Channels.* The proposals in the *FNPRM* do not include the possibility of imposing reporting and recordkeeping requirements for small businesses seeking licenses for shared channels. The *FNPRM* seeks comment on whether the current FCC Form 600 application should be revised to warn applicants of the risk of application fraud; whether application preparation services should be required to certify that the applicant has received information regarding the Commission's rules; and whether the frequency coordinator should be required to implement additional procedures in the coordination process to reduce the likelihood of fraudulent applications. These proposals would, if implemented, furnish additional information to applicants. None of these proposals would impose reporting or recordkeeping requirements on small businesses.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

34. None.

Description and Number of Small Entities Involved

35. *Nationwide Channels.* The rule changes discussed in the *FNPRM* with

respect to implementing coverage requirements for the 26 nationwide licenses will probably not directly affect small businesses because nationwide licensees are probably not small businesses. However, if all 26 nationwide licenses are held by small businesses, the rule change would not affect more than 26 small businesses.

36. *Geographic Partitioning and Spectrum Disaggregation.* The partitioning and disaggregation rule changes proposed in this proceeding will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding paging licenses who choose to partition and/or disaggregate and small businesses who may acquire licenses through partitioning and/or disaggregation.

37. The Commission is required to estimate in its *Final Regulatory Flexibility Analysis* the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, would be affected by the proposed rules in the *FNPRM.* In particular, the Commission seeks estimates of how many such entities, existing and potential, will be considered small businesses. The Small Business Administration (SBA) has not developed a definition of small business specifically applicable to paging. The closest applicable definition under the SBA rules is radiotelephone (wireless) companies. According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Commission seeks comment on whether this definition is appropriate for paging licensees in this context. Additionally, the Commission requests each commenter to identify whether it is a small business under this definition. If a commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

38. The Commission estimates that up to approximately 50,000 licensees or potential licensees could take the opportunity to partition and/or disaggregate a license or obtain a license through partitioning and/or disaggregation. This number is based on the total geographic area licenses to be awarded (approximately 16,600) and an estimate that each license will probably not be partitioned and/or disaggregated to more than three parties. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of future paging licensees can be made, the Commission assumes for purposes of this IRFA that all of the licenses will be awarded to small businesses. It is possible that a significant number of the up to approximately 50,000 licensees or potential licensees who could take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning and/or disaggregation will be small businesses.

39. *Shared Channels.* The rule changes proposed in the *FNPRM* with respect to warning prospective applicants about paging application fraud would probably not have an impact on any small business or other entity applying for a paging license on a shared channel. The proposed changes to the paging license application are intended to warn consumers about the prevalence of application fraud.

Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

40. The Commission seeks comment on whether coverage requirements should be imposed for the nationwide geographic area licensees. Any significant alternatives presented in the comments will be considered. Coverage requirements for the nationwide geographic area licensees, if adopted, would probably not affect small businesses.

41. With respect to partitioning, the Commission seeks comment on whether nationwide licensees should be permitted to partition their license area, build-out requirements for partitioned nationwide licenses, and license term of partitioned nationwide licenses. For MTA and EA geographic area licenses, the Commission proposes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions in the auction rules and partitions a portion of the geographic license area to another entity that would not qualify for such benefits. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefitted from the special bidding provisions for small businesses to become unjustly enriched by partitioning a portion of their license area to parties that do not qualify for such benefits. The Commission also seeks comment on build-out requirements and license term for partitioned MTA and EA geographic area licenses.

42. The Commission seeks comment on whether spectrum disaggregation would be feasible for paging, and how much spectrum a paging licensee should be permitted to disaggregate. The Commission seeks comment on build-out requirements and license term for disaggregated geographic area licenses. If spectrum disaggregation is feasible in paging it may facilitate the efficient use of spectrum, increase competition, and expedite service to the public.

43. The Commission also seeks comment on an issue raised by the Federal Trade Commission in comments regarding paging application fraud. Specifically, the Commission seeks comment on whether the current FCC Form 600 should be revised to warn applicants of the risk of application fraud, and whether application preparation services should be required to certify that the applicant has received information regarding the Commission's rules and the obligations of licensees. Commenters are invited to address whether the frequency coordinator should implement additional procedures to reduce fraudulent or speculative paging applications. The alternative to revising the application and/or the coordination process could permit application mill fraud which may affect many unwitting consumers.

44. The *FNPRM* solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered.

B. Paperwork Reduction Act

45. This *FNPRM* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *FNPRM* as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this *FNPRM;* OMB notification of action is due May 12, 1997. Comments should address (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

46. *Dates:* Written comments by the public on the proposed information

collections are due April 11, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before May 12, 1997.

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

48. *Further Information:* For additional information concerning the information collections contained in this *NPRM* contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

49. *Supplementary Information:*

Title: Revision of part 22 and part 90 of the Commission's rules to Facilitate Future Development of Paging Systems and Implementation of section 309(j) of the Communications Act—Competitive Bidding

Type of Review: New Collection.

Respondents:

Number of Respondents: We estimate that approximately 50,000 licensees or potential licensees could take the opportunity to partition or disaggregate a license or obtain a license through partitioning or disaggregation.

Estimated Time Per Response: The average burden on the applicant is 3 hours for the information necessary to complete FCC Forms 490 or 430 and 600 filed under cover of the FCC Form 490. We estimate that 75 percent of the respondents will contract out the burden of responding. We estimate that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents are estimated to employ in-house staff to provide the information.

37,500 applicants (contracting out) × .5 hour = 18,750 hours

12,500 applicants (in-house) × 3 hours = 37,500 hours

Total burden = 18,750 + 37,500 = 56,250 hours.

Estimated Cost to the Respondent: Total capital and start-up costs: Applicants wishing to file the package under cover of the FCC Form 490 electronically will incur a $2.30 per minute on-line charge. On-line time would amount to no more than 30 minutes. Seventy-five percent of applicants are expected to file electronically.

37,500 applications × $2.30 × 30 = $2,587,500

All other respondents are expected to file manually and would incur the following costs:

12,500 applications × $1.15 = $14,375

Total capital and start-up costs = $2,587,500 + $14,375 = $2,601,875.

We assume that the respondents contracting out the information would use an attorney or engineer (average $200 per hour) to prepare the information.

37,500 applications × $200 per hour × 3 hours = $22,500,000

Total respondent costs: $2,601,875 + $22,500,000 = $25,101,875

Cost to the Federal Government: The government review time per response for this submission is estimated at 15 minutes per response with review being done by personnel at the GS–6 level.

50,000 applications × $3.39 = $169,500

C. Ex Parte Presentations—Non-Restricted Proceeding

50. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).

D. Comment Period

51. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 17, 1997. Reply comments are to be filed on or before May 1, 1997. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554. Parties should also submit two copies of comments and reply comments to Bobby Brown, Commercial Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, NW., Room 7130, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

E. Authority

52. Authority for issuance of this *Further Notice of Proposed Rulemaking* is contained in sections 4(i), 257, 303(r), and 303(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 257, 303(r), and 303(j).

F. Ordering Clauses

53. Accordingly, it is ordered that, pursuant to the authority of sections 4(i), 257, 303(r), and 303(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 257, 303(r), and 303(j), a Further Notice of Proposed Rulemaking is hereby adopted.

54. It is further ordered that comments in WT Docket No. 96–18 will be due April 17, 1997 and reply comments will be due May 1, 1997.

List of Subjects

47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 90

Common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–6091 Filed 3–11–97; 8:45 am]

BILLING CODE 6712–01–P

federal register

Wednesday
March 12, 1997

Part VI

Office of Personnel Management

Proposed Laboratory Personnel Management Demonstration Project; Department of the Army, U.S. Army Research Laboratory, Adelphi Maryland; Notice

OFFICE OF PERSONNEL MANAGEMENT

Proposed Laboratory Personnel Management Demonstration Project; Department of the Army, U. S. Army Research Laboratory, Adelphi, MD

AGENCY: Office of Personnel Management.

ACTION: Notice of Intent to Implement Demonstration Project.

SUMMARY: Title VI of the Civil Service Reform Act, 5 U.S.C. 4703, authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

Public Law 103–337, October 5, 1994, permits the Department of Defense (DOD), with the approval of OPM, to carry out personnel demonstration projects at DOD Science and Technology (S&T) reinvention laboratories. These projects are to be similar to the demonstration project at China Lake. The Army is proposing a demonstration project initially to cover five of its S&T reinvention laboratories. Each of the laboratories vary in their approaches to classification and compensation, performance management, and reduction in force. This proposal is for the U.S. Army Research Laboratory (ARL).

DATES: To be considered, written comments must be submitted on or before May 20, 1997; public hearings will be scheduled as follows:

1. Thursday, April 17, 1997, at 10:00 a.m., in Adelphi, Maryland.
2. Friday, April 18, 1997, at 10:00 a.m., in Aberdeen Proving Ground, Maryland.

At the time of the hearings, interested persons or organizations may present their written or oral comments on the proposed demonstration project. The hearings will be informal. However, anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT,** and state the hearing location, so that OPM can plan the hearings and provide sufficient time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to ten minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

ADDRESSES: Comments may be mailed to Fidelma A. Donahue, U. S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415; public hearings will be held at the following locations:

1. Adelphi—U.S. Army Research Laboratory, Building 205 Auditorium, 2800 Powder Mill Road, Adelphi, Maryland.
2. Aberdeen Proving Ground—Post Theatre, Aberdeen Boulevard & Frankford Road, Building 3245, Aberdeen Proving Ground, Maryland.

FOR FURTHER INFORMATION CONTACT: (1) on proposed demonstration project: Mr. Jack R. Wilson, II, U.S. Army Research Laboratory Building 202, 2800 Powder Mill Road, Adelphi, MD 20783–1197, 301–394–1105; (2) on proposed demonstration project and public hearings: Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415, 202–606–1138.

SUPPLEMENTARY INFORMATION: Since 1966, at least 19 studies of Department of Defense (DOD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. The proposed project involves simplified job classification, broadbanding, a pay for performance (PFP) system, enhanced hiring flexibilities, modified reduction in force (RIF) procedures and expanded development opportunities.

Office of Personnel Management.

James B. King,

Director.

Table of Contents

I. Executive Summary
II. Introduction
A. Purpose
B. Problems with the Present System
C. Changes Required/Expected Benefits
D. Participating Organizations
E. Participating Employees and Union Representation
F. Project Design
G. Experimentation and Revision
III. Personnel System Changes
A. Broadbanding
B. Classification
C. Pay for Performance (PFP)
D. Hiring and Appointment Authorities
E. Internal Placements and Pay Setting
F. Employee Development
G. Reduction in Force (RIF)
H. Grievances and Disciplinary Actions
IV. Implementation Training
V. Conversion
VI. Project Duration
VII. Evaluation Plan
VIII. Demonstration Project Costs
IX. Required Waivers to Law and Regulation
Appendix A—ARL Employee Duty Locations
Appendix B—Occupational Series by Occupational Family
Appendix C—Demographics and Union Representation
Appendix D—Performance Management Forms
Appendix E—Project Evaluation

I. Executive Summary

The proposed project was designed by the Army Research Laboratory with participation and review by the Department of Defense (DOD) and the Office of Personnel Management (OPM). The purpose of the project is to achieve the best workforce for the laboratory mission, adjust the workforce for change, and improve workforce quality. The project framework addresses all aspects of the human resources life cycle model. There are six major areas of change: (a) Enhanced hiring flexibilities; (b) broadbanding; (c) automated classification, (d) a pay for performance system, (e) modified reduction in force procedures and (f) expanded developmental opportunities.

ARL managers will exercise cost discipline in the development and execution of this project, which will be tied to in-house costs and consistent with the Department of the Army (DA) plan to downsize laboratories. ARL will manage and control its personnel costs to remain within established in-house budgets. An in-house budget is a compilation of costs of the many diverse components required to fund the day-to-day operations of a laboratory. These components generally include pay of people (labor, benefits, overtime, awards), training, travel, supplies, non-capital equipment, and other costs depending on the specific function of the activity.

Extensive evaluation of the project will be performed by OPM, OSD, and Department of the Army. The Army has programmed a decision point 5 years into the project for continuance, modification, or rejection of the demonstration initiatives.

This plan represents a general description of the major interventions proposed for the demonstration project. Specific procedures and regulations will provide details on how the personnel demonstration project will be implemented.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of Department of Defense (DOD) laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same

time, expanding the opportunities available to employees through a more responsive and flexible personnel system. The quality of DOD laboratories, their people, and products have been under intense scrutiny in recent years. The perceived deterioration of quality is believed to be due, in substantial part, to the erosion of control which line managers have over their human resources. This demonstration project, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products through an improved personnel management system.

B. Problems With the Present System

The ARL mission is to execute fundamental and applied research to provide the Army the key technologies and analytical support necessary to assure supremacy in future land warfare. The ARL vision is a laboratory preeminent in key areas of science, engineering, and analysis relevant to land warfare; a staff widely recognized as outstanding; a laboratory seen by Army users as essential to their missions; and an intellectual crossroads for the technical community. ARL products contribute to the readiness of U.S. forces. To achieve this vision, ARL must hire and retain enthusiastic, innovative, highly-educated scientists and engineers to meet mission needs; also required is the ability to hire and retain dynamic, committed technical, clerical and administrative support personnel.

ARL finds the current Federal personnel system to be cumbersome, confusing, and unable to provide the flexibility necessary to respond to the current mandates of downsizing, restructuring, and possible closure while trying to maintain a high level of mission excellence. The present system—a patchwork of laws, regulations, and policies—often inhibits rather than supports the goals of developing, recognizing, and retaining the employees needed to realign the organization with its changing fiscal and production requirements.

The current Civil Service General Schedule (GS) system has 15 grades with 10 levels each and involves lengthy, narrative, individual position descriptions, which have to be classified by complex, OPM-mandated position classification standards. Because these standards have to meet the needs of the entire federal government, they are frequently obsolete and often not relevant to the needs of ARL. Distinctions between levels are often not meaningful. Currently, standards do not provide for a clear progression beyond the full performance level, especially for scientific/engineering occupations where career progression through technical as well as managerial occupational families is important.

Performance management systems require additional emphasis on continuous, career-long development in a work environment characterized by an ever-increasing rate of change. Since past performance and/or longevity are the factors on which pay raises are currently assessed, there is often no positive correlation between compensation and performance contributions nor value to the organization. These limited criteria do not take into account the future needs of the organization nor other culturally relevant criteria which an organization may wish to use as incentives.

Finally, current rules on training, retraining and otherwise developing employee competencies make it difficult to correct skills imbalances and to prepare current employees for new lines of work to meet changing mission needs.

C. Changes Required/Expected Benefits

The proposed demonstration project responds to problems in the classification system with a broadbanding classification system for GS employees; to problems in the current performance management system with a pay for performance system; to problems associated with downsizing with slightly modified reduction in force processes; and to problems of skills imbalances and rapidly changing missions with an enhanced developmental opportunities program.

D. Participating Organizations

The Army Research Laboratory (ARL) Director is located in Adelphi, Maryland. ARL employees assigned to the various laboratory directorates work at the locations shown in Appendix A.

E. Participating Employees and Union Representation

In determining the scope of the demonstration project, primary considerations were given to the number and diversity of occupations within the laboratory and the need for adequate development and testing of the Pay for Performance (PFP) System. Additionally, current DOD human resource management design goals and priorities for the entire civilian workforce were considered. While the intent of this project is to provide the Laboratory Director with increased control and accountability for the total workforce, the decision was made to initially restrict development efforts to General Schedule (GS/GM) positions.

To this end, the project will cover all ARL civilian employees under title 5, United States Code except members of the Senior Executive Service (SES), employees classified in the Scientific and Professional (ST) pay plan, and Federal Wage System (FWS) employees. A decision point has been programmed for the end of two and one half years of the demonstration project to expand coverage to include FWS. In the event of expansion to FWS employees, full approval of the expansion plan will be obtained from the Department of the Army, DOD, and OPM. Civilian Intelligence Personnel Management System (CIPMS) employees covered by Title X will be included for performance appraisal purposes only. They will not be eligible for performance payouts because they are not contributing funds to the pay pools. Performance awards for CIPMS employees will follow the procedures currently in place. Department of the Army and Major Subordinate Command centrally-funded interns are covered by the plan except for reduction in force (RIF) purposes. They will compete in a separate competitive area in the event of RIF. The series to be included in the project are identified in Appendix B.

The American Federation of Government Employees (AFGE), the National Federation of Federal Employees (NFFE), the International Association of Machinists and Aerospace Workers (IAM/AW), and the Fraternal Order of Police (FOP) represent many ARL employees. The laboratory continues to fulfill its obligation to consult or negotiate with the unions who represent both professional and nonprofessional employees in accordance with 5 U.S.C. 4703(f) and 7117. Union representatives have been separately notified about the project. Of the more than 2600 employees assigned to the laboratory, approximately 600 are represented by labor unions.

F. Project Design

In December 1993, the ARL Director decided the laboratory needed a personnel system more like the personnel demonstration project then in effect at the National Institute for Science and Technology (NIST). A preliminary plan patterned after the NIST Personnel Demonstration Plan was developed and shared with the Commanding General, Army Materiel Command and the Deputy Assistant Secretary of the Army for Research and

Technology where it received conceptual approval. The ARL Personnel Demonstration Project Office was then created and became the focal point for subsequent development efforts. In October 1994, the concept was briefed to representatives of DOD and other federal agencies. In November 1994 an Army Personnel Demonstration Team was formed with ARL designated as the lead. The team's charter was to develop the Army's Personnel Demonstration Concept Plan. In December 1994, this plan was approved by the Secretary of the Army.

In January 1995, ARL established a management structure designed to oversee the development of the demonstration proposal and to incorporate the workforce in the design efforts. This was accomplished by appointing an Executive Steering Committee, establishing a Staff Members Committee and discussing the project with unions. For most of 1995 various revisions were made to the ARL plan, many of which resulted from further DA and OSD staffing and coordination. In the Spring of 1996, the plan was ready for joint DOD and OPM review, which resulted in additional refinements. During this time, feedback was provided to ARL employees, through town hall meetings, electronic mail messages and memoranda, union briefings, and peer group review of draft implementing documents. The opinions and comments of the workforce have had a significant impact in the overall design of the demonstration project.

G. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. ARL will make minor modifications without further notice; major changes will be published in the Federal Register.

III. Personnel System Changes

A. Broadbanding

The ARL demonstration project will use a broadbanding approach to compensation and classification. Such an approach overcomes some of the problems experienced with the current system. A broadbanding system will simplify the classification system by reducing the number of distinctions between levels of work which will facilitate delegating classification authority and responsibility to line managers.

The proposed broadbanding scheme will replace the current General Schedule (GS) grading structure. The broadband levels are designed to enhance pay progression and to allow for more competitive recruitment of quality candidates at differing rates within the appropriate pay band level(s). Competitive promotions will be less frequent and movement through the pay bands will be a more seamless process than today's procedure. Like the broadbanding systems used at China Lake and NIST, advancement within each pay band is based upon performance.

Occupations at ARL have been grouped into four occupational families according to similarities in type of work and customary requirements for formal training or credentials. The common patterns of advancement within the occupations as practiced at ARL and in the private sector were also considered. The current occupations and grades have been examined, and their characteristics and distribution were used to develop the four occupational families described below:

1. *Engineers and Scientists.* This path includes all technical professional positions, such as engineers, physicists, chemists, psychologists, metallurgists, mathematicians, and computer scientists. Ordinarily, specific course work or educational degrees are required for these occupations. (Pay Plan DB)

2. *E&S Technicians.* This path consists of positions that directly support the various scientific and engineering activities of the laboratory. Employees in these positions are not required to have college course work. However, practical, quasi-professional training and skills in the various aspects of electronic, electrical, mechanical, chemical or computer engineering are generally required. (Pay Plan DE)

3. *Administrative.* This occupational family contains specialized functions in such fields as finance, procurement, personnel, public information, computing, supply, library science, and management analysis. Special skills in specific administrative fields or special degrees are normally required. (Pay Plan DJ)

4. *General Support.* This occupational family is composed of positions for which minimal formal education is needed, but for which special skills, such as office automation, typing, or shorthand may be required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Other support functions include the work of secretaries, guards, and mail clerks. (Pay Plan DK)

Each occupational family will be composed of discrete pay bands (levels) corresponding to recognized advancement within the occupations. These pay bands will replace grades. They will not be the same for all occupational families. Each occupational family will be divided into three to five pay bands, each pay band covering the same pay range now covered by one or more GS grades. A salary overlap, similar to the current overlap between GS grades, will be maintained. The salary range of each band begins with step 1 of the lowest grade in that band and ends with step 10 of the highest grade in the band.

The specific grouping of GS grades into a particular pay band was based on a careful examination of grade levels that have proven difficult for managers, employees and classifiers to distinguish; current performance levels within occupations; and traditional laboratory training and career development practices.

The proposed pay bands for the occupational families and how they relate to the current GS framework are shown in Figure 1.

BILLING CODE 6325–01–P

Occupational Families	Bands															
Corresponding GS Grades	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
Engineers and Scientists	I				II							III		IV		V
E&S Technicians	I								II			III				
Administrative	I				II						III			IV		
General Support	I				II			III								

Figure 1 - Broadbanding

BILLING CODE 6325–01–C

Administrative Pay Band III includes two full performance levels because not all work assignments in band III will support movement to the top of the band. Positions that typically support the higher salaries perform non-supervisory work associated with formulating programs and policies with laboratory-wide scope and impact. Other positions perform supervision of operating level programs in one or more administrative fields. In order to move beyond the equivalent of the GS–12 Step 10 salary, duty and work assignments must satisfy the highest level of the criteria in the classification standard for this pay band.

Employees will be converted into the occupational family and pay band which correspond to their GS/GM series and grade. Each employee is assured an initial place in the system without loss of pay. As the rates of the General Schedule are increased due to general pay increases, the minimum and maximum salaries of the pay band levels will also move up. All employees will receive the general pay increases given in January of each year. In addition, all employees will be eligible for future locality pay increases of their geographic area. (See Section III.E.4. for special provisions for employees in special rate categories.) Employees can receive additional pay increases based on their evaluations under the Pay for Performance Management System. Since pay progression through the pay bands is based on performance, there will be no scheduled Within-Grade Increases (WGIs) or Quality Step Increases (QSIs) for employees once the broadbanding system is in place.

There are several advantages to broadbanding. It is simpler, less time consuming, and less costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized occupational families, and complements the other personnel management aspects of the demonstration project.

The ARL broadbanding plan expands the broadbanding concept used at China Lake and NIST by creating Pay Band V of the Engineers and Scientists occupational family. This pay band is designed for senior technical managers and senior scientists/engineers.

Current OPM guidelines covering the Senior Executive System and Scientific and Professional (ST) positions do not fully meet the needs of ARL. The SES designation is appropriate for executive level managerial positions whose classification exceeds the GS-15 grade level. The primary knowledges and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are designed for bench research scientists and engineers. OPM guidelines state that the duties and responsibilities of ST positions must not include any managerial or supervisory responsibility.

ARL currently has many division chief positions that have characteristics of both SES and ST classifications. Most division chiefs in ARL are responsible for supervising other GS–15 positions, including branch chiefs, non-supervisory researcher engineers and scientists and in some cases ST positions. Most division chief positions are classified at the GS–15 level, but some have been established at the SES level. ARL management considers the primary requirement for division chiefs to be knowledge of and expertise in the specific scientific and technology areas related to the mission of their divisions. The ability to manage, while important, is considered secondary. Historically, these positions have been filled by employees who possess primarily scientific/engineering credentials and who are considered experts in their field by the scientific community. While it is clear these positions warrant classification beyond the GS–15 level, attempts to classify most of the positions as SES have been difficult because the size of the divisions and their location in the organization are not competitive with other SES level positions. Classification of the positions as ST is also not an option because the supervisory responsibilities inherent in division chief positions cannot be ignored.

As preeminent scientists and engineers, incumbents of ST positions are responsible for specific research and development efforts that are continuing and long range, generally requiring the efforts of a team. These ST positions usually serve as team leaders which means there is some responsibility for assigning work, coordinating results, and redirecting efforts. It is administratively convenient for these research team leaders to also participate in performance management. The restriction of including supervisory authorities in ST jobs has forced ARL to exclude any mention of the team leader responsibilities in these position descriptions for fear that they will be interpreted as characteristic of SES

rather than ST positions. Consequently, ARL has some positions that do not strictly conform to OPM definitions of either the SES or ST.

The purpose of Pay Band V is to overcome the difficulties identified above by creating a category for two types of positions—the senior technical manager (with full supervisory authority) and the senior scientist/engineer (less than full supervisory authority). Current GS–15 division chiefs will convert into the demonstration project at Pay Band IV. After conversion they will be reviewed against established criteria to determine if they should be reclassified to Pay Band V. Other positions possibly meeting criteria for classification to Pay Band V will be reviewed on a case by case basis. The proposed salary range is the same as currently exists for ST positions (minimum of 120% of the minimum rate of basic pay for GS–15 with a maximum of the basic rate of pay established for level IV of the Executive Schedule). Vacant positions in Pay Band V will be competitively filled to ensure that selections are made from among the world's preeminent researchers and technical leaders in the specialty fields. ARL will capitalize on the efficiencies that can accrue from central recruiting by continuing to use the expertise of the Army Materiel Command SES Office as the recruitment agent. Panels will be created to assist in filling Pay Band V positions. Panel members will be selected from a pool of current ARL SES members, ST employees and those in Pay Band V, and an equal number of individuals of equivalent stature from outside the laboratory to ensure impartiality, breadth of technical expertise, and a rigorous and demanding review. The panel will apply criteria developed largely from the current OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level. The same procedure will be used for evaluating senior technical manager positions except the rating criteria will be adjusted to account for the differences in the positions, such as greater emphasis on technical program management and supervisory abilities.

The final component of Pay Band V is the management of all Pay Band V assets. Specifically, this includes authority to classify, create, or abolish positions as circumstances warrant; recruit and reassign employees in this pay band; set pay and to have their performance appraised under this project's Pay for Performance System. This authority will be executed within parameters to be established at the DA level, to include controls on the numbers of Pay Band V positions and recruitment/promotion criteria. The specific details regarding the control and management of Pay Band V assets will be included in the demonstration's operating procedures. The laboratory wants to demonstrate increased effectiveness by gaining greater managerial control and authority, consistent with merit, affirmative action, and equal employment opportunity principles.

B. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series which are divided into 22 occupational families. ARL currently has positions in 119 series which fall into 20 families. The occupational series, which frequently provide well-recognized disciplines with which employees wish to be identified, will be maintained. This will facilitate movement of personnel into and out of the proposed demonstration project. New series, established by OPM, may be added as needed to reflect new occupations in the workforce.

2. Classification Standards

The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM Position Classification Standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of occupational family and pay band determinations. The objective is to record the essential criteria for each pay band within each occupational family by stating the characteristics of the work, the responsibilities of the position, and the knowledges, skills, and abilities required. ARL will continue its current practice of using peer reviews to facilitate the classification process and in some cases will expand its use to meet the needs of the laboratory.

3. Classification Authority

The Director, ARL will have delegated classification authority and may, in turn, redelegate this authority to subordinate management levels, and ultimately to the lowest level of full supervision in each organizational segment. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process.

4. Position Descriptions

Under the proposed classification system, a new position description will replace the current DA Form 374, Department of the Army Job Description. The classification standard for each pay band will serve as an important component in the new position description, which will also include position-specific information, and provide data element information pertinent to the job. Laboratory supervisors will follow a computer-assisted process to produce position descriptions. The objectives in developing the new descriptions are to: (1) Simplify the descriptions and the preparation process through automation; (2) minimize the amount of writing and time required to create new position descriptions; and (3) make the position descriptions more useful and accurate tools for other functions of personnel management, such as recruitment, reduction in force, performance assessment, and employee development. Because there is little writing required in the automated system, supervisory writing style and ability as a hidden consideration in position classification are eliminated.

5. Specialty Work Codes

Specialty work codes will be used to further differentiate types of work and the skills and knowledges required for particular positions within an occupational family and pay band. Each code represents a specialization or type of work within the occupation. Supervisors will select appropriate specialty work codes to describe the work of each employee through the automated classification process.

6. Automated Classification Process

Writing the position description is accomplished by completion of the following steps using an automated system.

(a) The supervisor enters, by typing free-form, the organizational location and the employees name. From the menu, the supervisor selects the appropriate occupational series and title, occupational family, and pay band corresponding to the level of duties and responsibilities desired. The user will then select whether the position is a non-supervisor, team leader or supervisor,

(b) The supervisor enters a brief description of the primary purpose of the position by typing free-form at the appropriate point. From a menu, the supervisor will choose statements pertaining to operation of a motor vehicle; any unusual physical and travel

requirements; required financial disclosure statements; and the position's sensitivity. The system will produce standardized statements of supervisory or team leader duties and responsibilities. The system will also produce a statement pertaining to positive education requirements, or their equivalencies, based on the occupational series selected.

(c) From a menu, the supervisor selects up to three specialty work codes which are appropriate to the job. The specialty work codes are subsets of the disciplines and describe particular skills and knowledges related to the kinds of work performed at ARL.

(d) The supervisor has the option of providing additional position information by typing free-form at an appropriate point at the end of the document. This area is to be used when the information addressed by the purpose of the position, specialty work codes, and functional classification codes are not completely adequate. The information will be used primarily to supplement skill and knowledge requirements and to refine competitive level decisions.

7. Fair Labor Standards Act (FLSA)

Fair Labor Standards Act exemption and nonexemption determinations will be made consistent with criteria found in 5 CFR (Code of Federal Regulations) part 551. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria and the tentative conclusions programmed into the automated classification system so that the system will be able to generate the FLSA coverage based upon the user's selection of occupational family, pay band, and supervisory responsibility.

As a general rule, the FLSA status can be matched to occupational family and pay band. For example, positions classified in Pay Band I of any occupational family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers who meet the definitions outlined in the OPM General Schedule Supervisory Guide and who spend 80% or more of the work week on supervisory duties. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA.

The generic position descriptions will not be the sole basis for the FLSA determination. Each position will be evaluated on a case-by-case basis by comparing the duties and responsibilities assigned, the classification standards for each pay band, and the 5 CFR part 551 FLSA criteria. The final review of the FLSA status will be made by the Civilian Personnel Operations Center (CPOC) based upon the above-mentioned material and any supplemental information such as that contained in established performance objectives.

The automated classification system will annotate the position description with a preliminary FLSA determination in accordance with Figure 2 below.

BILLING CODE 6325–01–P

OCCUPATIONAL FAMILY	I	II	III	IV	V
E&S	N	N	E	E	E
E&S Technicians	N	N	E		
Administrative	N	N	E	E	
General Support	N	N	N		

Figure 2 - FLSA

BILLING CODE 6325–01–C

8. Classification Appeals

An employee may appeal the occupational family, occupational series, or pay band of his or her position at any time. The employee may accomplish this by exercising any of the following options: (a) The employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing, (b) If the employee is not satisfied with the supervisory response, the employee may appeal to the appellate level within DOD or may appeal directly to OPM, (c) If the employee elects to first appeal to DOD but is not satisfied with this response, he/she may appeal to the Office of Personnel Management. Appellate decisions from OPM are final.

The evaluation of a classification appeal is based on the ARL Personnel Demonstration Project Classification Standards.

C. Pay for Performance

1. Overview

The purpose of the Pay For Performance (PFP) System is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the laboratory workforce. It is essential for the development of a highly productive workforce and to provide management, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products. PFP allows for more employee involvement in the assessment process, increases communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, provides an understandable basis for salary changes, and delinks awards from the annual performance appraisal process. The funds previously allocated for performance-based awards will be reserved for distribution under a separate laboratory awards program.

PFP creates a method to more directly link pay and performance. The system combines goal setting, tied to corporate objectives, with a letter grading system. The performance evaluations made under the demonstration project will ensure that top performers receive pay increases commensurate with their achievements. The PFP System uses a

four level summary pattern (Pattern E) under 5 CFR 430.208(d) where a rating of C is equivalent to fully successful.

Employees within the laboratory will be placed into pay pools. Base pay adjustment decisions (i.e., decisions regarding the amounts of salary increase) are based on the relationship between performance ratings and present salaries. The maximum base pay rate under this demonstration project will be the unadjusted base pay rate of GS–15/Step 10, except for employees in Pay Band V of the E&S Occupational Family. In this case, the maximum rate of base pay will be the basic rate of pay for level IV of the Executive Schedule.

Cost discipline is assured within each pay pool by limiting the total base pay increases to the funds available in the base pay fund in the pay pool, based on what would have been available in the General Schedule system from within-grade increases, quality step increases and within-band promotions. The ARL Director may adjust the amount of funds assigned to each pay pool as necessary to ensure equity and to meet unusual circumstances. No changes will be made to locality pay under the demonstration project and all employees continue to receive general pay increases.

The PFP system being proposed differs from the current system in that all the supervisors in a pay pool will meet to reconcile the scores given to each employee in the pay pool, with the purpose being to reach consensus on the type of achievements that warrant particular scores. After this reconciliation process is completed, final letter grades are assigned and payout proceeds according to each employee's final letter rating, score, and current salary.

The PFP System eliminates within-grade increases, quality step increases, in band promotions and awards, and replaces them with pay for performance payouts described above. Other awards such as special acts will continue to be awarded. The new system also provides the ability to give bonuses to employees who are at the top of the range in their pay band. Bonuses differ from pay increases in that they are not added to base salary but rather are given as a lump sum payment.

Interns in recognized DA career programs will be appraised semi-annually until they complete their internships. The second appraisal in each annual cycle will be considered the rating of record.

2. The PFP Assessment Process

At the beginning of the assessment cycle, the employee and rater will collaborate on the development of the employee's performance objectives, designation of the performance elements and which of these elements are critical, and their associated weights. An objective is defined as a statement of specific job responsibilities expected of the employee during the rating period. These are to be based on the work unit's mission and goals and should be consistent with the employee's job description. Performance objectives may be modified and/or changed as appropriate during the rating cycle. As a general rule, performance objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload changes occur. Performance objectives will be tailored to each individual employee. Use of generic one size fits all objectives will be avoided.

The supervisor and employee will discuss the performance objectives, which elements are critical, and what weight each carries in an attempt to reach agreement whenever possible. Disagreements will be handled through the normal chain of command. Management retains the right to establish objectives, identify which elements are critical, and their relative weights. Employees retain their right to grieve any element they believe is inappropriate through Alternative Dispute Resolution processes or grievance procedures. It is encouraged that disagreements be resolved at the beginning of the appraisal period.

How well work objectives are performed will be measured by a series of weighted performance elements. Performance elements are defined as generic critical attributes of job performance that are of sufficient importance that performance below the minimum standard requires remedial action and may be the basis for removing the employee from the position. Specific information on the interrelationships between objectives and elements will be included in the implementing procedures for this plan.

Eight elements have been developed for evaluating the yearly performance of all laboratory personnel covered by this initiative: Technical Competence, Cooperation, Communication, Management of Time and Resources, Customer Relations, Technology Transition, Management/Leadership, and Supervision/EEO.

All employees will be rated against the first five performance elements. Element 6 is optional and is intended for those positions involving technology transition. Element 7 is optional and is intended for non-supervisory team leaders or program managers. Elements 7 and 8 are required for all supervisory positions. These eight elements are described below.

(1) *Technical Competence.* Exhibits and maintains current technical knowledge, skills, and abilities to produce timely and quality work with the appropriate level of supervision. Makes prompt, technically sound decisions and recommendations that add value to mission priorities and needs. For appropriate occupational families, seeks and accepts developmental and/or special assignments. Adaptive to technological/organizational change. (Weight range: 15 to 50)

(2) *Cooperation.* Accepts personal responsibility for assigned tasks. Considerate of others views and open to compromise on areas of difference. Exercises tact and diplomacy and maintains effective relationships, particularly in immediate work environment and teaming situations. Readily/willingly gives assistance. Shows appropriate respect and courtesy. (Weight Range: 5 to 25)

(3) *Communication.* Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and easily understood. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions. (Weight Range: 5 to 25)

(4) *Management of Time and Resources.* Meets schedules and deadlines, and accomplishes work in order of priority; generates and accepts new ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; supports organization's resource development and conservation goals. (Weight Range: 15 to 50)

(5) *Customer Relations.* Demonstrates care for customers through respectful, courteous, reliable and conscientious actions. Seeks out, develops and/or maintains solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customer informed. Within the scope of job responsibility, seeks out and develops new programs and/or reimbursable customer work. (Weight Range: 10 to 50)

(6) *Technology Transition.* Seeks out and incorporates outside technology within internal projects. Implements partnerships for transition or transfer of technology to other internal working groups, other government agencies, and/

or commercial activities. (Weight Range: 5 to 50)

(7) *Management/Leadership.* Actively furthers the mission of the organization. As appropriate, participates in the development and implementation of strategic and operational plans of the organization. Exercises leadership skills within the environment. Mentors junior personnel in career development, technical competence, and interpersonal skills. Exercises appropriate responsibility for positions assigned. (Weight Range: 5 to 50)

(8) *Supervision/EEO.* Works toward recruiting, developing, motivating, and retaining quality employees; initiates timely/appropriate personnel actions, applies EEO/merit principles; communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers employees. (Weight Range: 25 to 50)

The performance element titled Technical Competence is a mandatory critical element for all employees. In addition, all supervisors must be evaluated against the element titled Supervision/EEO and this must be identified as critical.

Other elements may be identified as critical as agreed upon between the rater and the employee. Generally any performance element that has been given a weight of 25 or higher should be identified as critical. Some elements weighted less than 25 (e.g., Communication or Cooperation) may also be critical; for instance, those that are considered so important to a particular job that failure to perform at an acceptable level would result in an overall performance evaluation of unsatisfactory. Weights on elements must add up to 100.

Appendix D contains the Performance Objective Worksheet and the Performance Appraisal form accompanied by a guidance form entitled, Point Ranges and Performance Element Benchmarks.

Pay pool managers will review objectives, critical element designations and weights prior to their implementation to ensure these are reasonable and fair and in keeping with expectations for each employee. As a general rule, essentially identical positions will have the same critical elements and the same weights.

The rater will provide periodic feedback to the employee on how well he/she is performing. If the rater judges that the employee is not performing at an acceptable level on one or more elements, the rater must alert the employee and document the problem. This feedback will be provided any time during the rating cycle especially if there is a problem. A mid-point counseling session is required. Deficiencies identified will be accompanied by a plan to correct them.

Employees will provide information on their accomplishments to the rater at both the mid-point and end of the rating period, similar to the current Army process. Employees may self-rate their performance elements and/or they may solicit input from team members, customers, peers, supervisors in other units, subordinates and other sources which will permit the rater to fully evaluate the contributions during the rating period. As a minimum, employees will provide the rater with an itemized list of their accomplishments during the rating period.

Employees may also provide information and input to the rater's supervisor for consideration in the supervisor's appraisal. This material may go directly to the rater's supervisor but a copy must be furnished to the rater.

At the end of the rating period, the rater will score each of the performance elements by assigning a value between 0 and 100 percent of the weighted value assigned to each of the elements. The rater arrives at this score by referring to the performance element benchmarks found on the reverse of the performance appraisal form. The benchmark performance standards are written so they describe performance at 100 percent of the element; 70 percent; 50 percent and the Unsatisfactory level of performance. Using these benchmarks, the rater decides where on a continuum the performance of the employee fits and assigns a point value according to that determination. The chart to the right of the performance element benchmarks will be used to assign the specific point value. Scores will be summed and a letter rating assigned; i.e., 85–100 = A, 70–84 = B, 50–69 = C. This rating will become the rating of record. A total score of 49 or below will result in an unsatisfactory rating. Failure to achieve at the 50% level of any critical element will also result in an overall unsatisfactory rating.

The letter ratings will be used to determine pay or bonus values and to award additional RIF retention years as shown in Figure 3 below.

BILLING CODE 6325–01–P

RATING	COMPENSATION	RIF RETENTION YEARS ADDED
A	3 or 4 shares	10
B	2 or 3 shares	7
C	0 or 1 share	3
U	0 shares	0

Figure 3 - RIF Retention

BILLING CODE 6325–01–C

After a rating has been assigned, the rater recommends the number of shares that should be granted. This decision is based on an evaluation of the employee's current salary and level of performance (e.g., high B or low A) in

comparison to similarly situated employees within the pay pool and overall funding availability. For example, an employee who receives a score of 84 and a final rating of B, but whose current salary is at the lower end of his/her pay band might receive the maximum number of shares (3) permitted for a B rating. In contrast, an employee who received a score of 85 which warrants a final rating of A, but whose salary is comparable to or above similar positions in the pay pool might receive 3 rather than 4 shares. A third example is that an employee who receives a score of 84 might receive the maximum number of shares based on the fact that it is a very high B or one point away from an A. The methods available for determining shares will allow ARL managers to adjust basic pay by considering differences in performance levels among employees in terms of comparability within ARL and the pay pool for similarly situated employees.

Upon approval of this plan, implementing procedures and regulations will provide details on this process to employees and supervisors.

3. Performance Which Fails To Meet Expectations

a. Continuing Performance Evaluation

Informal employee performance reviews will be a continuous process so that corrective action, to include a Performance Improvement Plan (PIP), may be taken at any time during the rating cycle. At least one review will be documented as a formal progress review. Whenever a supervisor recognizes that an employee's performance is at a level that could put him/her in danger of receiving an unsatisfactory rating, the supervisor will discuss the situation with the employee in an effort to identify the possible reasons for the poor performance.

b. End of Rating Cycle Performance Evaluation

Employee performance will be formally reviewed at the end of the rating cycle. If an employee's rating score is below 50 points, or if the employee fails a critical element, the employee will receive an unsatisfactory rating. Immediately upon assigning an unsatisfactory rating, the supervisor will take steps to correct the problem.

c. Improving Performance

In recognition that personality conflicts sometimes occur between a supervisor and an employee, or that an employee might be better suited to another type of work, the supervisor and employee may explore a temporary assignment to another unit in the organization. The supervisor is under no obligation to explore this option prior to taking more formal action.

If the temporary assignment is not possible or has not worked out, and the employee continues to perform at an unsatisfactory level or has received an unsatisfactory rating, written notification will be provided of the unsatisfactory performance in the element(s) at issue, and an opportunity to improve will be structured in a Performance Improvement Plan (PIP). The supervisor will identify the items/actions which need to be corrected or improved; will outline required time frames for such improvement; and will provide the employee with any available assistance, references, training and the like which might facilitate needed improvements. Progress will be intensively monitored during this PIP period; all counseling sessions will be documented.

If the PIP results in a score of 50 or above and/or the critical element which was failed is now acceptable, no further action is necessary. If the PIP does not improve performance to an acceptable level, the supervisor may propose to institute a Last Chance Agreement (LCA) with the employee. A Last Chance Agreement stipulates that if performance does not rise to the required level within a specified time frame the employee will be changed to a lower pay band, reduced in salary, or released from Federal service. The employee agrees to this last chance arrangement with the understanding that there are no grievance or appeal rights if the adverse action eventually has to be taken. The decision to enter into a last chance agreement is entirely voluntary on the part of the employee.

If the PIP does not improve performance to the acceptable level and the employee elects not to enter into the LCA, the supervisor will take the appropriate follow-on action, such as change to lower pay band/occupational family, reduction in pay within the same pay band, or removal, as indicated by the circumstances of the situation. For the most part, employees with an unsatisfactory rating will not be permitted to remain at their current pay band or salary. Reductions in salary within the same pay band or changes to a lower pay band will be accomplished with a minimum of a 5% decrease in employee base pay. If the employee is reduced to a lower pay band, the salary will not exceed the highest level in that pay band.

4. Pay Pools

Pay pool structure is under the authority of the laboratory director. A pay pool must be large enough to constitute a reasonable statistical sample, i.e., 50 or more. The pay pool manager (for instance, a directorate or division chief) is delegated yearly pay adjustment authority. However, a pay pool manager's final decision may still be subject to higher management review. Supervisors will be placed in a pay pool separate from their employees.

The pay pool manager makes final decisions on pay increases and/or bonuses to individuals based on rater recommendation, the final score and letter rating, the value of the pay pool resources available, and the individual's current salary within a given pay band. Pay pool managers will not prescribe a distribution of rating levels. A pay pool manager may request approval from the Personnel Management Board (PMB) (described in VIII.C.) or its designee to grant a pay increase to an employee that is higher than the compensation formula for that employee. Examples of employees who might warrant such consideration are those making extraordinary achievements or those serving as interns.

The amount of money available for performance payouts is divided into two components. The amount of money which can be used for salary increases within a pool is based upon the money that would have been available for within-grade increases, quality step increases, and grade level promotions that are now within the band. In the first year of the project, this amount will be set at 2.4% of the total of base salaries in the pay pool. The amount of money to be used for bonus payments is separately funded within the constraints of the overall awards budget. In the first year of the project, this amount will be set at 1.1% of the total of base salaries in the pay pool which reflects the funds previously available for performance awards. The sum of these two factors is referred to as the pay pool percentage factor. The Personnel Management Board will annually review and adjust the pay pool funding formula, to ensure cost discipline over the life of the demonstration project.

Performance pay increases (i.e., base pay increases) will not be granted to employees at the top of their pay band or in a pay retention status. In these cases, payouts earned as a function of performance will be paid as a bonus. In addition, a portion of the projected pay increase may be paid as bonus instead of base pay if required to keep the base pay portion of the pay pool from

exceeding its maximum value (initially 2.4%).

In making the annual performance payouts under the PFP system, it will be necessary to determine the amount of that year's pay pool and share value. As explained above, the amount of the pay pool is the pay pool percentage (initially 3.5 percent) multiplied by the sum of the combined base salaries of covered employees. The share value will be calculated so that a pay pool manager will not exceed the resources that are available in the pay pool. The value of a share cannot be exactly determined until the rating and reconciliation process described below is complete. The estimated share value is about 1% of salary, but inflated ratings (if they occur) will reduce the value of the share. (Conversely, lower average ratings will increase the value of a share.) The share value is expressed as a fraction of base salary. It is computed by dividing the amount of the pay pool by the sum of each pay pool member's salary multiplied by his/her earned shares, or

share value = (pay pool value)/(sum of (salary * shares) for each member).

Each individual's performance payout is calculated by multiplying the individual's base salary by the total value of his/her earned shares expressed as a percentage of base salary, or

Individual performance payout = salary * (earned shares * share value).

In summary, an individual's performance payout is computed as follows:

Individual performance payout = SALi * Ni * SV,
where: SV = share value = (pay pool value) / SUM (SALk * Nk); k = 1 to n
pay pool value = (pay pool percentage factor) * SUM (SALk), k = 1 to n
n = number of employees in pay pool
i = an individual employee
N = Number of shares earned by an employee based on his/her performance rating (0 to 4)
SAL = An individual's base salary and
SUM = The summation of the entities in parentheses over the range indicated.

This formula ensures that a share represents a fixed percentage salary increase for all employees in a pay pool.

After the payout and share value calculations have been completed, the pay pool manager must calculate the proportion of payouts to be paid as base pay vs bonus. If base pay increases would exceed the authorized percentage, shares must be paid out as base pay increases up to the limit, and the remainder paid as a bonus. This base/bonus proportion will be constant for all uncapped employees. This process will preserve the principle that all shares maintain equal (percentage) value, and will ensure that all of the allocated funds are disbursed as intended.

Pay pool managers will establish and chair a panel to review supervisors preliminary ratings and make any necessary adjustments. The panel will comprise all rating supervisors below the pay pool manager. The reconciliation process gives raters the opportunity to verify that their preliminary evaluations and approach to scoring conform with that of other raters within the pay pool and assures that performance assessments of employees are comparable and equitable across organizational lines. In this step, each employee's preliminary performance element scores are compared and through discussion and consensus building, final ratings are determined. The reconciliation process is aimed at determining the relative worth of employee accomplishments.

The rationale behind reconciliation is that supervisors within a pay pool will reach a consensus on the types of achievements that warrant particular scores. Each panel will develop operating procedures that will provide for fair and equitable conclusions. If the panel cannot reach consensus, the pay pool manager makes final decisions.

A midpoint principle will be used to determine performance pay increases. This principle is that employees must receive a B rating or higher in order to cross the midpoint of the pay band range and, once the midpoint is crossed, the employee must receive a B or better rating in order to receive a base pay increase. This applies to all employees in every occupational family and pay band. Any amount of an employee's performance payout not paid in the form of a base pay increase because of the midpoint principle will be paid as a bonus.

5. Awards

While not linked to the pay for performance system, awards will continue to be given for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off.

In an effort to foster and encourage team work among its employees, ARL often gives group awards for special acts or significant achievement. Under the demonstration project, if such an award is given a team may elect to distribute the award among themselves. Thus, a team leader or supervisor may allocate a sum of money to a team for outstanding completion of a special task, and the team may decide the individual distribution of the total dollars among themselves.

D. Hiring and Appointment Authorities

1. Qualifications

The qualifications required for placement into a position in a pay band within an occupational family will be determined using the OPM Qualification Standards Handbook for General Schedule Positions. Since the pay bands are anchored to the General Schedule grade levels, the minimum qualification requirements for a position will be the requirements corresponding to the lowest General Schedule grade incorporated into that pay band. For example, the minimum eligibility requirements for a position in Pay Band II in the Engineers and Scientist Occupational Family will be the GS–05 qualification requirements for the series.

Selective factors may be established for a position in accordance with the OPM Qualification Standards Handbook when determined to be critical to successful job performance. These factors become part of the minimum requirements for the position and applicants must meet them in order to be eligible. If used, selective factors will be clearly stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Competitive Examining

Current OPM regulations state that appointment registers will list the names of eligibles in accordance with their numerical ratings. However, preference eligibles with a compensable service-connected disability of 10 percent or more shall be entered at the top of the register ahead of all others unless the register is for professional and scientific positions GS–9 and above.

ARL professional and scientific positions in the demonstration project have been placed into two occupational families, the Engineers and Scientists Occupational Family and the Administrative Occupational Family. The broadbanding concept adopted by ARL groups scientific positions in grades GS–5 through GS–11 into one pay band (DB–II). Similarly, GS–5 through GS–10 positions in the Administrative Occupational Family (DJ–II) have been grouped into one pay band.

As a result of the ARL broadbanding method, the exception authorized by OPM for professional and scientific positions will not be used for DB–II and

DJ–II pay bands and will only be used for the bands that include professional and scientific positions at GS–12 and above. Otherwise, appointment registers for all positions, regardless of occupational family, will follow the normal practice for listing eligibles in order of their numerical ratings and observing the existing rules for preference eligibles.

3. Revisions to Term Appointments

The laboratory conducts many research and development projects that range from three to six years. The current four-year limitation on term appointments imposes a burden on the laboratory by forcing the termination of some term employees prior to completion of projects they were hired to support. This disrupts the research and development process and reduces the laboratory's ability to serve its customers.

Under the demonstration project, ARL will have the authority to hire individuals under modified term appointments. These appointments will be used to fill positions for a period of more than one year but not more than five years when the need for an employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR part 316 in that they may be made for a period not to exceed five, rather than four years. The ARL Director is authorized to extend a term appointment one additional year.

Employees hired under the modified term appointment authority may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career-conditional appointment at a later date; (2) served two years of continuous service in the term position; (3) be selected under merit promotion procedures for the permanent position and (4) have a current rating of B or better.

Employees serving under regular term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional appointment if they have a current rating of B or better and are selected under merit promotion procedures for the permanent position after having completed two years of continuous service. Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous. Employees serving under modified term appointments under this plan will be covered by the plan's pay for performance system.

4. Voluntary Emeritus Corps

Under the demonstration project, the laboratory director will have the authority to offer retired or separated employees voluntary positions in the laboratory. Voluntary Emeritus Program assignments are not considered employment by the Federal Government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on an earlier separation from Federal Service. The Voluntary Emeritus Corps will ensure continued quality research while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the scientific and technical communities. The program will be beneficial during manpower reductions as senior scientists, engineers, and technicians accept retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less-experienced employees.

To be accepted into the emeritus corps, a volunteer must be recommended by laboratory managers to the directorate chief. Everyone who applies is not entitled to an emeritus position. The directorate chief must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the government. The volunteers may be required to submit a financial disclosure form annually and will not be permitted to participate on any contracts where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the directorate chief, and the Civilian Personnel Operations Center. The agreement must be finalized before the assumption of duties and shall include:

(a) A statement that the voluntary assignment does not constitute an appointment in the Civil Service, is without compensation, and any and all claims against the Government because of the voluntary assignment are waived by the volunteer,

(b) A statement that the volunteer will be considered a federal employee for the purpose of injury compensation,

(c) Volunteer's work schedule,

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years),

(e) Support provided by the laboratory (travel, administrative, office space, supplies),

(f) A one page statement of duties and experience,

(g) A statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the voluntary emeritus corps,

(h) A provision allowing either party to void the agreement with ten working days written notice, and

(i) The level of security access required (any security clearance required by the position will be managed by the laboratory while the volunteer is a member of the emeritus corps).

5. Extended Probationary Period

A new employee appointed to a nonsupervisory/non-managerial position in the Engineers and Scientists occupational family must demonstrate adequate contribution during all cycles of a research effort for a laboratory manager to render a thorough evaluation. The current one year probationary period will be extended to three years for all newly hired permanent career-conditional employees appointed to positions in that occupational family. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's contributions and conduct. The three year probationary period will apply only to new hires subject to a probationary period.

If a probationary employee's performance is determined to be satisfactory at a point prior to the end of the three year probationary period, a supervisor has the option of ending the

probationary period at an earlier date, but not before the employee has completed one year of continuous service. If the probationary period for an employee is terminated before the end of the three year period, the supervisor will develop written rationale for his/her decision and will elevate it at least one level for review prior to implementing the action.

All other existing provisions pertaining to probationary periods are retained, including limited notice and appeal rights and crediting prior service. Prior Federal civilian service (including NAF service and service in temporary or term positions) counts toward completion of probation when the service is in the Department of Army, is in the same line of work, and contains or is followed by no more than a single break in service that does not exceed 30 calendar days.

In the case of modified-term employees who are converted to permanent status, the time served under the term appointment counts toward the required probationary period as long as it is in the same line of work. If the permanent position is in a different line of work, the full three-year probationary requirement applies.

6. Supervisory Probationary Period

Supervisory probationary periods will be made consistent with 5 CFR part 315, subchapter 315.901 except references to grade will be indicated as pay band. New supervisors will be required to complete a one year probationary period for the initial appointment to a supervisory position. If, during the probationary period, the decision is made to return the employee to a nonsupervisory position for reasons solely related to supervisory performance, the employee will be returned to a comparable position of no lower pay band and pay than the position from which promoted. Pay will not exceed the maximum rate of the lower pay band.

New supervisors who are hired into the E&S occupational family will only serve under a single one-year probationary period and are not subject to the three-year probationary period described above. The reason for this is that the position for which they were hired is primarily supervisory in nature and performance can adequately be measured in the one year probationary period.

E. Internal Placement and Pay Setting

1. Promotions

A promotion is the movement of an employee to a higher pay band within the same occupational family or to a pay band in a different occupational family which results in an increase in the employee's salary. Supervisors may consider promoting employees at any time since promotions are not tied to the pay for performance system. Progression within a pay band is based upon performance pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section.

Promotions will be processed under competitive procedures in accordance with merit principles and requirements and the local merit promotion plan. The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction in force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion or detail to a position in a higher pay band of 180 days or less.

(f) Reclassification to include impact of person in the job promotions.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(h) Consideration of a candidate not given proper consideration in a competitive promotion action.

Upon promotion to a higher pay band, an employee will be entitled to a 6% increase in base pay or the lowest level in the pay band to which promoted, whichever is greater. The maximum amount of pay increase upon promotion will not exceed $5,000. However, on a case-by-case basis, the Personnel Management Board will approve requests for promotion beyond the $5,000 limit. Highest previous rate also may be considered in fixing pay in accordance with the laboratory's pay fixing policies.

2. Demotions

A demotion is a placement into a lower pay band within the same occupational family, or placement into a pay band in a different occupational family with a lower salary. Demotions may be for cause (performance or conduct) or for reasons other than cause (e.g., erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements or at the employee's request, or placement actions resulting from reduction in force procedures). Employees demoted for cause are not entitled to pay retention. Employees demoted for reasons other than cause may be entitled to pay retention in accordance with the laboratory's pay fixing policies.

3. Pay Fixing Policies and Procedures

The Director, ARL, will establish pay administration policies which conform with basic governmental pay fixing policy; however, the ARL policies will be exempt from Army Regulations or local pay fixing policies, except where negotiated agreements prevail.

Highest previous rate (HPR) will be considered in placement actions for which authorized. Use of HPR will be at the supervisor's discretion. The pay retention provisions of 5 U.S.C. 5363 and 5 CFR 536.101 will apply to this plan except where waived or modified as specified in the waiver section. Pay retention may also be granted by the ARL Director to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided not specifically excluded.

An employee's total monetary compensation paid in a calendar year may not exceed the basic pay of level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530 subpart B.

As a general rule, pay will be set at the lowest level in a pay band. Appointments made above the minimum level will be based upon superior qualifications of the candidate. A candidate appointed toward the higher end of a pay band should have qualifications approaching the lowest General Schedule grade incorporated into the next higher pay band. For example, a person appointed at the higher end of Pay Band II in the Engineers and Scientist occupational family would have education, experience, or a combination of the two approaching the qualifications of the GS–12 level, which is the lowest General Schedule grade incorporated into Pay Band III. Appointments above the minimum of the pay band will be approved at the directorate level.

Directorates may make full use of recruitment and retention bonuses, and relocation payments as currently provided for by OPM.

When a temporary promotion is terminated, the employee's pay entitlements will be redetermined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by ARL. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate.

4. Staffing Supplements

Employees assigned to occupational series and geographic areas covered by special rates will be eligible for a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to the base pay, much like locality rates are added to base pay. The employee's total pay immediately after implementation of the demonstration project will be the same as immediately before the demonstration project, but a portion of the total will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in total salary. The staffing supplement is calculated as described below.

Upon conversion, the demonstration base rate will be established by dividing the employee's old GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. So the employee's final demonstration special staffing rate equals the demonstration base rate plus the special staffing supplement; this amount will equal the employee's former GS adjusted rate.

Simplified, the formula is this:

Staffing Supplement = demonstration base rate x (staffing factor − 1)

Salary upon conversion = demonstration base rate + staffing supplement (sum will equal existing rate)

$$\text{Staffing factor} = \frac{\text{Maximum Special Rate for the banded grades}}{\text{GS rate corresponding to that special rate}}$$

$$\text{Demonstration base rate} = \frac{\text{Old GS adjusted rate (special or locality rate)}}{\text{staffing factor}}$$

Example: In the case of a GS–801–11/03 employee who is receiving a special salary rate, the salary before the demonstration project is $42,944. The maximum special rate for a GS–801–11 Step 10 is $51,295 and the corresponding regular rate is $46,523. The staffing factor is computed as follows:

Staffing Factor = $51,295 ÷ $46,523 = 1.1026

Demonstration Base Rate = $42,944 ÷ 1.1026 = $ 38,948

Then to determine the staffing supplement, multiply the demonstration base by the staffing factor minus 1.

Staffing Supplement = $38,948 X .1026 = $ 3,996

The Staffing Supplement of $3,996 is added to the Demonstration Base Rate of $38,948 and the total salary is $42,944, which is the salary of the employee before conversion to the demonstration project.

If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee is converted into the demonstration project, the demonstration base rate is derived by dividing the employee's former GS adjusted rate (the higher of locality rate or special rate) by the applicable locality pay factor (for example, in the Washington-Baltimore area, it is currently 1.0711). The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate.

The annual pay adjustment for employees in special rate occupations will require recomputation of the staffing supplement. Employees in special rate occupations remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, employees will be entitled to pay retention. Upon geographic movement, an employee who receives the special staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

Established salary including the staffing supplement will be considered basic pay for the same purposes as a locality rate under 5 CFR 531.606(b), i.e., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

5. Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that ARL have increased flexibility to assign individuals. Broadbanding can be used to address this need. As a result of the assignment to a more general position description, the organization will have increased flexibility to assign an employee without a pay change consistent with the needs of the organization, and the individual's qualifications and rank or level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level and area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description.

Such assignments within the coverage of the generic descriptions are accomplished without the need to process a personnel action. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. This flexibility allows a broader latitude in assignments and further streamlines the administrative process and system.

6. Details

Under this plan employees may be detailed to a position in the same or lower pay band (or its equivalent in a different occupational family) for up to one year. Details may be implemented by submitting one SF 52–B to cover the one year period. As in the current system, details to duties in a higher pay band for more than 180 days will be implemented using competitive procedures.

F. Employee Development

1. Expanded Development Opportunities

ARL will have the authority to grant sabbaticals to career employees to permit them to engage in study or uncompensated work experience that will contribute to their development and effectiveness. The ARL Expanded Developmental Opportunities Program, to include sabbaticals, will cover all demonstration project employees. One developmental opportunity for a sabbatical 3–12 months in duration may be granted to an employee in any 10-year period. The developmental opportunity period will not result in loss of (or reduction in) pay, leave to which the employee is otherwise entitled, or credit for time of service. Employees will be eligible after completion of seven years of Federal service. Each opportunity must result in a product, service, report, or study that will benefit the ARL mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching, study, or research; self-directed or guided study; and on-the-job work experience with a public, private commercial, or private nonprofit organization. The positions of employees on expanded developmental opportunities may be backfilled (i.e., with temporarily promoted employees or with term employees). However, that position or its equivalent must be made available to the employee returning from the expanded development opportunity.

2. Critical Skills Training

Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training in the academic environment of laboratories is also a critical tool for recruiting and retaining employees with or requiring critical skills. Constraints under current law and regulation limit degree payment to shortage occupations. In addition, current government-wide regulations authorize payment for degrees based only on recruitment or retention needs. Degree payment is not permitted for non-shortage occupations involving critical skills.

ARL proposes to expand the authority to provide degree or certificate payment for purposes of meeting critical skill requirements, to ensure continuous acquisition of advanced specialized knowledge essential to the organization, and to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. In addition, this proposal will be implemented consistent with 5 U.S.C. 4107(b)(2).

3. Appraisals for Employees on Expanded Development Opportunities Training

Expanded development opportunities generally fall into two general categories: classroom and developmental (on-the-job training). Developmental assignments should be treated as any other temporary assignment that continues for 120 days or more. A performance plan is established and the incumbent receives a special or annual rating upon completion. Assignments that involve classroom work are covered by one of two options. The first is to render a rating as soon as the employee returns to the position and completes 120 days under a performance plan. The second is to render a rating for the classroom performance. Procedures for this option will follow those currently in place for Department of Army's Long Term Training (LTT) Program. Employees availing themselves of expanded development opportunities are eligible to be considered for pay for performance increases as appropriate.

4. Employee Development Panels

Each directorate (or equivalent organizational unit) will create an Employee Development Panel which will be chaired by the directorate chief. The purpose of the panel is to review, evaluate, and make decisions on applications for any expanded developmental opportunities described in this plan or in related Human Resources Development Plans. Because opportunities for training and development will be limited by budgetary considerations, the panel must determine which training is most important to the successful accomplishment of the mission, both present and future.

The directorate chief will oversee panel meetings, ensuring that all panel member comments and recommendations receive equal consideration in the selection process and that decisions are made based on majority vote. The directorate chief will provide written feedback to each person who has applied, including reasons for nonselection when that is the panel's decision. Panels will elicit feedback from mentors and mentees and will put these before the panel for consideration. Applicants must show a direct relationship of their training request to the ARL mission and will outline what return on investment will be realized if the training is approved. Supervisors will be asked to provide their recommendations to the panel and will include a statement concerning the applicant's potential and his/her ability to apply the knowledges gained. Once selected, the employee must sign a service obligation agreement which provides for serving in the government three times the length of the training period. If he/she voluntarily leaves the government before the service obligation is completed the employee is liable for repayment.

G. Reduction In Force (RIF)

When an employee in the ARL Demonstration Project is faced with separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of reemployment or restoration rights, or furlough for more than 30 calendar days or more than 22 discontinuous days, RIF procedures will be used.

The procedures in 5 CFR part 351 and OPM RIF regulations will be followed with slight modifications pertaining to competitive areas, broadbanding, assignment rights, and calculation of adjusted service computation date.

A separate competitive area will be established for each occupational family; within each occupational family, separate competitive areas will be established by duty location. Within each competitive area, competitive levels will be established consisting of all positions in the same occupational series and pay band which are similar enough in duties, qualifications, and working conditions that the incumbent of one position can perform successfully the duties of any other position in the competitive level without unduly interrupting the work program.

An employee may displace another employee by bump or retreat to one band below the employee's existing band. A preference eligible with a compensable service-connected disability of 30% or more may retreat to positions two bands (or equivalent to five grades) below his/her current band.

Reductions in force are accomplished using the existing procedures, the retention factors of tenure, veterans preference, length of service, and performance ratings, in that order. However, the additional RIF service credit for performance based on the last three ratings of record during the

preceding four years will be applied as follows: Rating A adds 10 years, Rating B adds 7 years, Rating C adds 3 years, and Rating U (or an overall rating of unsatisfactory) adds no credit for retention. The additional years of service credit are added, not averaged. Ratings given under non-demonstration systems will be converted to the demonstration rating scheme and provided the equivalent rating credit.

In some cases, an employee may not have three annual performance ratings of record. In these situations, service credit will be given on the basis of assumed ratings of C. If, however, an employee has ratings from another system but not three demonstration project ratings, the last three actual ratings will be translated into demonstration project ratings. Ratings older than five years will not be used.

An employee who has received a written decision to demote him/her to a lower pay band because of unacceptable performance, competes in RIF from the position to which he/she will be/has been demoted. Employees who have been demoted for unacceptable performance, and as of the date of the issuance of the RIF notice have not received a performance rating in the position to which demoted, will receive a presumed fully successful rating for purposes of RIF credit.

An employee who has received an improved rating following a PIP will have the improved rating considered as the current annual performance rating of record.

An employee with a current annual performance rating of U has assignment rights only to a position held by another employee who has a U rating. An employee who has been given a written decision of removal because of unacceptable performance will be placed at the bottom of the retention register for their competitive level.

Modified term appointment employees are in Tenure Group III for reduction in force purposes. Reduction in force procedures are not required when separating these employees when their appointments expire.

H. Grievances and Disciplinary Actions

Except where specifically waived or modified in this plan, adverse actions procedures under 5 CFR part 752 remain unchanged; however, the demonstration project will enhance the use of Alternative Dispute Resolution (ADR) and Last Chance Agreements (LCA).

IV. Implementation Training

An extensive training program is planned for every employee in the demonstration project and associated support personnel. Training will be tailored to fit the requirements of every employee included and will fully address employee concerns to ensure everyone has a comprehensive understanding of the program. In addition, leadership training will be provided to all managers and supervisors as the new system places more responsibility and decision-making authority on their shoulders.

Training requirements will vary from an overview of the new system to a more detailed package for laboratory managers on the new classification system; to very specific instructions for both civilian and military supervisors, managers, and others who provide personnel and payroll support; to an employee handbook to be provided to each covered ARL employee. Training will begin within the 90 days just prior to implementation.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate pay band without loss of pay. Employees serving under regular term appointments at the time of the implementation of the demonstration project will be converted to the modified term appointment if all requirements in III.D.3., Revisions to Term Appointments, have been satisfied. Position announcements, etc. will not be required for these term appointments. An automatic conversion from current GS/GM grade and pay into the new broadband system will be accomplished. Each employee's initial total salary under the demonstration project will equal the total salary received immediately before conversion. Special conversion rules apply to special rate employees as described in III.E.4., Staffing Supplements. Employees who enter the demonstration project later by lateral reassignment or transfer will be subject to parallel pay conversion rules. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the pay band which corresponds to the grade of record. When a temporary promotion is terminated, pay will be determined as described in III.E.3., Pay Fixing Policies and Procedures. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases actions to make the temporary promotion permanent will be considered and, if implemented, will be subject to all existing priority placement programs.

B. Conversion or Movement From a Project Position to a General Schedule Position

If a demonstration project employee is moving to a General Schedule (GS) position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedure will be used to convert the employee's project pay band to a GS-equivalent grade and the employee's project rates of pay to GS-equivalent rates of pay. The converted GS grade and GS rates of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rates will become the employee's actual GS grade and rates after leaving the demonstration project (before any other action). For transfers, promotions, and other actions the converted GS grade and rates will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules) as if the GS converted grade and rates were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of these grades according to the following rules:

a. The employee's adjusted rate of basic rate under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is

located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

b. If the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

c. If the employee's adjusted project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds step 4 rate of the second highest grade, the employee is converted to that grade.

d. This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

e. Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described step 4 rule but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

f. Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has undergone a reduction in band.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

a. The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

b. An employee's adjusted rate of basic pay under the project (including any locality payment or staffing supplement) is converted to a GS-adjusted rate on the highest applicable rate range for the converted GS grade. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

c. If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

d. If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

3. Conversion of Rating Levels

In the event an employee leaves the demonstration project or if the project is terminated, the performance ratings given under the demonstration project pay for performance rating system will be converted to an appropriate non-demonstration system. For purposes of conversion, a rating of C under this plan equates to Summary Level 3 outlined in 5 CFR 430.208.

4. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration project. The project evaluation plan adequately addresses how each intervention will be comprehensively evaluated for at least the first 5 years of the demonstration project. Major changes and modifications to the interventions can be made through announcement in the Federal Register and would be made if formative evaluation data warranted. At the 5 year point, the entire demonstration project will be reexamined for either: (a) permanent implementation, (b) change and another 3–5 year test period, or (c) expiration.

VII. Evaluation Plan

Chapter 47 (Title 5 U.S.C.) requires that an evaluation system be implemented to measure the effectiveness of the proposed personnel management interventions. An evaluation plan for the entire laboratory demonstration program covering 24 DOD laboratories was developed by a joint OPM/DOD Evaluation Committee. A comprehensive evaluation plan was submitted to the Office of Defense Research & Engineering in 1995 and subsequently approved (Proposed Plan for Evaluation of the Department of Defense S&T Laboratory Demonstration Program, Office of Merit Systems Oversight & Effectiveness, June 1995). The overall evaluation effort will be coordinated and conducted by OPM's Personnel Resources and Development Center (PRDC). The primary focus of the evaluation is to determine whether the waivers granted result in a more effective personnel system than the current as well as an assessment of the costs associated with the new system.

The present personnel system with its many rigid rules and regulations is generally perceived as an impediment to mission accomplishment. The demonstration project is intended to remove some of those barriers and therefore, is expected to contribute to improved organizational performance. While it is not possible to prove a direct causal link between intermediate and ultimate outcomes (improved personnel system performance and improved organizational effectiveness), such a linkage is hypothesized and data will be collected and tracked for both types of outcome variables.

An intervention impact model will be used to measure the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified consistent with expected effects. Measures may also be deleted when appropriate. Activity specific measures may also be developed to accommodate specific needs or interests which are locally unique. Appendix E represents an overview of the Evaluation Model. More detailed information about the evaluation model is available upon request.

The evaluation model for the demonstration project identifies elements critical to an evaluation of the effectiveness of the interventions. The

overall evaluation approach will also include consideration of context variables that are likely to have an impact on project outcomes; e.g., Human Resources Management regionalization, downsizing, cross-service integration, and the general state of the economy. However, the main focus of the evaluation will be on intermediate outcomes, i.e., the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment, and customer satisfaction.

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual data will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate information gathered through another.

Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of data will be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews, and focus groups; (4) local activity histories; and (5) core measures of laboratory effectiveness.

VIII. Demonstration Project Costs

A. Step Buy-Ins

Under the current pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step they have completed up until the effective date of implementation. As under the current system, supervisors will be able to withhold these partial step increases if the employee's performance falls below fully successful.

Rules governing Within-Grade Increases (WGI) under the current Army performance plan will continue in effect until the implementation date. Adjustments to the employees base salary for WGI equity will be computed effective the date of implementation to coincide with the beginning of the first formal PFP assessment cycle. WGI equity will be acknowledged by increasing base salaries by a prorated share based upon the number of weeks an employee has completed towards the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. Employees at step 10 on the date of implementation will not be eligible for WGI equity adjustments since they are already at the top of the step scale.

B. Cost Discipline

An objective of the demonstration project is to ensure in-house budget discipline. A baseline will be established at the start of the project and salary expenditures will be tracked yearly. Implementation costs, including the step buy-in costs detailed above, will not be included in the cost discipline evaluations.

The Personnel Management Board will annually track personnel cost changes and determine if adjustments are required to achieve the objective of cost discipline.

C. Personnel Management Board

ARL will create a Personnel Management Board to oversee and monitor the implementation and operation of the demonstration project. Its specific functions are outlined below. The Board will be chaired by the Deputy Director and consist of the Chief of Staff, Associate for Science and Technology, the senior ranking civilian in each directorate and center within the laboratory and the Program Manager for the ARL Personnel Demonstration Project. EEO, Legal, Human Resources Office, appropriate union representatives and the Staff Members Committee (SMC) Chair will serve as non-voting advisors on the board. The board will be responsible for:

(a) Determining the composition of the PFP pay pools in accordance with the established guidelines,

(b) Providing guidance to pay pool managers,

(c) Overseeing disputes in pay pool issues,

(d) Overseeing the civilian pay budget,

(e) Monitoring award pool distribution by organization,

(f) Reviewing hiring and promotion salaries, to include approving promotions over $5,000,

(g) Conducting classification review and oversight; monitoring and adjusting classification practices and deciding broad classification issues,

(h) Approving major changes in position structure,

(i) Addressing issues associated with multiple pay systems during the demonstration project,

(j) Assessing the need for changes to demonstration project procedures and policies,

(k) Ensuring in-house budget discipline.

D. Developmental Costs

Costs associated with the development of the demonstration project system include software automation, training, and project evaluation. All funding will be provided through the Army Science and Technology budget. The projected annual expenses for each area is summarized in Figure 4 below. Project evaluation costs will continue for at least the first 5 years and may continue beyond.

BILLING CODE 6325–01–P

	FY96	FY97	FY98	FY99	FY00	FY01
Training	10K	20K				
Project Evaluation	17K	32.5K	32.5K	32.5K	32.5K	32.5K
Automatio n		100K				
Data Systems	69K					
TOTALS	96K	152.5K	32.5K	32.5K	32.5K	32.5K

Figure 4 - Projected Developmental Costs (Then Year Dollars)

BILLING CODE 6325–01–C

IX. Required Waivers to Law and Regulation

A. Waivers to Title 5 United States Code

Chapter 31, section 3111: Acceptance of volunteer service.

Chapter 33, section 3324: Appointments to Positions Classified Above GS–15.

Chapter 33, section 3341: Details.

Chapter 41, section 4107 (a) (1), (2), (b) (1), (3): Restriction on Degree Training.

Chapter 43, section 4301 (3): Definition of unacceptable performance.

Chapter 43, section 4302–4303: This waiver applies to the extent that the term ''grade level'' is replaced with ''pay band''.

Chapter 51, sections 5101–5111: Purpose, definitions, basis, classification of positions, review, authority—This waiver applies to the extent that white collar employees will be covered by broadbanding. Pay category determination criteria for Federal Wage System positions remain unchanged.

Chapter 53, sections 530l; 5302 (1), (8) and (9); 5303; and 5304: Pay comparability system. (This waiver applies only to the extent necessary to allow (1) demonstration project employees, except employees in band V of the engineers and scientists occupational family, to be treated as General Schedule employees, (2) basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay, and (3) employees in band V of the engineers and scientists occupational family to be treated as SES and ST employees for the purposes of these provisions.)

Chapter 53, section 5305: Special rates.

Chapter 53, sections 5331–5336: General Schedule pay rates.

Chapter 53, section 5362: Grade retention.

Chapter 53, section 5363: Pay retention. (This waiver applies only to the extent necessary to (1) allow demonstration project employees to be treated as General Schedule employees, and (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.)

Chapter 55, section 5545 : Night, standby, irregular, and hazardous duty differential. (This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in band V of the engineers and scientists occupational family.)

Chapter 57, sections 5753, 5754, and 5755: Recruitment and relocation bonuses, retention allowances, and supervisory differentials (This waiver applies only to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in band V of the engineers and scientists occupational family to be treated as SES and ST employees)

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental United States or Alaska. (This waiver applies only to the extent necessary to provide that COLA's paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).)

Chapter 75, section 7512(3): Adverse actions. (This provision is waived only to the extent necessary to replace ''grade'' with ''pay band.'')

Chapter 75, section 7512 (4): Adverse actions. (This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.)

B. Waivers to Title 5. Code of Federal Regulations

Part 300, sections 300.601 through 300.605: Time in grade restrictions. Time in grade restrictions are eliminated in the Demonstration project.

Part 308.101 through 308.103: Volunteer Service.

Part 315, sections 315.801 and 315.802: Probationary period.

Part 316, section 301 (Term Appointments for more than 4 years).

Part 316, section 303 (Converting Terms to Status).

Part 335, section 103: Covering the length of details and temporary promotions.

Part 351, section 351.402(b): Competitive area.

Part 351, section 351.403: Competitive Level. (This waiver applies only to the extent necessary to replace ''grade'' with ''pay band''.)

Part 351, sections; 351.504 as it relates to years of credit; 351.701 to the extent that employee bump and retreat rights will be limited to one pay band except in the case of 30% preference eligible.

Part 430, Section 207 (d): Definition of Unacceptable Performance.

Part 432: Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay or reduced in pay without a reduction in band level based on unacceptable performance. Also modified to redefine unacceptable performance.

Part 511, subpart A, General Provisions, and subpart B, Coverage of the General Schedule.

Part 511, section 511.601: Classification Appeals modified to the extent that white collar positions established under 5 U.S.C. 4703, although specifically excluded from Title V, are covered by the classification appeal process outlined in this section, as amended below.

Part 511, section 511.603(a): Right to appeal—substitute band for grade.

Part 511, section 511.607(b): Non-Appealable Issues—add to the list of issues which are neither appealable nor reviewable, the assignment of series under 5 U.S.C. 4703 to appropriate career paths.

Part 530, subpart C: Special salary rates.

Part 531, subparts B, D, and E: Determining The Rate of Basic Pay, Within-Grade Increases, and Quality Step Increases.

Part 531, subpart F: Locality-Based Comparability Payments. (This waiver applies only to the extent necessary to allow (1) demonstration project employees, except employees in band V of the engineers and scientists occupational family, to be treated as General Schedule employees, (2) basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay, and (3) employees in band V of the engineers and scientists occupational family to be treated as SES and ST employees for the purposes of these provisions.)

Part 536, Grade retention.

Part 536, section 536.104: Pay Retention. (This waiver applies only to the extent necessary to provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.)

Part 536, sections 536.205 (b)(3), (c) and (d): Determination of the rate of basic pay. (These provisions are waived only to the extent necessary to replace ''grade'' with ''pay band''.)

Part 550, section 550.703: Severance Pay. (This provision is waived only to the extent necessary to modify the definition of ''reasonable offer'' by replacing ''two grade or pay levels'' with ''one band level'' and ''grade or pay level'' with ''band level''.)

Part 550, section 550.902: Hazardous duty differential, definition of ''employee''. (This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in band V of the engineers and scientists occupational family.)

Part 575, subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances, and Supervisory Differentials. (This waiver applies only to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in band V of the engineers and scientists occupational family to be treated as SES and ST employees for the purposes of these provisions.)

Part 591, subpart B: Cost-of-Living Allowances and Post Differential-Nonforeign Areas. (This waiver applies only to the extent necessary to allow (1) demonstration project employees to be treated as employees under the General Schedule and (2) employees in band V of the engineers and scientists occupational family to be treated as SES and ST employees for the purposes of these provisions.)

Part 752, section 752.401 (a)(3): Adverse actions. (This provision is waived only to the extent necessary to replace ''grade'' with ''pay band.'')

Part 752, section 752.401 (a)(4): Adverse actions. (This provision applies only to the extent necessary to provide that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.)

Appendix A—ARL Employee Duty Locations (as of 17 JUN 96) (Totals Include SES, ST and FWS Employees)

ARL EMPLOYEES

Duty location	Total
Seoul, Korea	1
Fort Rucker, AL	3
Redstone Arsenal, AL	4
Fort Huachuca, AZ	4
Newark, DE	1
Wilmington, DE	58
Hurlbert Field, FL	1
MacDill AFB, FL	1
Orlando, FL	4
Atlanta, GA	14
Fort Benning, GA	4
Fort Gordon, GA	2
Tripler Army Hospital, HI	1
Scott Air Force Base, IL	1
Fort Knox, KY	2
APG, MD	929
Adelphi, MD	873

ARL EMPLOYEES—Continued

Duty location	Total
Baltimore, MD (JHU)	9
Gaithersburg, MD	3
LaPlata, MD (Blossom Point)	4
Watertown, MA	26
Warren, MI	5
St. Louis, MO	3
Fort Monmouth, NJ	190
Picatinny, NJ	6
White Sands Missile Range, NM	272
Fort Bragg, NC	1
Akron, OH	1
Cleveland, OH	52
Fairview Park, OH	1
Fort Sill, OK	8
Austin, TX	1
Fort Bliss, TX	1
Fort Hood, TX	9
Alexandria, VA	1
Arlington, VA	1
Fort Belvoir, VA	81
Newport News, VA	50
Vint Hill Farms Station, VA	1
Woodbridge, VA	2
Fort Lewis, WA	1
Total	2,631

Appendix B: Occupational Series by Occupational Family

I. Engineers & Scientists

0180 Psychologist
0401 General Biological Science
0413 Physiology
0471 Agronomy
0690 Industrial Hygiene
0801 General Engineering
0803 Safety Engineering
0806 Materials Engineering
0810 Civil Engineering
0819 Environmental Engineering
0830 Mechanical Engineering
0840 Nuclear Engineering
0850 Electrical Engineering
0854 Computer Engineering
0855 Electronics Engineering
0861 Aerospace Engineering
0892 Ceramic Engineering
0893 Chemical Engineering
0894 Welding Engineering
0896 Industrial Engineering
0899 Engineering & Architecture Student Trainee
1301 General Physical Science
1306 Health Physics
1310 Physics
1320 Chemistry
1321 Metallurgy
1340 Meteorology
1386 Photographic Technology
1399 Physical Science Student Trainee
1515 Operations Research
1520 Mathematics
1529 Mathematical Statistician
1550 Computer Science
1599 Mathematics & Statistics Student Trainee

II. E&S Technician

0181 Psychology Aid & Technician
0802 Engineering Technician
0818 Engineering Drafting

0856 Electronics Technician
1152 Production Control
1311 Physical Science Technician
1341 Meteorological Technician
1601 General Facilities & Equipment
1670 Equipment Specialist

III. Administrative

0018 Safety & Occupational Health Management
0028 Environmental Protection Specialist
0080 Security Administration
0101 Social Science
0170 History
0201 Personnel Management
0205 Military Personnel Management
0212 Personnel Staffing
0221 Position Classification
0230 Employee Relations
0235 Employee Development
0260 Equal Employment Opportunity
0301 Miscellaneous Administration & Program
0334 Computer Specialist
0340 Program Management
0341 Administrative Officer
0343 Management & Program Analysis
0346 Logistics Management
0391 Telecommunications
0501 Financial Administration & Program
0505 Financial Management
0510 Accounting
0511 Auditing
0560 Budget Analysis
0905 General Attorney
0950 Paralegal Specialist
1001 General Arts & Information
1020 Illustrating
1035 Public Affairs
1060 Photography
1071 Audio Visual Production
1082 Writing & Editing
1083 Technical Writing & Editing
1084 Visual Information
1101 General Business & Industry
1102 Contracting
1170 Realty
1222 Patent Attorney
1410 Librarian
1412 Technical Information Services
1640 Facilities Management
654 Printing Management
1811 Criminal Investigating
1910 Quality Assurance
2001 General Supply
2003 Supply Program Management
2010 Inventory Management
2101 Transportation Specialist
2130 Traffic Management

IV. General Support

0081 Fire Protection & Prevention
0083 Police
0085 Security Guard
0086 Security Clerical & Assistance
0303 Miscellaneous Clerk & Assistant
0304 Information Receptionist
0305 Mail & File
0318 Secretary
0322 Clerk Typist
0326 Office Automation Clerical & Assistant
0332 Computer Operation
0335 Computer Clerk & Assistant
0342 Support Services Administration
0344 Management Clerical & Assistant
0361 Equal Opportunity Assistant
0392 General Telecommunications
0503 Financial Clerical & Assistance
0525 Accounting Technician
0561 Budget Clerical & Assistant
0986 Legal Clerk & Technician
1087 Editorial Assistance
1105 Purchasing
1106 Procurement Clerical & Assistance
1411 Library Technician
1702 Education & Training Technician
2005 Supply Clerical & Technician
2102 Transportation Clerk & Assistant

Appendix C—Demographics and Union Representation (As of 17 June 1996)

SCIENTISTS & ENGINEERS	56%
E&S TECHNICIANS	9%
ADMINISTRATIVE	18%
GENERAL SUPPORT	12%
EXCEPTED SERVICE	5%
OCCUPATIONAL SERIES	119
DUTY LOCATIONS	41
VETERANS	23%

The following unions have been notified about the project:

Adelphi, Maryland—AFGE Local 2 Fraternal Order of Police
Aberdeen Proving Ground, Maryland—AFGE Local 3176 IAM/AW Local 2424
Fort Monmouth, New Jersey—NFFE Local 476
White Sands Missile Range, New Mexico—NFFE Local 2049
Cleveland, Ohio—AFGE Local 2182

BILLING CODE 6325–01–P

APPENDIX D - PERFORMANCE MANAGEMENT FORMS

PERFORMANCE APPRAISAL

PERIOD COVERED FROM TO

NAME (Last, First, MI)	SOCIAL SECURITY NUMBER	OCCUPATIONAL FAMILY/SERIES/BAND

	PRINTED	SIGNATURE	DATE
SENIOR RATER			
RATER			
RATEE			

CIRCLE ALL CRITIAL ELEMENTS; STRIKE THROUGH UNUSED ELEMENTS	Technical Comp.	Cooperation	Communication	Mgmt of Time and Resources	Customer Relations	Tech Transition	Mgmt/Leadership	Supv. EEO	
WEIGHT RANGE	15-50	5-25	5-25	15-50	10-50	5-50	5-50	25-50	TOTAL
WEIGHT ASSIGNED									100
SCORE									

RATINGS

☐ A 85-100 ☐ B 70-84

☐ C 50-69 ☐ Unsatisfactory 0-49

☐ Comments attached for unsatisfactory rating

PAYOUT

Share(s) Recommended _____

Pay Increase Recommended $_____

Bonus Recommended $_____

☐ Pay Pool Manager Approval

Elements 1-5 are Mandatory for All; Elements 1-5, 7, and 8 are Mandatory for Supervisors.

1. TECHNICAL COMPETENCE: Exhibits and maintains current technical knowledge, skills, and abilities to produce timely and quality work with the appropriate level of supervision. Makes prompt, technically sound decisions and recommendations that add value to mission priorities and needs. For appropriate career path, seeks and accepts developmental and/or special assignments. Adaptive to technological change. (Weight range: 15-50)
2. COOPERATION: Accepts personal responsibility for assigned tasks. Considerate of others views and open to compromise on areas of difference. Exercises tact and diplomacy and maintains effective relationships, particularly in immediate work environment and teaming situations. Readily/willingly gives assistance. Shows appropriate respect and courtesy. (Weight range: 5-25)
3. COMMUNICATIONS: Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and easily understood. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions. (Weight range: 5-25)
4. MANAGEMENT OF TIME AND RESOURCES: Meets schedules and deadlines, and accomplishes work in order of priority; generates and accepts new ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; supports organization's resource development and conservation goals. (Weight range: 15-50)
5. CUSTOMER RELATIONS: Demonstrates care for customer through respectful, courteous, reliable and conscientious actions. Seeks out, develops and/or maintains solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customer informed. Within the scope of job responsibility, seeks out and develops new programs and/or reimbursable customer work. (Weight range: 10-50)
6. TECHNOLOGY TRANSITION: Seeks out and incorporates outside technology within internal projects. Implements partnerships for the transition or transfer of technology to other internal working groups, other government agencies, and /or commercial activities. (Weight range: 5-50) (OPTIONAL)
7. MANAGEMENT/LEADERSHIP: Actively furthers the mission of the organization. As appropriate, participates in the development and implementation of strategic and operational plans of the organization. Exercises leadership skills within the environment. Mentors junior personnel in career development, technical competence, and interpersonal skills. Exercises appropriate responsibility for positions assigned. (Weight range: 5-50) (Optional for non-supervisory positions)
8. SUPERVISION/EEO: Works toward recruiting, developing, motivating, and retaining quality team members; initiates timely/appropriate personnel action; applies EEO/merit principles; communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members. (Weight Range 25-50) (For supervisory positions)

ELEMENT POINT-RANGES AND PERFORMANCE STANDARDS

THESE BENCHMARK PERFORMANCE STANDARDS ARE USED TO EVALUATE AND SCORE PERFORMANCE AGAINST THE WEIGHTED PERFORMANCE ELEMENTS. THIS SHEET MUST BE USED I N CONJUNCTION WITH BENCHMARK JOB DESCRIPTION AND PERFORMANCE OBJECTIVES.

ELEMENT WEIGHTS

	50	45	40	35	30	25	20	15	10	5
100% Performance elements were attained demonstrating exceptional initiative, versatility, originality, and creativity. This individual demonstrates the ability to grasp, understand, organize, and convey complex issues to others and carry the job assignment to successful completion with minimum direct supervision. Performance elements were effectively achieved utilizing cooperation, responsiveness, conflict avoidance, or conflict resolution. Written and oral communications were appropriately demonstrated effectively and efficiently. Performance elements were achieved with demonstrated leadership, integrity, competency, commitment, candor, and sense of duty.	49	44	39	34	29					
	48					24				
		43	38				19			
	47	42		33	28					
	46		37			23		14		
		41		32						
	45		36		27		18		9	
		40		31		22				
	44		35							
	43	39		30	26					
		38	34				17			
	42			29	25	21				
	41	37	33							
	40	36	32	28	24	20	16	12	8	4
	39	35	31		23					
	38	34		27		19				
			30				15			
	37	33		26	22			11		
	36		29			18				
		32		25						
70% Performance elements were attained effectively and efficiently with consistently high quality and quantity of work. This individual has demonstrated the ability to complete the job assignments in an efficient, orderly sequence that culminated in results that were timely, correct, thorough and cost effective. Performance elements were attained with consistently above average quality and reliability while effectively utilizing accepted procedures and resolving problems with skill and resourcefulness. Performance elements were attained with consistently productive cooperative efforts and with clear, precise, and convincing written and oral communication.	35		28		21		14		7	
		31		24						
	34		27			17				
	33	30		23	20			10		
			26				13			
	32	29		22		16				
	31	28	25		19					
	30	27	24	21	18	15	12	9	6	3
	29	26	23							
	28			20	17	14				
		25	22				11			
	27	24		19	16					
	26		21							
		23		18		13				
50% Performance elements were accomplished, were mostly reliable, and delivered without unacceptable delays. Procedures were minimally correct and problems were dealt with satisfactorily. Attained performance elements, using work methodology that demonstrated a reasonable degree of cooperation with other with clear and concise written and oral communications.	25		20		15		10		5	
UNSATISFACTORY	24	22	19	17	14	12	9	7	4	2

Performance elements were not successfully completed because of failure in quality, quantity, completeness, responsiveness, or timeliness of work. Performance elements products were deficient, because they were contrary to direction or guidelines; did not meet minimum specifications; were inconsistent with organizational procedures; were significantly flawed or substandard in quality; demonstrated insufficient technical knowledge or skill; were incomplete; were unacceptably late; lacked essential cooperative involvement or support; or problems that arose during performance of performance elements activities were not satisfactory resolved.

PERFORMANCE OBJECTIVE WORKSHEET

PERIOD COVERED		
FROM	TO	
NAME (Last, First, MI)	SOCIAL SECURITY NUMBER	OCCUPATIONAL FAMILY/SERIES/BAND

MUTUALLY DEVELOPED PERFORMANCE OBJECTIVES

VERIFICATION OF PERFORMANCE CONFERENCE

	DATES	RATEE'S INITIALS	RATER'S INITIALS
INITIAL			
MIDPOINT			

PERFORMANCE CONFERENCE

CIRCLE ALL CRITICAL ELEMENTS; STRIKE THROUGH UNUSED ELEMENTS

		Technical Comp.	Cooperation	Communication	Mgmt of Time and Resources	Customer Relations	Tech Transition	Mgmt/Leadership	Supv. EEO	
WEIGHT RANGE	15-50	5-25	5-25	15-50	10-50	5-50	5-50	25-50	TOTAL
WEIGHT ASSIGNED									100

AGREEMENT ON ASSIGNED WEIGHTS

	INITIAL	DATE
PAY POOL MANAGER		
RATER		
RATEE		

VERIFICATION OF PERFORMANCE CONFERENCE

	DATES	RATEE'S INITIALS	RATER'S INITIALS
INITIAL			
MIDPOINT			

END OF YEAR PERFORMANCE CONFERENCE (HELD JUST BEFORE APPRAISAL) EMPLOYEE PREPARES A LIST OF ACCOMPLISHMENTS

RATEE: _____ _____

Signature Date

APPENDIX E: Project Evaluation
Intervention Impact Model - DOD Laboratory Demonstration Program

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
1. Compensation			
a. Broadbanding	-increased organizational flexibility	-perceived flexibility	-attitude survey
	-reduced administrative workload, paperwork reduction	-actual/perceived time savings	-personnel office data, PME results, attitude survey
	-advanced in-hire rates	-starting salaries of banded v. non-banded employees	-workforce data
	-slower pay progression at entry levels	-progression of new hires over time by band, occupational family	-workforce data
	-increased pay potential	-mean salaries by band, occupational family, demographics, total payroll costs	-workforce data
	-increased satisfaction with advancement	-employee perceptions of advancement	-attitude survey
	-increased pay satisfaction	-pay satisfaction, internal/external equity	-attitude survey
	-improved recruitment	-offer acceptance ratios	
	-no change in high grade (GS-14/15) distribution	-percent declinations -number/percentage of high grade salaries pre/post banding	-personnel office data
b. Conversion buy-in	-employee acceptance	-employee perceptions of equity, fairness	-attitude survey
		-cost as a percent of payroll	-workforce data
2. Performance Management			
a. Cash awards/bonuses	-reward/motivate performance	-perceived motivational power	-attitude survey
	-to support fair and appropriate distribution of awards	-amount and number of awards by occupational family, demographics	-workforce data
		-perceived fairness of awards	-attitude survey
		-satisfaction with monetary awards	-attitude survey

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
b. Performance based pay progression	-increased pay-performance link -improved performance feedback -decreased turnover of high performers -increased turnover of low performers -differential pay progression of high/low performers -alignment of organizational and individual performance expectations and results -increased employee involvement in performance planning and assessment	-perceived pay-performance link -perceived fairness of ratings -satisfaction with ratings -employee trust in supervisors -adequacy of performance feedback -turnover by perfor-mance rating category -turnover by perfor-mance rating category -pay progression by performance rating category, occupational family -linkage of performance expectations to strategic plans/goals -performance expectations -perceived involvement -performance management procedures	-attitude survey -attitude survey -attitude survey -attitude survey -attitude survey -workforce data -workforce data -workforce data -performance expectations, strategic plans -attitude survey/focus groups -attitude survey/focus groups -personnel regulations
c. New appraisal process	-reduced administrative burden -improved communication	-employee and supervisor perception of revised procedures -perceived fairness of process	-attitude survey -focus groups
d. Performance development	-better communication of performance expectations -improved satisfaction and quality of workforce	-feedback and coaching procedures used -time, funds spent on training by demographics -organizational commitment -perceived workforce quality	-focus groups -personnel office data -training records -attitude survey -attitude survey

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
3. Classification			
a. Improved classification system with generic standards in an automated mode	-reduction in amount of time and paperwork spent on classification -ease of use	-time spent on classification procedures -reduction of paper work/number of personnel actions (classification/ promotion) -managers' perceptions of time savings, ease of use, improved ability to implement requests	-personnel office data -attitude survey
b. Classification authority delegated to managers	-increased supervisory authority/accountability -decreased conflict between management and personnel staff -no negative impact on internal pay equity	-perceived authority -number of classifica-tion disputes/appeals pre/post -management satisfaction with service provided by personnel office -internal pay equity	-attitude survey -personnel office records -attitude survey -attitude survey
c. Dual career ladder	-increased flexibility to assign employees -improved internal mobility -increased pay equity -flatter organizational structure -improved quality of supervisory staff	-assignment flexibility -perceived internal mobility -perceived pay equity -sup/non-sup ratios -employee perceptions of quality of supervi-sors	-focus groups, surveys -attitude survey -attitude survey -workforce data -attitude survey
4. RIF			
Modified RIF	-minimize loss of high performing employees with needed skills -contain cost and disruption	-separated employees by demographics, performance -satisfaction with RIF process -cost comparisons of traditional vs. modified RIF -time to conduct RIF -number of appeals/ reinstatements	-workforce data -attitude survey/focus groups -attitude survey/focus groups -personnel/ budget office data

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
5. Expanded Development Opportunities			
a. Sabbaticals	-expanded range of professional growth and development -application of enhanced knowledge and skills to work product	-number and type of opportunities taken -employee and supervisor perceptions	-workforce data -attitude survey
b. Critical Skills Training	-improved organizational effectiveness	-number and type of training -placement of employees, skills imbalances corrected -employee and supervisor perceptions	-personnel office data -personnel office data -attitude survey
6. Combination of all interventions			
All	-improved organizational effectiveness -improved management of R&D workforce -improved planning -cross functional coordination -increased product success -cost of innovation	-combination of personnel measures -employee/management satisfaction -planning procedures -perceived effectiveness of planning procedures -actual/perceived coordination -customer satisfaction -project training/ development cost (staff salaries, contract cost, training hours per employee)	-all data sources -attitude survey -strategic planning documents -attitude survey -organizational charts -customer satisfaction surveys -demonstration project office records -contract documents
7. Context			
a. Regionalization	-reduced servicing ratios/cost -no negative impact on service quality	-HR servicing ratios -average cost per employee served -service quality, timeliness	-attitude survey -workforce data -attitude survey/focus groups
b. GPRA	-improved organizational performance	-other measures to be developed	-as established

[FR Doc. 97–6170 Filed 3–10–97; 8:45 am]
BILLING CODE 6325–01–C

federal register

Wednesday
March 12, 1997

Part VII

Office of Personnel Management

Proposed Laboratory Personnel Management Demonstration Project; Department of the Army, U.S. Army Medical Research and Materiel Command, Fort Detrick, Frederick, Maryland; Notice

OFFICE OF PERSONNEL MANAGEMENT

Proposed Laboratory Personnel Management Demonstration Project; Department of the Army, U.S. Army Medical Research and Materiel Command, Fort Detrick, Frederick, Maryland

AGENCY: Office of Personnel Management.

ACTION: Notice of Intent to Implement Demonstration Project.

SUMMARY: Title VI of the Civil Service Reform Act, 5 U.S.C. 4703, authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

Public Law 103–337, October 5, 1994, permits the Department of Defense (DOD), with the approval of the OPM, to carry out personnel demonstration projects generally similar in nature to the China Lake demonstration project at DOD Science and Technology (S&T) Reinvention Laboratory sites. The Army is proposing demonstration projects initially to cover five of its S&T Reinvention Laboratories: the Army Research Laboratory; the Missile Research, Development, and Engineering Center; the Aviation Research, Development, and Engineering Center; the Medical Research and Materiel Command; and the Waterways Experiment Station. This proposal is for the Medical Research and Materiel Command (MRMC).

DATES: To be considered, written comments must be submitted on or before May 20, 1997; two public hearings will be scheduled as follows: (1) April 21, 1997, at 10:00 a.m., at Fort Detrick, Maryland. (2) April 21, 1997, at 1:00 p.m by Video Teleconference (VTC) and/or conference calls from Fort Detrick, Maryland covering all MRMC sites geographically located outside of the Fort Detrick, Maryland commuting area. At the time of the hearings, interested persons or organizations may present their written or oral comments for the April 21, 1997 hearing or oral comments for the VTC/conference call hearing on the proposed demonstration project. The hearings will be informal.

Anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT,** and state the hearing location and date, so that OPM can plan the hearings and provide sufficient time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to 10 minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

ADDRESSES: Comments may be mailed to Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415; the public hearings will be held at the U.S. Army Research and Material Command, Strough Auditorium, 504 Scott Street, Building 611, Fort Detrick, Maryland; and, the VTC/conference call hearings will be conducted at the U.S. Army Research and Material Command, Strough Auditorium, 504 Scott Street, in Building 810, Conference Rooms 1 and 2, Fort Detrick, Maryland.

FOR FURTHER INFORMATION CONTACT: (1) On proposed demonstration project: Ms. Carol Gartrell, U.S. Army Medical Research and Materiel Command, ATTN: MCMR-RMP, 504 Scott Street, Fort Detrick, Maryland 21702–5012, phone 301–619–7255.

(2) On proposed demonstration project and public hearings: Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415, phone 202–606–1138.

SUPPLEMENTARY INFORMATION: Since 1966, numerous studies of DOD laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. The proposed project involves simplified job classification, pay banding, pay-for-performance management system, streamlined hiring processes, expanded employee developmental opportunities, and modified Reduction-in-Force (RIF) procedures.

Office of Personnel Management

James B. King,

Director

Table of Contents

I. Executive Summary
ll. Introduction
A. Purpose
B. Problems with the Present System
C. Changes Required/Expected Benefits
D. Participating Organization
E. Participating Employees
F. Labor Participation
G. Project Design
H. Personnel Management Board
Ill. Personnel System Changes
A. Broadbanding
B. Classification
C. Pay-for-Performance Management System
D. Hiring and Appointment Authorities
E. Expanded Developmental Opportunities Program
F. Revised Reduction-In-Force (RIF) Procedures
IV. Training
V. Conversion
VI. Project Duration
VII. Evaluation Plan
VIII. Demonstration Project Costs
IX. Required Waivers to Law and Regulation
Appendix A: Occupational Series by Occupational Family
Appendix B: Project Evaluation and Oversight
Appendix C: Performance Elements
Appendix D: Benchmark Performance Standards

I. Executive Summary

This project was designed by the Department of the Army (DA), with participation of and review by the Department of Defense (DOD) and the Office of Personnel Management (OPM). The purpose of the project is to achieve the best workforce for the Medical Research & Materiel Command (MRMC) mission, adjust the workforce for change, and improve workforce quality.

The foundations of this project are based on the concept of linking performance to pay for all covered positions; simplifying paperwork and the processing of classification and other personnel actions; emphasizing partnerships among management, employees and unions representing covered employees; and delegating classification and other authorities to line managers. Additionally, the research intellect of the MRMC workforce will be revitalized through the use of expanded developmental opportunities. The use of these expanded opportunities will reinvigorate the creative intellect of the research and development community.

Development and execution of this project will be in-house budget neutral, based on a baseline of September 1995 in-house costs and consistent with the DA plan to downsize laboratories. Army managers at the DOD S&T Reinvention Laboratory sites will manage and control their personnel costs to remain within established in-house budgets. An in-house budget is a compilation of costs of the many diverse components required to fund the day-to-day operations of a laboratory. These components generally include pay of people (labor, benefits, overtime, awards), training, travel, supplies, non-capital equipment, and other costs depending on the specific function of the activity.

This project will be under the joint sponsorship of the Assistant Secretary of the Army for Research, Development

and Acquisition and the Assistant Secretary of the Army for Manpower and Reserve Affairs. The Commander , U.S. Army Medical Command (MEDCOM), will execute and manage the project. Project oversight within the Army will be achieved by an executive steering committee made up of top-level executives, co-chaired by the Deputy Assistant Secretary of the Army for Research and Technology and the Deputy Assistant Secretary of the Army (Civilian Personnel Policy)/Director, Civilian Personnel. Oversight external to the Army will be provided by DOD and OPM.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DOD laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. The quality of DOD laboratories, their people, and products has been under intense scrutiny in recent years. The perceived deterioration of quality is due, in substantial part, to the erosion of control which line managers have over their human resources. This demonstration, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve quality laboratories and quality products.

B. Problems with the Present System

The MRMC provides medical solutions for military requirements to protect and sustain the force. To do this, its management must acquire and retain an enthusiastic, innovative, and highly educated/trained workforce. The MRMC must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees. Today, industry laboratories can make an offer of employment to a promising new hire before the government can prepare the paperwork necessary to begin the recruitment process.

Currently, jobs are described using a cumbersome classification system that is overly complex and specialized. This hampers a manager's ability to shape the workforce and match the positions while making best use of the employees. Managers must be given local control of positions and their classification to move both their employees and vacancies freely within their organization to other lines of the business activities to match the life cycle needs of supported customers.

These issues work together to hamper supervisors in all areas of human resource management. Hiring restrictions and overly complex job classifications, coupled with poor tools for rewarding and motivating employees and a system that does not assist managers in removing poor performers, builds stagnation in the workforce and wastes valuable time.

C. Changes Required/Expected Benefits

This project is expected to demonstrate that a human resource system tailored to the mission and requirements of the MRMC will result in: (a) Increased quality in the total workforce and the products they produce; (b) increased timeliness of key personnel processes; (c) increased retention of high quality employees and increased non-retention of poor quality employees; and (d) increased satisfaction with the MRMC and its products by all customers served.

The MRMC demonstration project builds on the successful features of demonstration projects at China Lake and the National Institute of Standards and Technology (NIST). These demonstration projects have produced impressive statistics on the job satisfaction for their employees versus that for the federal workforce in general. Therefore, in addition to expected benefits mentioned above, the MRMC demonstration project expects to find more satisfied employees on many aspects of the demonstration project including pay equity, classification accuracy, and fairness of performance management. A full range of measures will be collected during Project Evaluation (Section VII).

D. Participating Organization

This demonstration project will cover approximately 1250 MRMC civilian employees at all geographic sites within the United States. It should be noted that many sites currently employ fewer than 10 people and that the sites may change as the MRMC reorganizes, realigns, and complies with Base Realignment and Closure Act requirements. Successor organizations will continue coverage in the demonstration project. Approximately 46 percent of covered employees are located at Fort Detrick, Frederick, Maryland. The remaining employees are located at the following sites: Aberdeen Proving Ground, Maryland; Falls Church, Virginia; Fort Rucker, Alabama; Fort Sam Houston, Texas; Natick, Massachusetts; Washington, DC; Tobyhanna Army Depot, Pennsylvania; Fort Lee, Virginia; Tracy, California; Ogden, Utah; Brooks Air Force Base, Texas; Dayton, Ohio; Tripler Army Medical Center, Hawaii; and Fort Bragg, North Carolina. Additionally, the MRMC has some employees participating in the Flexiplace Program who are geographically located at Fort Collins, Colorado; Clarksville, Tennessee; and Jefferson, Maryland.

E. Participating Employees

The demonstration project includes appropriated funded civilian employees in the competitive and excepted service (to include non-citizens hired in the absence of qualified citizens) paid under the General Schedule (GS) and Scientific and Professional (ST) pay systems, and DA Interns. Senior Executive Service (SES) employees, Federal Wage System employees, and employees assigned to the GS–080 series and presently covered by the Civilian Intelligence Personnel Management System (CIPMS), will not be covered in the demonstration project. Personnel added to the MRMC in like positions, either through appointment, promotion, reassignment, change to lower grade or where their functions and positions have been transferred into the MRMC, will be converted to the demonstration project.

The personnel systems for 5 U.S.C. 3104 (ST) positions will change only to the extent that 3104 positions are in the same performance appraisal and awards systems as other positions. Classification, staffing, compensation and reduction-in-force procedures, however, will not change. 5 U.S.C. 3104 employees will not receive the pro rata share payout upon completion of one year of coverage in the demonstration project. Pay adjustments for their positions under the project will be carried out in accordance with existing Federal rules pertaining to 3104 pay adjustments. (See 5 U.S.C. 5376)

F. Labor Participation

The National Federation of Federal Employees (NFFE) and the American Federation of Government Employees (AFGE), represent professional and nonprofessional GS employees at some sites within the MRMC. The MRMC is continuing to fulfill its obligations to consult and/or negotiate with the NFFE and AFGE, as appropriate, in accordance with 5 U.S.C. 4703 (F) and 7117. The participation with the NFFE, and AFGE is within the spirit and intent of Executive Order 12871. The bargaining units of MRMC not endorsing the demonstration project will not participate.

G. Project Design

In October 1994, the MRMC began development of the specifics of this personnel demonstration proposal. A Personnel Demonstration Project Office was established and administrative support added in April 1995. Briefings of the proposal were initially conducted for the workforce at every participating subordinate activity with subsequent briefings provided upon request by Commanders/Directors.

Status of the project is provided to subordinate activity Commanders/ Directors, usually on a weekly basis for dissemination to all employees. An electronic mail address was established in the Fall of 1994 and made available to all employees and managers for the purpose of expressing opinions and/or obtaining specific information about the project.

Review of the proposal and input by the MEDCOM, as well as critical and extensive reviews by Headquarters DA, the Office of the Secretary of Defense, and OPM since April 1995, have led to the current configuration of the proposal.

H. Personnel Management Board

The MRMC intends to establish an appropriate balance between the personnel management authority/ accountability delegated to subordinate activity Commanders/ Directors and MRMC management/oversight responsibilities by establishing a Personnel Management Board (PMB). The Chairperson and members will be appointed by the Commander MRMC, and oversee/provide policy, guidelines and corrective action as appropriate as subordinate activity Commanders/ Directors execute the following:

1. formulate and execute the civilian pay budget;
2. determine the composition of the pay-for-performance pay pools in accordance with the guidelines of this proposal and internal procedures;
3. administer funds allocation to pay pool managers;
4. determine hiring and promotion salaries as well as exceptions to pay-for-performance salary increases;
5. provide guidance to pay pool managers;
6. manage the awards pools;
7. select participants for the Expanded Developmental Opportunities Program, long term training, and any special developmental assignments;
8. adhere to guidelines concerning the promotion of employees into salary ranges designated ''high grades'';
9. ensure in-house budget neutrality to include tracking of average salaries, FTEs, etc.
10. contact the PMB designee for problem resolution, recommending changes in policy/procedure, etc.
11. ensure that all employees are treated in a fair and equitable manner in accordance with all policies, regulations, and guidelines covering this demonstration project.

III. Personnel System Changes

A. Broadbanding

Occupational Families

Occupations at the MRMC will be grouped into occupational families. Occupations will be grouped according to similarities in type of work and customary requirements for formal training or credentials. The common patterns of advancement within the occupations as practiced at DOD Laboratories and in the private sector will also be considered. The current occupations and grades have been examined, and their characteristics and distribution have served as guidelines in the development of the four occupational families described below. Positions included in each occupational family are listed in Appendix A.

1. *Engineers and Scientists.* This occupational family includes all technical professional positions, such as positions in the biological, physical and social sciences, medical, veterinary, mathematical, and engineering fields. Ordinarily, specific course work or educational degrees are required for these occupations.

2. *E&S Technicians.* This occupational family contains specialized functions in fields that provide direct technical support to the scientific/engineering effort. Positions in these occupations may or may not require completion of formal college course work. However, training and skills in the various specialties are generally required.

3. *Administrative.* This occupational family contains specialized functions in such fields as management analysis, accounting, budgeting, contracting, purchasing, legal, business and industry, library, quality assurance, and supply. Special skills in administrative fields or special degrees are required.

4. *General Support.* This occupational family is composed of positions requiring special skills and knowledge, such as typing, shorthand, or office automation skills, and job related experience. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Support functions include positions such as secretary, mail clerk, medical clerk, accounting technician and supply technician.

Pay Bands

Each occupational family will be composed of discrete pay bands (levels) corresponding to recognized advancement within the occupations. These pay bands will replace grades. They will not be the same for all occupational families. Each occupational family will be divided into three to five pay bands, each pay band covering the same pay range now covered by one or more grades. A salary overlap, similar to the current overlap between GS grades, will be maintained.

Ordinarily, an individual will be hired at the lowest salary in a pay band. Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead to a higher entrance level within a band.

The MRMC broadbanding plan expands the broadbanding concept used at China Lake and NIST by creating Pay Band V of the Engineers and Scientists occupational family. This pay band is designed for senior technical managers and senior scientists/engineers.

Current OPM guidelines covering the Senior Executive Service and Scientific and Professional (ST) positions do not fully meet the needs of MRMC. The SES designation is appropriate for executive level managerial positions whose classification exceeds the GS–15 grade level. The primary knowledges and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are designed for bench research scientists and engineers. OPM guidelines state that the duties and responsibilities of ST positions may only include minimal managerial or supervisory responsibility.

MRMC currently has many division/ directorate chief positions that have characteristics of both SES and ST classifications. Most division/ directorate chiefs in MRMC are responsible for supervising other GS–15 positions, such as branch chiefs, non-supervisory researcher scientists and engineers. Most of these senior positions are classified at the GS–15 level. MRMC management considers the primary requirement for division/directorate chiefs to have knowledge of and expertise in the specific scientific and technology areas related to their mission. The ability to manage, while important, is considered secondary. Historically, these positions have been filled by employees who possess primarily scientific/engineering credentials and who are considered experts in their field by the scientific

community. While it is clear these positions warrant classification beyond the GS–15 level, attempts to classify most of the positions as SES have been difficult because of the organizational structure of MRMC. Classification of the positions as ST is also not an option because the supervisory responsibilities inherent in division/directorate chief positions cannot be ignored. MRMC has positions that do not strictly conform to OPM definitions of either the SES or ST.

The purpose of Pay Band V is to overcome the difficulties identified above by creating a category for two types of positions—the senior technical manager (with full supervisory authority) and the senior scientist engineer (less than full supervisory authority). Current GS–15 division/directorate chiefs will convert into the demonstration project at Pay Band IV. After conversion, they will be reviewed against established criteria to determine if they should be reclassified to Pay Band V. The proposed salary range is the same as currently exists for ST positions (minimum of 120% of the minimum rate of basic pay for GS–15 with a maximum of the basic rate of pay established for level IV of the Executive Schedule). Vacant positions in Pay Band V will be competitively filled to ensure that selections are made from among the world's preeminent researchers and technical leaders in the specialty fields. Panels of experts from the discipline or an allied discipline that the recruitment action seeks to fill will be created to assist in filling Pay Band V positions. Panel members will be selected from senior military and civilian employees of the MRMC, and an equal number of individuals of equivalent stature from outside the activity to ensure impartiality, breadth of technical expertise, and a rigorous and demanding review. The panel will apply criteria developed largely from the current OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level. The same procedure will be used for evaluating senior technical manager positions however, the rating criteria will be adjusted to account for the differences in the positions, such as greater emphasis on technical program management and supervisory abilities.

The final component of Pay Band V is the management of all Pay Band V assets. Specifically, this includes authority to classify, create, abolish positions as circumstances warrant; recruit and reassign employees in this pay band; set pay and to have their performance appraised under this project's Pay for Performance System. This authority will be executed within parameters to be established at the DA level, to include controls on the numbers of Pay Band V positions and recruitment/promotion criteria. The specific details regarding the control and management of Pay Band V assets will be included in the demonstration's operating procedures. The laboratory wants to demonstrate increased effectiveness by gaining greater managerial control and authority, consistent with merit, affirmative action, and equal employment opportunity principles.

High-grade controls within the agency currently restrict movement into high grade positions (GS–14/15). OPM definition for broadbanding purposes is a position where the base pay exceeds that of a GS–13, Step 10. Until the high-grade controls are lifted, demonstration employees will not be able to advance into the currently defined pay level of a high-grade, unless a high-grade authorization is available. To accommodate this, employees whose salary adjustment would place them above the high-grade pay limit in activities where high-grade authorizations are unavailable will receive permanent adjustments to basic salary up to an amount equivalent to one dollar less than the base of the defined high-grade pay structure. Any additional amount granted under pay-for-performance will be paid as a one-time bonus payment from pay-pool funds. This pattern of payout will continue until high-grade authorizations become available.

The proposed pay bands for the occupational families and how they relate to the current GS grades are shown in Figure 1. Application of the Fair Labor Standards Act (FLSA) within each pay band is also shown in Figure 1. This pay band concept has the following advantages:

1. It reduces the number of classification decisions required during an employee's career.

2. It simplifies the classification decision-making process and paperwork. A pay band covers a larger scope of work than a grade, and thus will be defined in shorter and simpler language.

3. It supports delegation of classification authority to line managers.

4. It provides a broader range of performance-related pay for each level. In many cases, employees whose pay would have been frozen at the top step of a grade will now have more potential for upward movement in the broader pay band.

5. It prevents the progression of low performers through a pay band by mere longevity, since job performance serves as the basis for determining pay.

BILLING CODE 6325–01–P

Figure 1. Occupational Families and Pay Bands

Occupational Families	BANDS															
Corresponding GS grades	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
Engineers & Scientists (DB)	I (N)				II (*)								III (E)		IV (E)	V (E)
E&S Technicians (DE)	I (N)				II (*)				III (*)			IV (E)				
Administrative (DJ)	I (N)				II (*)						III (E)		IV (E)		V (E)	
General Support (DK)	I (N)				II (*)				III (*)							

FLSA CODES: N - Nonexempt E - Exempt * - Nonexempt or Exempt

NOTE: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

BILLING CODE 6325–01–C

Fair Labor Standards Act

The FLSA exemption and nonexemption determinations will be made consistent with criteria found in 5 CFR part 551. Supervisors with classification authority will make the determinations on a case-by-case basis with reference to documentation in the operating procedures manual and the advice and assistance of the Civilian Personnel Offices (CPO)/Civilian Personnel Advisory Centers (CPAC)/ Civilian Personnel Operations Centers (CPOC). The generic position descriptions will not be the sole basis for the determination. The basis for exemption/non-exemption will be documented and attached to each description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. The basis for determinations will be reviewed as a part of the performance review process and when salary adjustments are warranted. Changes will be documented and provided to the CPO/CPAC/CPOC, as appropriate.

Simplified Assignment Process

Today's environment of rightsizing and workforce transition mandates that the MRMC have maximum flexibility to assign duties and responsibilities to individuals. Broadbanding can be used to address this need. As a result of the assignment to a particular level descriptor, the organization will have maximum flexibility to assign an employee with no change in pay, within broad descriptions consistent with the needs of the organization, and the individual's qualifications and rank or level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level and area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current level descriptor, or benchmark position description.

Such assignments within the coverage of the generic descriptors are accomplished without the need to process a personnel action. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows a broader latitude in assignments and further streamlines the administrative process and system.

Promotions

A promotion is the movement of an employee to a higher pay band within the same occupational family or to a pay band in a different occupational family which results in an increase in the employee's salary. Progression within a pay band is based upon performance pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section.

Promotions will be processed under competitive procedures in accordance with merit principles and requirements. The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction-in-force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion, or detail to a position in a higher pay band, of 180 days or less.

(f) Impact of person on the job, accretion of duties, and Factor IV process (application of the Research Grade Evaluation Guide, Equipment Development Grade Evaluation Guide or similar guides) promotions.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

Link Between Promotion and Performance

To be promoted competitively or noncompetitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of ''B'' or better (see Performance Evaluation) or equivalent under a different performance management system.

B. Classification

Introduction

The objectives of the new classification system are to simplify the classification process, make the process more serviceable and understandable, and place more decision-making authority and accountability with line managers. All positions listed in Appendix A will be in the classification structure. Provisions will be made for including other occupations as employment requirements change in response to changing missions and technical programs.

Occupational Series

The present GS classification system has over 400 occupations (also called series), which are divided into 22 groups. The occupational series will be maintained. New series, established by OPM, may be added as needed to reflect new occupations in the workforce. Appendix A lists the occupational series currently represented at the MRMC by occupational family.

Classification Standards

MRMC will use a classification system that is a modification of the system now in use at the US Navy, Naval Command, Control and Ocean Surveillance Center, San Diego, California. The present classification standards will be used to create local benchmark position descriptions for each pay band, reflecting duties and responsibilities comparable to those described in present classification standards for the span of grades represented by each pay band. There will be at least one benchmark position description for each pay band. A supervisory benchmark position description will be added to those pay bands that include supervisory employees. Present titles and series will continue to be used in order to recognize the types of work being performed and educational backgrounds and requirements of incumbents. Locally developed speciality codes and OPM functional codes will be used to facilitate titling, making qualification determinations, and assigning competitive levels to determine retention status.

Position Descriptions and Classification Process

The MRMC Commander will have delegated classification authority and will redelegate this authority to subordinate activity Commanders/Directors for redelegation to activity managers as appropriate. New position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, the functional code, the speciality code, pay band level, and the appropriate acquisition codes. The manager will document these decisions on a cover sheet similar to the present DA Form 374. Speciality codes will be developed by Subject Matter Experts (SMEs) to identify the special nature of work performed. Functional codes are those currently found in the OPM Introduction to the Classification Standards which defines certain kinds of activities, e.g., Research, Development, Test and Evaluation, etc., and covers Engineers & Scientists (E&S).

Classification Appeals

An employee may appeal the occupational family, occupational series, or pay band of his or her position at any time. The employee may accomplish this by exercising any of the following options: (a) The employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing, (b) If the employee is not satisfied with the supervisory response, the employee may appeal to the appellate level within DoD or may appeal directly to OPM, (c) If the employee elects to first appeal to DoD but is not satisfied with this response, he/she may appeal to the Office of Personnel Management. Appellate decisions from OPM are final.

The evaluation of a classification appeal is based on the MRMC Personnel Demonstration Project Classification Standards.

C. Pay-for-Performance Management System

Performance Evaluation

Introduction

The performance appraisal system will link compensation to performance through annual performance evaluations and performance ratings. The performance appraisal system will allow optional use of peer evaluation input and/or input from subordinates whenever appropriate. The system will have the flexibility to be modified, if necessary, as more experience is gained under the project. Details of the system may be found in the implementing instructions.

Performance Objectives

Performance objectives are statements of job responsibilities based on the work unit's mission, goals, and supplemental benchmark position descriptions. Employees and supervisors will jointly develop performance objectives which will reflect the types of duties and responsibilities expected at the respective pay level. The performance objectives, representing joint efforts of employees and their rating chains, should be in place within 30 days from the beginning of each rating period.

Performance Elements

New performance elements and rating forms will be designed to implement a new scoring and rating system. The new performance evaluation system will be based on critical performance elements defined in Appendix C. All elements in the new performance evaluation system are critical. Non-critical elements will not be used. Each performance element is assigned a weight between a specified range. The total weight of all elements in a performance plan is 100 points. The supervisor assigns each element some portion of the 100 points in accordance with its importance for mission attainment. These weights will be developed along with employee performance objectives.

Mid-Year Review

A mid-year review between a supervisor and employee will be held to determine whether objectives are being met and whether performance objectives should be modified to reflect changes in planning, workload, and resource allocation. Additional reviews may be held as deemed necessary by the supervisor. The weights assigned to performance elements will be changed, if necessary.

Performance Appraisal

A performance appraisal is scheduled for the final weeks of the annual performance cycle, although an individual performance appraisal may be conducted at any time after 60 days on approved standards. The performance appraisal process brings supervisors and employees together for formal discussions on performance and results in (1) written appraisals, (2) performance ratings, (3) performance pay increases and/or bonuses, (4) cash awards, and (5) other individual performance-related actions, as appropriate. A performance appraisal

may consist of two meetings held between employee and supervisor: the performance review meeting and the evaluation feedback meeting.

Performance Review Meeting Between Employee and Supervisor

The review meeting is to discuss job performance and accomplishments. Supervisors do not assign scores, ratings, pay increases, or awards at this meeting. The supervisor notifies the employee of the review meeting in time to allow the employee to prepare a list of accomplishments. Employees will be given an opportunity at the meeting to give a personal performance assessment and describe accomplishments. The supervisor and employee discuss job performance and accomplishments in relation to the performance elements, objectives, and planned activities established in the performance plan.

Evaluation Feedback Meeting Between Employee and Supervisor

In this second meeting between employee and supervisor, the supervisor informs the employee of management's appraisal of the employee's performance, the employee's performance score and rating, and any recommended related pay increase, bonus, award, or other personnel action. During this second meeting, the supervisor and employee will discuss and document performance objectives for the next rating period.

Performance Scores

Selection of the weighted points to assign to an employee's performance is assisted by use of benchmark performance standards (appendix D). Each benchmark performance standard describes the level of performance associated with a particular point on a rating scale. Supervisors may add supplemental standards to the performance plans of the employees they supervise to further elaborate the benchmark performance standards.

The overall score is the sum of the individual element scores. Employees will receive an academic-type rating of ''A'', ''B'', ''C'', or ''F'' depending upon the percentage of goal attainment. These summary ratings are representative of Pattern E in Summary Level Chart in 5 CFR 430.208(d)(1). This rating will become the rating of record, and only those employees rated ''C'' or higher (any element rated less than 50 percent is unacceptable performance) will be eligible to receive performance-based pay increases and/or bonuses or retention years credit for RIF. A rating of ''A'' will be assigned for scores of 85 to 100 points, ''B'' for scores of 70 through 84, ''C'' for scores of 50 through 69, and ''F'' for scores of 0 through 49

[Note: An ''F'' constitutes an unacceptable rating]. The academic-type ratings will be used to determine pay or bonus values and to award additional RIF retention years as follows:

Rating	Compensation	RIF retention years added
''A''	4 shares	10.
''B''	2 shares	7.
''C''	1 share	3 (SEE NOTE).
''F''	0	0.

Note: Only those employees rated ''C'' or higher (with no element rated less than 50 percent) will be eligible to receive performance-based pay increases and/or bonuses or retention years credit for RIF retention.

Performance Based Actions

MRMC will implement a two step process to deal with poor performers. This process may lead to involuntary separations with grievance or appeal rights if the overall level of performance is below that of a ''C'' rating or the employee receives less than 50 percent of the assigned benchmark score in any element.

The process will begin with the recognition that an employee's performance is unacceptable (any element rated less than 50 percent of the assigned benchmark score), or that an employee receives an annual rating of ''F''. The two steps are as follows: (1) performance improvement plan (PIP), and (2) separation.

When the employee is determined to be performing below the ''C'' level, or below 50% of the assigned benchmark score in any element, the supervisor and employee will develop a structured PIP that will be monitored for a reasonable period of time.

If the employee fails to improve after this structured plan, the employee will be given notice of proposed appropriate action. The activity may consider a change in assignment or reduction in pay as opposed to removal if the mission, organizational structure and available resources warrant such action. The separated employee will have subsequent due process recourse as a former employee. (Note: Performance based adverse actions may be taken under 5 U.S.C., Chapter 75, rather than Chapter 43).

If, as a result of the PIP, an employee's performance improves to the ''C'' or above level, or the 50% or above level in all assigned benchmark level elements, prior to the end of the annual performance cycle, the employee is appraised again at the end of the annual performance cycle. If the employee attains an annual rating of ''C'' or higher, an increase to base pay and/or bonus and RIF retention years credit will be earned.

If, as a result of the PIP, an employee's performance improves to the ''C'' or above level, or the 50% or above level in all assigned benchmark level elements, after the end of the annual performance cycle, employment continues but no increase to base pay and/or bonus or RIF retention years credit are granted.

Employee Relations

Employees covered by the project will be evaluated under a performance evaluation system that affords grievance rights comparable to those provided currently. The MRMC will maintain the substantive and procedural appeal rights currently afforded when taking action for misconduct and poor performance.

Senior Executive Service and 5 U.S.C. 3104 (ST) Employees

Members of the SES will remain under the current SES performance appraisal system. 5 U.S.C. 3104 (ST) employees will be included in the project performance evaluation system, but will not be in the project pay-for-performance system.

Awards

The MRMC currently has an extensive awards program consisting of both internal and external awards. While not linked to the pay-for-performance system, awards will continue to be given for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off, and may be modified or expanded as appropriate. Major Army Command (MACOM) and DOD awards and other honorary noncash awards will be retained.

In an effort to foster and encourage team work among its employees, a Commander/Director may allocate a sum of money to a team for outstanding completion of a special task or significant achievement, and the team may decide the individual distribution of the total dollars among themselves.

Members of the SES will remain under their current awards system and will not participate in the project performance recognition bonus awards program. 5 U.S.C. 3104 (ST) employees will be eligible for cash awards.

Pay Administration

Introduction

The objective is to establish a pay system that will improve the ability of the MRMC to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a redistribution of pay resources based upon individual performance.

Pay-for-Performance

MRMC will use a simplified performance appraisal system that will permit both the supervisor and the employee to focus on quality of the work. The proposed system will permit the manager/supervisor to base compensation on performance or value added to the goal of the organization rather than on longevity and risk aversion. This system will allow managers to withhold pay increases from nonperformers, thereby giving the nonperformer the incentive to improve performance or leave government service.

Pay-for-performance has two components: performance pay increases (i.e. base pay increases) and/or bonuses. All covered employees will be given the full amount of locality pay adjustments when they occur, regardless of performance. The funding for performance pay increases and/or bonuses is composed of money previously available for the annual general increase, within-grade increases, quality step increases, and promotions from one grade to another when the grades are now in the same pay band. Additionally, funds will be obtained from salary increases withheld for poor performance (see *Performance Evaluation*).

Performance Pay Pool

The funding in the performance pay pool will be used for base pay increases and performance bonus pay. The payouts made to employees from the performance pay pool may be a mix of base pay increases and bonus payments, subject to the pay ceiling in the pay bands.

The Headquarters, MRMC Comptroller, in conjunction with each subordinate activity Commander/Director, will calculate the total performance pay pool and allocate pay pools to subordinate activities. Each subordinate activity Commander/Director will allocate pay pools to organizational units or teams as appropriate.

Performance Pay Increases and/or Performance Bonuses

A pay pool manager is accountable for staying within pay pool limits. The pay pool manager assigns pay increases and/or bonuses to individuals on the basis of an academic-type rating, the value of the performance pay pool resources available, and the individual's current basic rate of pay within a given pay band. A pay pool manager may request approval from the Commander/Director or his/her designee to grant a performance pay increase/performance bonus to an employee that is higher than the compensation formula for that employee to recognize extraordinary achievement or to provide accelerated compensation for local interns.

A share value will be initially calculated for each individual based upon a pay pool assignment that will be composed of monies outlined previously. For illustration purposes, approximately 3 percent of the value of the combined basic rates of pay of the assigned employees will be used. A share will be calculated so that a pay pool manager will not exceed the resources that are available in the pay pool. The share value for an individual will be determined by a relationship that considers the individual's current basic rate of pay with respect to the maximum pay rate in the respective pay band. This relationship is as follows:

$$\text{Individual Pay Increase} = \frac{\text{Pool Value} * \text{SALi}*,\ \text{Ni}}{\text{SUM (SALj} * \text{Nj); j} = 1 \text{ to n}}$$

where:

Pool Value = 0.03 * SUM (SALk); K = 1 to n

n= number of employees in pay pool

N = Number of Shares (0–4) earned by an employee based on their performance rating

SAL = An individual's basic rate of pay

SUM = The summation of the entities in parenthesis over the range indicated

To illustrate the formula, the basic rates of pay of the 10 employees in a pay pool, who each earn $50,000 per year, total to $500,000. The employees earned a total of 30 shares based on their ratings (5 individuals earned an ''A'' rating, and 5 individuals earned a ''B'' rating). The pay pool value is then 3 percent of the sum of $500,000, or $15,000. The individual performance pay increase being determined is for an individual who earns $50,000 per year and receives a ''B'' on the appraisal, thus earning 2 shares. Using the formula, the individual performance pay increase is calculated by multiplying the pay pool value, $15,000, by the individual basic rate of pay, $50,000, by the number of shares earned, 2. This product is divided by the sum of the products of the individual basic rates of pay times the number of shares earned, or 1,750,000. The resulting individual performance pay increase is $1,000.00 for the year.

An annual performance pay increase could range between all of the performance pay increase formula or none of it, depending on the current pay of the employee. For example, a mid-point principle will be used to determine performance pay increases. This principle requires that employees in all pay bands must receive a B rating or higher to advance their basic rate of pay beyond the mid-point dollar threshold of their respective pay bands. If the performance pay increase formula yields a dollar value for a C-rated employee that would increase their basic rate of pay beyond the mid-point dollar threshold, then their basic rate of pay will be adjusted to the mid-point dollar threshold and the balance converted to a performance bonus. Once an employee has progressed beyond the mid-point dollar threshold, future performance pay increases will require a ''B'' rating or greater. If an employee attains a ''C'' rating and is beyond the mid-point dollar threshold, performance pay increases will be restricted to performance bonuses only.

An annual performance pay increase could be all the compensation formula or none of it, depending on the current basic rate of pay of the employee. Annual performance pay increases will be limited to the difference between the particular band pay cap and the employee's current basic rate of pay, or total dollar value of shares, whichever is less, with the balance converted to a performance bonus. This means that employees whose basic rates of pay have reached the upper limits of a particular pay band will receive most performance compensation as a performance bonus. Cash bonuses will not become a part of the employee's basic rate of pay. Employees receiving

retained rates are subject to special rules governing basic pay adjustments. They may receive pay increases ranging from 0 to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position.

Supervisory Bonus

Supervisory bonuses of up to 10% of the basic rate of pay may be paid at the discretion of Commanders/Directors to supervisors with employees in the same pay band. In exceptional cases (approved by HQ, MRMC), supervisors who do not have employees in the same pay band may be compensated up to 5% of basic rate of pay. Supervisory bonuses are not part of the basic rate of pay. The bonus will not apply to 5 U.S.C. 3104 (ST) positions. Employees who qualify for the bonus include supervisors in all occupational families with formal supervisory authority meeting that required for coverage under the OPM GS Supervisory Guide. The bonus may be paid at the beginning of a performance period.

Because the bonus is paid at the beginning of the appraisal period, if the individual leaves a supervisory position or is removed from supervisory responsibilities (unless effected through RIF action), the prorated portion of the bonus for the non-supervisory portion of the performance year will be recovered as a debt due the Government. Before any supervisory bonus is paid, the supervisor will sign an agreement to make any required repayment.

Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the basic pay of level I of the Executive Schedule, consistent with 5 USC 5307, and 5 CFR part 530, Subpart B, except for employees in Pay Band V of the Engineers and Scientists Occupational Family. In this case, the maximum rate of basic pay will be that which is established for level IV of the Executive Schedule.

In addition, each pay band will have its own pay ceiling, just as grades do in the current system. The maximum basic pay rates for the various pay bands will be directly keyed to the maximum rate of basic pay for the highest grade (as in the current system) in the band or level IV of the Executive Schedule for Pay Band V of the Engineers and Scientists Occupational Family. Except for retained rates, basic pay will be limited to the maximum rates payable for each pay band.

Pay Setting for Promotion

The minimum basic pay increase upon promotion to a higher pay band will be 6 percent. The maximum amount of pay increase upon promotion will not exceed $10,000.

When a temporary promotion is terminated, the employee's pay entitlements will be redetermined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by MRMC. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate.

Placement in a Lower Pay Band

Employees with ratings of ''F'' or those who receive 50 percent or less of an assigned benchmark score in any element will receive no pay increase and/or bonus. This action may result in a base salary that is identified in a lower pay band. This occurs because the minimum rates of basic pay in a pay band increase as the result of the general increase (5 U.S.C. 5303). This situation, (a reduction in band level with no reduction in pay) will not be considered an adverse action, nor will band retention provisions apply.

D. Hiring and Appointment Authorities

Hiring Authority

A candidate's basic eligibility will be determined using Office of Personnel Management's (OPM) Qualification Standards Handbook of General Schedule Positions. Candidates must meet the minimum standards for entry into the payband. For example if the payband includes positions in grades GS–5 and GS–7, the candidates must meet the qualifications for positions at GS–5 level. Specific experience/education required will be determined based on whether a position to be filled is at the lower or higher end of the band. Under the demonstration authority, the MRMC is authorized to modify by increasing QSH qualifications and/or experience or substitutable education requirements. Substitutable education can be modified; however, no changes can be made to standards with positive education requirements or minimum education requirements. In some cases, MRMC will update these standards to reflect current practices in the occupational families and modern curricula in recognized degree programs. Selective placement factors may be established when judged to be critical to successful job performance. These factors must be communicated to all candidates for specific vacancies and must be met for basic eligibility.

In the proposed system, as with the current system, the individual manager will decide whether to fill a position from among internal candidates or to recruit from outside.

The MRMC is committed to positive affirmative action and equal employment opportunity goals. Line managers will be accountable for understanding and implementing policies designed to meet these goals.

Appointment Authority

Under the demonstration project, there will continue to be career and career conditional appointments and temporary appointments not to exceed one year. These appointments will use existing authorities and entitlements. Non-permanent positions (exceeding one year) needed to meet fluctuating or uncertain workload requirements will be filled using a Contingent Employee appointment authority.

Employees hired for more than one year, under the contingent employee appointment authority are given term appointments in the competitive service for no longer than five years. The MRMC Commander is authorized to extend a contingent appointment one additional year. These employees are entitled to the same rights and benefits as term employees and will serve a one year trial period. The Pay-for Performance Management System outlined in this Plan applies to contingent employees.

Appointment will be made under the same appointment authorities and processes as regular term appointments, but recruitment bulletins must indicate that there is a potential for conversion to permanent employment.

Employees hired under the contingent employee authority may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career-conditional appointment at a later date; (2) served two years of substantially continuous service in the term position; (3) be selected under merit promotion procedures for the permanent position; and (4) have a current rating of ''B'' or better.

Employees serving under regular term appointments at the time of conversion to the Demonstration Project will be converted to the new contingent employee appointments provided they were hired for their current positions

under competitive procedures. These employees will be eligible for conversion to career-conditional appointment if they have a current rating of ''B'' or better (or the equivalent of ''B'' in their current evaluation system), and are selected under merit promotion procedures for their permanent position after having completed two years of continuous service. Time served in temporary or term positions prior to conversion to the contingent employee appointment is creditable, provided the service was continuous.

Extended Probationary Period

The current one-year probationary period will be extended to ''up to three years'' for all newly hired employees in all pay bands. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a research cycle and/or to fully evaluate an employee's contribution and conduct. The length of the probationary period for the Engineer and Scientist Occupational Family will be three years. The probationary period for all other occupational families will be two years.

Aside from extending the time period, all other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee subject to serving a probationary period that was appointed prior to the implementation date will not be affected. The ''up to three year'' probation will apply to new hires or those who do not have reemployment rights or reinstatement privileges.

Probationary employees will be terminated when the employee fails to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When the MRMC decides to terminate an employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate his/her fitness or qualifications for continued employment, it shall terminate his/her services by written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the manager's conclusions as to the inadequacies of his/her performance or conduct.

Supervisory Probationary Periods

Supervisory probationary periods will be made consistent with 5 CFR part 315, Subchapter 315.901. Employees that have successfully completed the initial probationary period will be required to complete an additional one-year probationary period for the initial appointment to a supervisory position. If, during the probationary period, the decision is made to return the employee to a non-supervisory position for reasons solely related to supervisory performance, the employee will be returned to a comparable position of no lower pay band and pay than the position from which he/she was promoted.

Voluntary Emeritus Program

Under the demonstration project, Commanders/Directors will have the authority to offer retired or separated individuals voluntary assignments in their activities. This authority will include individuals who have retired or separated from Federal service. Voluntary Emeritus Program assignments are not considered ''employment'' by the Federal Government (except for the purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on an earlier separation from Federal service. The Voluntary Emeritus Program will ensure continued quality research while reducing the overall salary line by allowing individuals to accept retirement incentive with the opportunity to retain a presence within their community. The program will be of most benefit during manpower reductions as individuals could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced individuals.

To be accepted into the emeritus program, a volunteer must be approved by the subordinate activity Commander/Director. Everyone who applies is not entitled to a voluntary assignment. The laboratory Commander/Director must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the individual's Federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated Federal individuals may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the subordinate activity Commander/Director, and the servicing CPO/CPAC/CPOC. The agreement will be reviewed by the Headquarters, MRMC legal office for ethics determinations under the Joint Ethics Regulations. The agreement must be finalized before the assumption of duties and shall include:

(a) A statement that the voluntary assignment does not constitute an appointment in the civil service and is without compensation, and any and all claims against the Government because of the voluntary assignment are waived by the volunteer,

(b) A statement that the volunteer will be considered a Federal employee for the purpose of injury compensation,

(c) Volunteer's work schedule,

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years),

(e) Support provided by the subordinate activity (travel, administrative, office space, supplies),

(f) A one-page or less Statement of Duties and Experience,

(g) A provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay and leave as a result of being a member of the Voluntary Emeritus Program,

(h) A provision allowing either party to void the agreement with 10 working days written notice, and

(i) The level of security access required (any security clearance required by the position will be managed by the subordinate activity while the volunteer is a member of the Voluntary Emeritus Program).

E. Expanded Developmental Opportunities Program

The MRMC Expanded Developmental Opportunities Program will cover all permanent demonstration project employees. An expanded developmental opportunity complements existing developmental opportunities such as (1) long-term training, (2) one-year work experiences in an industrial setting via the Relations With Industry Program, (3) one-year work experiences in laboratories of allied nations via the Science and Engineer Exchange Program, (4) rotational job assignments within the MRMC, (5) developmental assignments

in higher headquarters within the Army and DOD, (6) self-directed study via correspondence courses and local colleges and universities, (7) details within MRMC and to other Federal Agencies, and (8) Intergovernmental Personnel Act Agreements.

A developmental opportunity period will not result in loss of (or reduction in) pay or leave to which the employee is otherwise entitled, or credit for time or service. Input for performance rating purposes will be obtained from the gaining organization to ensure a rating of record is on file and, if warranted, a performance award and/or bonus and retention years credit for RIF purposes is documented. Each developmental opportunity period should benefit the MRMC, as well as increase the employee's individual effectiveness. Various learning or uncompensated developmental work experiences may be considered, such as advanced academic teaching or research, sabbaticals, or on-the-job work experience with public or non-profit organizations. Final approval authority will rest with the activity Commander/Director.

The opportunity to participate in the Expanded Developmental Opportunities Program will be announced as opportunities arise. Instructions for application and the selection criteria will be included in the announcement. Final selection for participation in the program will be made by activity Commanders/Directors. The position of employees on an expanded developmental opportunity may be backfilled by temporary promotion, or temporary/contingent employees. However, that position or its equivalent must be made available to the employee returning from the expanded developmental opportunity.

In the event the employee fails to carry out the intent/conditions of the developmental opportunity (except for good and sufficient reason as determined by the activity Commander/Director), the employee shall be liable to the United States for payment of all expenses. The amount shall be treated as a debt due the United States. Employees accepting an Expanded Developmental Opportunity do not have to sign a continuing service agreement as sited in 5 USC 4108(a)(1).

F. Revised Reduction-in-Force (RIF) Procedures

Introduction

When an employee in the MRMC Demonstration Project is faced with separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of reemployment or restoration rights, or furlough for more than 30 calendar days or more than 22 discontinuous days, RIF procedures will be used.

The procedures in 5 CFR part 351 and OPM RIF regulations will be followed with the modifications specified below pertaining to competitive areas, assignment rights, credit for performance ratings and service computation date.

Competitive Areas

The Headquarters and each subordinate activity of the MRMC will be in a separate competitive area for RIF purposes. Further, within each subordinate activity, detachments located at different geographic sites will be in a separate competitive area for RIF purposes. Each of the four occupational families will be a separate competitive area within each activity. DA Interns will continue to be part of the ACTEDS competitive area.

Retention

Within each competitive area, competitive levels will be established consisting of all positions in the same occupational family and pay band which are similar enough in duties, qualifications, and working conditions that the incumbent of one position can perform successfully the duties of any other position in the competitive level without unduly interrupting the work program.

Current RIF regulations will be modified to restrict bumping and retreating to positions within the employee's current occupational family. This feature will minimize the disruption associated with the RIF process. An employee may displace another employee within the same occupational family by bump or retreat to one band below the employee's existing band. A preference eligible veteran with a compensable service-connected disability of 30% or more may retreat to positions two bands (or the equivalent of five (5) grades) below his/her current band.

Reductions-in-force are accomplished using the retention factors of tenure, veterans preference, credit for performance ratings, and length of service, in that order.

Contingent employees are in Tenure Group III for reduction-in-force purposes. Reduction-in-force procedures are not required when separating these employees when their appointments expire.

Link Between Performance and Retention

Credit for performance based on the last three (3) ratings of record during the preceding four (4) years will be applied as follows: a rating of ''A'' equals 10 years; a rating of ''B'' equals 7 years; a rating of ''C'' equals 3 years, and a rating of ''F'' adds no credit for retention. Credit for performance is cumulative, not averaged. Ratings given under non-demonstration systems will be converted to the demonstration rating scheme and provided the equivalent performance rating credit.

In some cases, an employee may not have three (3) annual performance ratings of record. In these situations, performance credit will be given on the basis of assumed ratings of ''C''.

An employee who has received a written decision to demote him/her to a lower pay band because of unacceptable performance, competes in RIF from the position to which he/she will be/has been demoted. Employees who have been demoted for unacceptable performance, and as of the date of the issuance of the RIF notice have not received a performance rating in the position to which demoted, will receive a presumed rating of ''C'' for purposes of RIF credit.

An employee with a current annual performance rating of ''F'' has assignment rights only to a position held by another employee who has an ''F'' rating. An employee who has been given a written decision of removal because of unacceptable performance will be placed at the bottom of the retention register for their competitive level.

Notice Period

The RIF notice period will follow OPM guidelines.

Grade and Pay Retention

Except where waived or modified in the waiver section of this plan, grade and pay retention will follow current law and regulations (e.g. occupational family pay bands will substitute for grade.)

Use of Voluntary Incentives

Subordinate activity Commanders/Directors currently have delegated authority to grant payments under the VSIP. This authority will continue under this project.

IV. Training

Introduction

The key to the success or failure of the proposed demonstration project will be the training provided for all involved.

This training will not only provide the necessary knowledge and skills to carry out the proposed changes, but will also lead to commitment to the program on the part of participants.

Training at the beginning of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include:

(1) A description of the personnel system, (2) how employees are converted into and out of the system, (3) the pay adjustment and/or bonus process, (4) familiarization with the new position descriptions and performance objectives, (5) the performance evaluation management system, (6) the reconsideration process, and (7) the demonstration project administrative and formal evaluation process.

Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and mangers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, training in using the classification system, position description preparation, and performance evaluation. Additional training may focus on non-project procedural techniques such as interpersonal and communication skills.

Administrative Staff

The administrative staff, including personnel specialists, subordinate activity administrative officers, and personnel points of contact will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will need training in the procedural and technical aspects of the project.

Employees

The MRMC Demonstration Project Office will make and coordinate all arrangements necessary to train employees covered under the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

V. Conversion

Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate occupational family and pay band without loss of pay. Covered employees will be initially converted to appropriate pay bands with respect to type of work performed in accordance with the steps below. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlement in the new area must be determined before performing the pay conversion.

a. All employees will be converted at their current base pay at the time of conversion. [Not applicable to special rate employees.]

b. Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the pay band and salary which corresponds to the prior grade of record, plus any adjustments to base pay realized as a result of performance while on the temporary promotion. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent.

c. All employees in a pay grade corresponding to a pay band will be converted to that pay band.

d. Employees who are covered by special salary rates, prior to the demonstration project, will no longer be considered special rate employees under the demonstration project. These employees will, therefore, be eligible for full locality pay. The total salaries of these employees will not change upon conversion. Rather, the employees will receive a new base pay rate computed by dividing their adjusted basic pay by the locality pay factor (e.g., 1.0711 in the Washington-Baltimore locality pay area) for their area. Employees whose base pay upon conversion does not fit in the applicable pay range and would otherwise be subject to a reduction in pay, will be entitled to retain their converted base rate. A full locality adjustment will then be added to the new base pay rate. Since no employee's total pay will be reduced through the conversion process, adverse action and pay retention provisions (except as noted above) will not be applicable.

e. Upon conversion to the project, time served toward Within-Grade Increases (WIGs) will be documented and paid to the employee on a prorated basis (number of weeks completed in the waiting period divided by the number of weeks in the waiting period, adjusted using credit for service rules). This payment will be paid to those individuals employed at the one-year anniversary of the demonstration project. Payment will be lump-sum in nature and not a part of basic pay, providing the employee is performing at a ''C'' level or above.

Conversion or Movement from a Project Position to a General Schedule Position

If a demonstration project employee is moving to a General Schedule (GS) position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project pay band to a GS-equivalent grade and the employee's project rates of pay to GS-equivalent rates of pay. The converted GS grade and GS rates of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rates will become the employee's actual GS grade and rates after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rates will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rates were actually in effect immediately before the employee left the demonstration project.

Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

(a) The employee's adjusted rate of basic pay under the demonstration project (including any locality payment) is compared with step 4 rates in the highest applicable GS rate range. (For this purpose, a ''GS rate range'' includes a rate range in (1) the GS base schedule, (2) the locality rate schedule for the

locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(b) If the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds step 4 of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(e) Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described ''step 4'' rule, but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(f) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time, the employee has undergone a reduction in band.

Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted rate of basic pay under the project (including any locality payment) is converted to a GS adjusted rate on the highest applicable GS rate range for the converted GS grade. (For this purpose, a ''GS rate range'' includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

(d) If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. Supporting personnel specialists in CPOs/CPACs/CPOCs will continue to process personnel-related actions and provide consultative and other appropriate services.

Automation

The MRMC will continue to use the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

Local automated systems will be developed to support computation of performance-related pay increases and awards and other personnel processes and systems associated with this project.

Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The MRMC will make minor modifications, such as changes in the occupational series in a occupational family without further notice. Major changes, such as a change in the number of occupational families, will be published in the Federal Register.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration. The project evaluation plan adequately addresses how each intervention will be comprehensively evaluated for at least the first 5 years of the demonstration (Proposed Plan for Evaluation of the DOD Laboratory Demonstration Program, OPM, 1995). Major changes and modifications to the interventions can be made through announcement in the Federal Register and would be made if formative evaluation data warranted. At the 5-year point, the entire demonstration will be reexamined for either: (a) permanent implementation, (b) a continuing test period, or (c) expiration.

VII. Evaluation Plan

Introduction

In response to the Reinvention Project legislation, OPM will evaluate the project annually and provide briefings and written reports of the findings. The Evaluation Plan stipulates both internal and external evaluation efforts. The phases of the plan are outlined below.

Evaluation Phases

The evaluation effort will be carried out in three phases: implementation, formative, and summative evaluation. Monitoring of the project will be concurrent with the implementation phase. An evaluation of this phase is necessary to determine whether the project is implemented as designed and to ascertain when the monitored processes become stable and fully operational. The formative phase evaluation will extend for the duration of the project. Data will be collected annually and periodic reports will be issued by OPM. The summative evaluation phase will assess overall impact of the project during appropriate time intervals and/or after 5 years of operation.

Evaluation Methodology

The evaluation will focus on the continuum of personnel issues and will be based on before-and-after comparison of the personnel data, using both quantitative and qualitative criteria. Personnel records and reports, as well as previously validated survey instruments, will be used to develop appropriate measures. New data collection methods and measures, or modifications to existing instruments, may be required for some criteria. Baseline data will be collected before the demonstration project implementation. The baseline survey was administered in the Summer of 1996.

Evaluation Criteria

While it is not possible to prove a direct causal link between intermediate and ultimate outcomes (personnel system changes and improved organizational performance), indirect cause and effect relationships can be evidenced through the establishment of relevant effectiveness measures. An intervention impact model (Appendix B) will be used to measure the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified consistent with expected effects. Measures may also be deleted when appropriate. Activity specific measures may also be developed to accommodate specific needs or interests which are locally unique. The evaluation model for the Demonstration Project identifies elements critical to an evaluation of the effectiveness of the interventions. The overall evaluation approach will also include consideration of context variables that are likely to have an impact on project outcomes: e.g., HRM regionalization, rightsizing, cross-service integration, and the general state of the economy. However, the main focus of the evaluation will be on intermediate outcomes, i.e., the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment and customer satisfaction.

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual data will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of data will be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews and focus groups; (4) local activity histories, and (5) core measures of subordinate activity performance.

VIII. Demonstration Project Costs

Costs associated with the development of the personnel demonstration system include software automation, training, and project evaluation. All funding will be provided through the MEDCOM/MRMC budget. The projected annual expenses are as summarized in Table 1. Project evaluation costs are not expected to continue beyond the first 5 years unless the results warrant further evaluation. Projected developmental costs do not include potential contractor fees.

TABLE 1.—PROJECTED DEVELOPMENTAL COSTS (CURRENT YEAR DOLLARS)

	Baseline	FY97	FY98	FY99	FY00	FY01
Training		$99K	$19K	$19K	$19K	$19K
Project Eval	$17K	$28K	$28K	$28K	$28K	$28K
Automation	$80K	$10K	$10K	$10K	$10K	$10K
Totals	$97K	$137K	$57K	$57K	$57K	$57K

IX. Required Waivers to Law and Regulation

Public Law 103–337 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for implementation of the Demonstration Project. In due course, additional laws and regulations may be identified for waiver request.

1. Waivers to Title 5, U.S. Code

Chapter 31, section 3111: Acceptance of volunteer service—To the extent that the acceptance of retired or separated civilian and military are included as volunteers under current statute.

Chapter 31, Section 3324: Appointments to Positions Classified Above GS–15.

Chapter 33, Section 3341: Details; within Executive or military departments—Increasing 120-Day Increments for Details to 180 days.

Chapter 35, Section 3502: Order of Retention—Applies only to the extent that performance score is placed before length of service.

Chapter 41, Section 4107: Pay for Degrees.

Chapter 41, Section 4108: Employee Agreements, Service after training; to the extent that employees who accept an expanded developmental opportunity do not have to sign a continuing service agreement.

Chapter 43, Section 4301: Definitions.

Chapter 43, Section 4302: Establishment of Performance Appraisal Systems.

Chapter 43, Section 4303: Actions based on Unacceptable Performance.

Chapter 51, Sections 5101–5111: Purpose, definitions, basis, classification of positions, review, authority—Applies to the extent that white collar employees will be covered by broadbanding. Pay category determination criteria for federal wage system positions remain unchanged.

Chapter 53, Sections 5301, 5302 (8) and (9), 5303 and 5304: Pay Comparability System—Sections 5301, 5302, and 5304 are waived only to the extent necessary to allow (1) demonstration project employees except employees in Pay Band V of the Engineers and Scientists Occupational Family, to be treated as General Schedule employees, (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay, and (3) employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as SES and ST employees for the purposes of these provisions.

Chapter 53, Section 5305: Special Salary rates.

Chapter 53, Sections 5331–5336: General Schedule Pay Rates.

Chapter 53, Sections 5361–5366: Grade and pay retention—This waiver applies only to the extent necessary to (1) replace ''grade'' with ''pay band'; (2) allow demonstration project employees to be treated as General Schedule employees; (3) provide that pay band retention provisions do not apply to movements to a lower pay band as a result of receiving a performance pay increase that is less than the amount of general pay increase; (4) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; (5) provide that an employee on pay retention may receive between 0 and 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position. This waiver does not apply to ST employees unless they move to a GS-equivalent position under the demonstration project under conditions that trigger entitlement to pay retention.

Chapter 53, Section 5371: Health Care Positions—This waiver applies only to the extent necessary to allow demonstration project employees to hold positions subject to Chapter 51 of title 5.

Chapter 55, Section 5545 (d): Hazardous Duty Differential—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in Pay Band V of the Engineers and Scientists Occupational Family or ST employees.

Chapter 57, Sections 5753, 5754, and 5755: Recruitment and Relocation Bonuses; Retention Allowances and Supervisory Bonuses—This waiver applies only to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as ST employees. This waiver does not apply to ST employees who continue to be covered by these provisions as appropriate.

Chapter 59, Section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. This waiver applies only to the extent necessary to provide that COLA's paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, Section 7512(3): Adverse actions—This provision is waived only to the extent necessary to (1) replace ''grade'' with ''pay band'' and (2) provide that a reduction in band level is not an adverse action if it results from the employee's pay being exceeded by the minimum rate of his or her pay band.

Chapter 75, Section 7512(4): Adverse actions—This provision is waived only to the extent that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.

2. Title 5, Code of Federal Regulations:

Part 300.601–605: Time-In-Grade Restrictions—Restrictions eliminated under the demonstration.

Part 308.101–103: Volunteer Service—To the extent that retired/separated civilians and military can perform voluntary services.

Part 315.801 and 315.802: Probation on Initial Appointment to a Competitive Position—Demonstration project employees in some occupational families will have extended probationary period.

Part 316.301: Term Employment—Adding years to exceed 4 and establishment of Contingent appointments.

Part 316.303: Tenure of term employees—Demonstration allows for conversion.

Part 316.305: Eligibility for within-grade increases—Demonstration employees no longer received WIGs.

Part 334, section 334.102: Temporary Assignment of Employees Outside the Agency.

Part 335.103: Covering the length of details and temporary promotions.

Part 351.402(b): Competitive Area—To the extent that occupational family is the competitive area.

Part 351.403: Competitive Level—To the extent that pay band is substituted for grade.

Part 351.504: Credit for Performance—Retention standing to the extent that service credit will not be modified based on performance rating.

Part 351.701: Assignment Involving Displacement—To the extent that bumping and retreating will be limited to no more than one pay band except for 30 percent compensable veterans who can retreat to the equivalent of 5 GS grades.

Part 430: Subpart B, Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees—Employees under the demonstration project will not be subject to the requirements of this subpart.

Part 432: Performance Based Reduction In Grade and Removal Actions—Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay, reduced in pay without a reduction in band level and reduced in band level without a reduction in pay based on unacceptable performance. Also modified to delete reference to critical element (all elements are critical). For employees who are reduced in band level without a reduction in pay, sections 432.105 and 432.106(a) do not apply.

Part 432, sections 104 and 105: Addressing unacceptable performance and proposing and taking action based on unacceptable performance—In so far as references to ''critical elements'' are deleted (all elements are critical), and adding that the employee may be ''reduced in grade, or pay, or removed'' if performance does not improve to acceptable levels after a reasonable opportunity. In addition, requirements waived to the extent that a reduction in band level is taken based on skill utilization criteria when there is not a reduction in pay.

Part 511: Classification Under the General Schedule—To the extent that grades are changed to broadbands, and that white collar positions are covered by broadbanding.

Part 530, subpart C: Special Salary Rate Schedules for Recruitment and Retention.

Part 531, subparts B, D, and E: Pay Under the General Schedule—Determining rate of basic pay, within-grade increases, and quality step increases.

Part 531, subpart F: Locality Based Comparability Payments—This waiver applies only to the extent necessary to allow (1) demonstration project employees, except employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as General Schedule employees, (2) basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay, and (3) employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as ST employees for the purposes of these provisions. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

Part 536: Grade and pay retention—This waiver applies only to the extent necessary to (1) replace ''grade'' with ''pay band''; (2) provide that pay band retention provisions do not apply to movements to a lower pay band as result of receiving a performance pay increase that is less than the amount of the general pay increase; (3) provide that pay retention provisions do not

apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; (4) provide that an employee on pay retention may receive between 0 and 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position. This waiver does not apply to ST employees unless they move to a GS-equivalent position under the demonstration project under conditions that trigger entitlement to pay retention.

Part 550.703: Severance Pay—This waiver applies only to the extent necessary to modify the definition of ''reasonable offer'' by replacing ''two grade or pay levels'' with ''one band level'' and ''grade or pay level'' with ''band level''.

Part 550.902: Hazardous Duty Differential—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in Pay Band V of the Engineers and Scientists Occupational Family or ST employees.

Part 575, subparts A, B, C and D: Recruitment and Relocation Bonuses; Retention Allowances; Supervisory Differentials—This waiver applies only to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as ST employees for the purposes of these provisions. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

Part 591, subpart B: Cost-of-Living Allowances and Post Differential-Nonforeign Areas—This waiver applies to the extent necessary to allow (1) demonstration project employees to be treated as employees under the General Schedule and (2) employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as ST employees for the purposes of these provisions. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

Part 752.401(a)(3): Adverse Actions—This waiver applies only to the extent necessary to (1) replace ''grade'' with ''pay band'' and (2) provide that a reduction in pay band level is not an adverse action if it results from the employee's pay being exceeded by the minimum rate of his or her pay band.

Part 752.401(a)(4): Adverse Actions—This waiver applies only to the extent that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.

Appendix A: Occupational Series by Occupational Family

I. Engineers and Scientists

0101 Social Science
0180 Psychology
0190 Anthropology
0401 Biology
0403 Microbiology
0405 Pharmacology
0408 Ecology
0410 Zoology
0413 Physiology
0414 Entomology
0415 Toxicology
0440 Genetics
0601 General Health Science
0602 Medical Officer
0610 Nurse
0630 Dietitian & Nutritionist
0644 Medical Technologist
0662 Optometrist
0701 Veterinary Medical Science
0801 General Engineering
0808 Architecture
0830 Mechanical Engineering
0855 Electronics Engineering
0858 Biomedical Engineering
1301 General Physical Science
1306 Health Physics
1310 Physics
1320 Chemistry
1520 Mathematics
1529 Mathematical Stat
1530 Statistician

II. E&S Technicians

0181 Psychology Aid/Technician
0404 Biological Science Technician
0499 Biological Science Student Trainee
0620 Practical Nurse
0640 Health Aid & Technician
0645 Medical Technician
0646 Pathology Technician
0647 Diagnostic Radiologic Technologist
0649 Medical Instrument Technician
0802 Engineer Technician
0809 Construction Control
0818 Engineering Drafting
0856 Electronics Technician
1311 Physical Sciences Technician
1521 Mathematics Technician

III. Administrative

0018 Safety & Occupational Health Management
0028 Environmental Protection Spec
0080 Security Administration
0201 Civilian Personnel Management
0205 Military Personnel Management
0301 Misc Administration & Program
0332 Computer Operation
0334 Computer Specialist
0340 Program Management
0341 Administrative Officer
0342 Support Services Administration
0343 Management/Program Analysis
0346 Logistics Management
0391 Telecommunications
0501 Financial Administration & Program
0510 Accounting
0511 Auditing
0560 Budget Analysis
0905 General Attorney
1020 Illustrating
1035 Public Affairs
1040 Language Specialist
1071 Audiovisual Production
1082 Writing & Editing
1083 Technical Writing & Editing
1084 Visual Information
1102 Contracting
1105 Purchasing
1152 Production Control
1222 Patent Attorney
1410 Librarian
1412 Technical Information Services
1601 General Facilities & Equipment
1640 Facility Management
1670 Equipment Specialist
1710 Educational & Vocational Training
1801 General Inspection, Investigation and Compliance
1910 Quality Assurance
2001 General Supply
2003 Supply Program Management
2010 Inventory Management
2050 Supply Cataloging
2181 Aircraft Operation

IV. General Support

0086 Security Clerical & Asst
0302 Messenger
0303 Misc Clerk and Asst
0304 Information Receptionist
0305 Mail and File
0312 Clerk-Stenographer/Reporter
0318 Secretary
0322 Clerk-Typist
0326 Office Automation Clerical/Asst
0335 Computer Clerk/Asst
0344 Management Clerical/Asst
0525 Accounting Technician
0561 Budget Clerical/Asst
0675 Medical Records Technician
0679 Medical Clerk
1016 Museum Specialist & Technician
1060 Photography
1087 Editorial Asst
1106 Procurement Clerical/Tech
1411 Library Technician
1499 Library and Archives Student Trainee
1531 Statistical Asst
2005 Supply Clerical/ Tech
2102 Transportation Clerk/Asst

Appendix B: Project Evaluation and Oversight

Intervention Impact Model—DoD Lab Demonstration Program

1. Compensation

BILLING CODE 6325–01–P

Appendix B: Project Evaluation and Oversight

Intervention Impact Model - DoD Lab Demonstration Program

1. Compensation

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCE
a. Broad banding	-increased organizational flexibility	-perceived flexibility	-attitude survey
	-reduced administrative workload, paperwork reduction	-actual/perceived time savings	-personnel office data,PME results, attitude survey
	-advanced in-hire rates	-starting salaries of banded v. non-banded employees	-workforce data
	-slower pay progression at entry levels	-progression of new hires over time by band, career path	-workforce data
	-increased pay potential	-mean salaries by band, career path, demographics -total payroll cost	-workforce data -personnel office data
	-increased satisfaction with advancement	-employee perceptions of advancement	-attitude survey
	-increased pay satisfaction	-pay satisfaction, internal/external equity	-attitude survey
	-improved recruitment	-offer/acceptance ratios -percent declinations	-personnel office data
	-no change in high grade (GS-14/15) distribution	-number/percentage of high grade salaries pre/post banding	-workforce data
b. Conversion buy-in	-employee acceptance	-employee perceptions of equity, fairness -cost as a percent of payroll	-attitude survey -workforce data

2. Performance Management

INTERVENTIONS	EXPECTED BENEFITS	MEASURES	DATA SOURCES
a. Cash awards/bonuses	-reward/motivate performance	-perceived motivational power	-attitude survey
	-to support fair and appropriate distribution of awards	-amount and number of awards by career path, demographics,	-workforce data
		-perceived fairness of awards	-attitude survey
		-satisfaction with monetary awards	-attitude survey
b. Performance/ contribution based pay progression	-increased pay-performance link	-perceived pay performance link	-attitude survey
		-perceived fairness of ratings	-attitude survey
	-improved performance feedback	-satisfaction with ratings	-attitude survey
		-employee trust in supervisors	-attitude survey
		-adequacy of performance feedback	-attitude survey
	-decreased turnover of high performers/increased turnover of low performers	-turnover by performance rating category	-workforce data
	-differential pay progression of high/low performers	-pay progression by performance rating category, career path	-workforce data
	-alignment of organizational and individual performance expectations and results	-linkage of performance expectations to strategic plans/goals	-performance expectations, strategic plans
		-performance expectations	-attitude survey/ focus groups
	-increased employee involvement in performance planning and assessment	-perceived involvement	-attitude survey/ focus groups
		-performance management procedures	-personnel regulations
c. New appraisal process	-reduced administrative burden	-employee and supervisor perception of revised procedures	-attitude survey
		-perceived fairness of process	
	-improved communication	-feedback and coaching procedures used	-focus group
d. Performance development	-better communication of performance expectations	-time, funds spent on training by demographics	-focus group
			-personnel office data -training records
		-organizational commitment	
	-improved satisfaction and quality of workforce	-perceived workforce quality	-attitude survey
			-attitude survey

3. Classification

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
a. Improved classification systems with generic standards	-reduction in amount of time and paperwork spent on classification	-time spent on classification procedures	-personnel office data
		-reduction of paperwork/ number of personnel actions(classification/ promotion)	-personnel office data
	-ease of use	-managers' perceptions of time savings, ease of use, improved ability to recruit	-attitude survey
	-improved recruitment of employees with appropriate skills	-quality of recruits	-attitude survey
		-perceived quality of recruits	-focus groups/ interviews
		-GPAs of new hires, educational levels	-personnel office data
b. Classification authority delegated to managers	-increased supervisory authority/accountability	-perceived authority	-attitude survey
	-decreased conflict between management and personnel staff	-number of classification disputes/ appeals pre/post	-personnel records
		-management satisfaction with service provided by personnel office	-attitude survey
	-no negative impact on internal pay equity	-internal pay equity	-attitude survey
c. Dual career ladder	-increased flexibility to assign employees	-assignment flexibility	-focus groups, survey
	-improved internal mobility	-supervisory/non-supervisory ratios	-workforce data
		-perceived internal mobility	-attitude survey
	-increased pay equity	-perceived pay equity	-attitude survey
	-flatter organization	-supervisory/non-supervisory ratios	-workforce data
	-improved quality of supervisory staff	-employee perceptions of quality of supervisors	-attitude survey

4. RIF

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
Modified RIF	-prevent loss of high performing employees with need skills	-seperated employees by demographics, performance	-workforce data
			-attitude survey/focus groups
	-contain cost and disruption	-satisfaction with RIF process	-attitude survey/focus groups
		-cost comparisons of traditional v. modified RIF	-personnel office/budget data
		-time to conduct RIF	-personnel office data
		-number of appeals/reinstatements	-personnel office data

5. Combination of all Interventions

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
All	-improved organizational effectiveness	-combination of personnel measures	all data sources
	-improved management of R&D workforce	-employee/management job satisfaction (intrinsic/extrinsic)	-attitude survey
	-improved planning	-planning procedures	-strategic planning documents
		-perceived effectiveness of planning procedures	-organizational charts
	-improved cross functional coordination	-actual/perceived coordination	-attitude survey
	-increased product success	-customer satisfaction	-customer satisfaction surveys
	-cost of innovation	-project training/development cost (staff salaries, contract cost, training hours per employee)	-demo project records -contract documents

6. Context

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
a. Regionalization	-reduced servicing ratios/cost	-HR servicing ratios	-personnel office data, workforce data
		-average cost per employee served	-workforce data/ personnel office data
	- no negative impact on service quality	-service quality, timeliness	-attitude survey/ focus groups
b. GPRA	-improved organizational performance	-other measures to be developed	-as established

BILLING CODE 6325–01–C

Appendix C. Performance Elements.

Each performance element is assigned a weight between a specified range. The total weight of all elements in a performance plan is 100 points. The supervisor assigns each element some portion of the 100 points in accordance with its importance for mission attainment.

All employees will be rated against at least the five generic performance elements listed through ''e'' below. However, only those employees whose duties require supervisor or manager/ leader responsibilities will be rated on element ''f''. Supervisors will be rated against an additional performance element, listed at ''g'' below:

a. *Technical Competence.* Exhibits and maintains current technical knowledge, skills, and abilities to produce timely and quality work with the appropriate level of supervision. Makes prompt, technically sound decisions and recommendations that add value to mission priorities and needs. For appropriate career paths, seeks and accepts developmental and/or special assignments. Adaptive to technological change. (Weight Range: 15 to 50)

b. *Working Relationships.* Accepts personal responsibility for assigned tasks. Considerate of others views and open to compromise on areas of difference, if allowed by technology, scope, budget, or direction. Exercises tact and diplomacy and maintains effective relationships, particularly in immediate work environment and teaming situations. Always willing to give assistance. Shows appropriate respect and courtesy. (Weight Range: 5 to 15)

c. *Communications.* Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and cogent. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions. (Weight Range: 5 to 15)

d. *Resource Management.* Meets schedules and deadlines, and accomplishes work in order of priority; generates and accepts new ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; support organization's resource development and conservation goals. (Weight Range: 15 to 50)

e. *Customer Relations.* Demonstrates care for customers through respectful, courteous, reliable and conscientious actions. Seeks out and develops solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customers informed and prevents surprises. Within the scope of job responsibility, seeks out and develops new programs and /or reimbursable customer work. (Weight Range: 10 to 50)

f. *Management/Leadership.* Actively furthers the mission of the organization. As appropriate, participates in the development and implementation of strategic and operational plans of the organization. Develops and implements tactical plans. Exercises leadership skill within the environment. Mentors junior personnel in career development, technical competence, and interpersonal skills. Exercises due responsibility to oversee technical/acquisition/ organizational positions assigned to them. (Weight Range: 0 to 50)

g. *Supervision/EEO.* Works toward recruiting, developing, motivating, and retaining quality team members; takes timely/appropriate personnel actions, applies EEO/merit principles; communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members. (Weight Range: 15 to 50)

BILLING CODE 6325–01–P

Appendix D. Benchmark Performance Standards

ELEMENT POINT-RANGES AND PERFORMANCE STANDARDS

THESE BENCHMARK PERFORMANCE STANDARDS ARE USED TO EVALUATE AND SCORE PERFORMANCE AGAINST THE WEIGHTED PERFORMANCE ELEMENTS. THIS SHEET MUST BE USED I N CONJUNCTION WITH BENCHMARK JOB DESCRIPTION AND PERFORMANCE OBJECTIVES.

ELEMENT WEIGHTS

100% Performance elements were attained demonstrating exceptional initiative, versatility, originality, and creativity. This individual demonstrates the ability to grasp, understand, organize, and convey complex issues to others and carry the job assignment to successful completion with minimum direct supervision. Performance elements were effectively achieved utilizing cooperation, responsiveness, conflict avoidance, or conflict resolution. Written and oral communications were appropriately demonstrated effectively and efficiently. Performance elements were achieved with demonstrated leadership, integrity, competency, commitment, candor, and sense of duty.	50	45	40	35	30	25	20	15	10	5
	49	44	39	34	29					
	48					24				
		43	38				19			
	47	42		33	28					
	46		37			23		14		
		41		32						
	45		36		27		18		9	
		40		31		22				
	44		35							
	43	39		30	26					
		38	34				17			
	42			29	25	21				
	41	37	33							
	40	36	32	28	24	20	16	12	8	4
	39	35	31		23					
	38	34		27		19				
			30				15			
	37	33		26	22			11		
	36		29			18				
		32		25						
70% Performance elements were attained effectively and efficiently with consistently high quality and quantity of work. This individual has demonstrated the ability to complete the job assignments in an efficient, orderly sequence that culminated in results that were timely, correct, thorough and cost effective. Performance elements were attained with consistently above average quality and reliability while effectively utilizing accepted procedures and resolving problems with skill and resourcefulness. Performance elements were attained with consistently productive cooperative efforts and with clear, precise, and convincing written and oral communication.	35		28		21		14		7	
		31		24						
	34		27			17				
	33	30		23	20			10		
			26				13			
	32	29		22		16				
	31	28	25		19					
	30	27	24	21	18	15	12	9	6	3
	29	26	23							
	28			20	17	14				
		25	22				11			
	27	24		19	16					
	26		21							
		23		18		13				
50% Performance elements were accomplished, were mostly reliable, and delivered without unacceptable delays. Procedures were minimally correct and problems were dealt with satisfactorily. Attained performance elements, using work methodology that demonstrated a reasonable degree of cooperation with other with clear and concise written and oral communications.	25		20		15		10		5	
UNSATISFACTORY	24	22	19	17	14	12	9	7	4	2

Performance elements were not successfully completed because of failure in quality, quantity, completeness, responsiveness, or timeliness of work. Performance elements products were deficient, because they were contrary to direction or guidelines; did not meet minimum specifications; were inconsistent with organizational procedures; were significantly flawed or substandard in quality; demonstrated insufficient technical knowledge or skill; were incomplete; were unacceptably late; lacked essential cooperative involvement or support; or problems that arose during performance of performance elements activities were not satisfactory resolved.

[FR Doc. 97–6167 Filed 3–10–97; 8:45 am]
BILLING CODE 6325–01–C

federal register

Wednesday
March 12, 1997

Part VIII

Office of Personnel Management

Proposed Laboratory Personnel Management Demonstration Project; Aviation Research, Development and Engineering Center, Department of the Army, U.S. Army Aviation and Troop Command (ATCOM), Federal Center, St. Louis, Missouri; Notice

OFFICE OF PERSONNEL MANAGEMENT

Proposed Laboratory Personnel Management Demonstration Project; Aviation Research, Development and Engineering Center, Department of the Army, U.S. Army Aviation and Troop Command (ATCOM), Federal Center, St. Louis, Missouri

AGENCY: Office of Personnel Management.

ACTION: Notice of Intent to Implement Demonstration Project.

SUMMARY: Title VI of the Civil Service Reform Act, 5 U.S.C. 4703, authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such change in personnel policy or procedures would result in improved Federal personnel management.

Public Law 103–337, October 5, 1994, permits the Department of Defense (DoD), with the approval of the OPM, to carry out personnel demonstration projects generally similar in nature to the China Lake demonstration project at DoD Science and Technology (S&T) Reinvention Laboratory sites. The Army is proposing five demonstration sites initially: the Army Research Laboratory, U.S. Army Waterways Experiment Station, Medical Research Materiel Command, the Missile Research, Development and Engineering Center, and the Aviation Research, Development, and Engineering Center. This proposal is for the Aviation Research, Development, and Engineering Center (AVRDEC).

DATES: To be considered, written comments must be submitted on or before May 20, 1997; public hearings will be scheduled as follows:

April 23, 1997, at 10:00 a.m., Aviation Applied Technology Directorate, Fort Eustis, Virginia

April 24, 1997, at 10:00 a.m., Federal Center, St. Louis, Missouri

May 6, 1997, at 10:00 a.m., Aeroflightdynamics Directorate, National Aeronautics and Space Administration—Ames Research Center, Moffett Field, California

At the time of the hearings, interested persons or organization may present their written or oral comments on the proposed demonstration project. The hearing will be informal.

Anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT,** and state the hearing location, so that OPM can plan the hearings and provide sufficient time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to ten minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

ADDRESSES: Comments may be mailed to Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, NW, room 7460, Washington, DC 20415; public hearings will be held at the Federal Center, Auditorium, Building 105, 4300 Goodfellow Boulevard, St. Louis, Missouri; the Aviation Applied Technology Directorate, Jacobs Theater, Ft. Eustis, Virginia; and the U.S. Army Aeroflightdynamics Directorate, Main Auditorium, Building 201, NASA—Ames Research Center, Moffet Field, California.

FOR FURTHER INFORMATION CONTACT: (1) On proposed demonstration project: James A. Ray, U.S. Army Aviation and Troop Command, ATTN: AMSAT–R–E, Federal Center, St. Louis, MO, 63120–1798, 314 263–1100; (2) On proposed demonstration project and public hearing: Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415, 202–606–1138.

SUPPLEMENTARY INFORMATION: Since 1966, many studies of Department of Defense (DoD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. The proposed project involves simplified job classification, pay banding, streamlined hiring processes, pay-for-performance management system, expanded developmental opportunity, and modified Reduction-In-Force (RIF) procedures.

Office of Personnel Management.

James B. King,

Director.

Table of Contents

I. Executive Summary
II. Introduction
A. Purpose
B. Problems With the Present System
C. Changes Required/Expected Benefits
D. Participating Organization
E. Participating Employees
F. Labor Participation
G. Project Design
H. Personnel Management Board
III. Personnel System Changes
A. Broadbanding
B. Pay-for-Performance Management System
C. Classification
D. Hiring and Appointment Authorities
E. Employee Development
F. Revised Reduction-in-Force (RIF) Procedures
IV. Training
V. Conversion
VI. Project Duration
VII. Evaluation Plan
VIII. Demonstration Project Costs
IX. Required Waivers to Laws and Regulations
Appendix A: Occupational Series by Occupational Family
Appendix B: Project Evaluation and Oversight
Appendix C: Performance Elements
Appendix D: Benchmark Performance Standards

I. Executive Summary

This project was designed by the Department of the Army, with participation of and review by the Department of Defense (DoD) and the Office of Personnel Management (OPM). The purpose of the project is to achieve the best workforce for the AVRDEC mission, adjust the workforce for change, and improve workforce quality.

The foundations of this project are based on the concept of linking performance to pay for all covered positions; simplifying paperwork and the processing of classification and other personnel actions; emphasizing partnerships among management, employees, and unions representing covered employees; and delegating classification and other authorities to line managers. Additionally, the research intellect of the AVRDEC workforce will be revitalized through the use of expanded opportunities for employee development. These opportunities will reinvigorate the creative intellect of the research and development community.

Development and execution of this project will be in-house budget neutral, based on a baseline of September 1995 in-house costs and consistent with the Department of the Army (DA) plan to downsize laboratories. Army managers at the DoD S&T Reinvention Laboratory sites will manage and control their personnel costs to remain within established in-house budgets. An in-house budget is a compilation of costs of the many diverse components required to fund the day-to-day operations of a laboratory. These components generally include pay of people (labor, benefits, overtime, awards), training, travel, supplies, non-capital equipment, and other costs depending on the specific function of the activity.

This project will be under the joint sponsorship of the Assistant Secretary of the Army for Research, Development

and Acquisition and the Assistant Secretary of the Army for Manpower and Reserve Affairs. The Commander, U.S. Army Materiel Command, will execute and manage the project. Project oversight within the Army will be achieved by an executive steering committee made up of top-level executives, co-chaired by the Deputy Assistant Secretary of the Army for Research and Technology and the Deputy Assistant Secretary of the Army (Civilian Personnel Policy)/Director, Civilian Personnel. Oversight external to the Army will be provided by the Department of Defense and the Office of Personnel Management.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of Department of Defense (DoD) laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. The quality of DoD laboratories, their people, and products has been under intense scrutiny in recent years. This perceived deterioration of quality is due, in substantial part, to the erosion of control which line managers have over their human resources. This demonstration, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve quality laboratories and quality products.

B. Problems with the Present System

The AVRDEC products contribute to the readiness of U.S. forces and to the stability of the American economy. To do this, the AVRDEC must acquire and retain an enthusiastic, innovative, and highly educated and trained workforce, particularly scientists and engineers. The AVRDEC must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees. Today, industry laboratories can make an offer of employment to a promising new hire before the government can prepare the paperwork necessary to begin the recruitment process.

Currently, jobs are described using a cumbersome classification system that is overly complex and specialized. This hampers a manager's ability to shape the workforce and match the positions while making best use of employees. Managers must be given local control of positions and their classification to move both their employees and vacancies within their organization to other lines of the business activities to match the life cycle needs of supported customers.

These issues work together to hamper supervisors in all areas of human resource management. Hiring restrictions and overly complex job classifications, coupled with poor tools for rewarding and motivating employees and a system that does not assist managers in removing poor performers builds stagnation in the workforce and wastes valuable time.

C. Changes Required/Expected Benefits

This project is expected to demonstrate that a human resource system tailored to the mission and needs of the AVRDEC will result in: (a) increased quality in the total workforce and the products they produce; (b) increased timeliness of key personnel processes; (c) increased retention of high quality employees and separation rates of poor quality employees; and (d) increased customer satisfaction with the AVRDEC and its products by all customers it serves.

The AVRDEC demonstration program builds on the successful features of demonstration projects at China Lake and the National Institute of Standards and Technology (NIST). These demonstration projects have produced impressive statistics on the job satisfaction for their employees versus that for the federal workforce in general. Therefore, in addition to expected benefits mentioned above, the AVRDEC demonstration expects to find more satisfied employees on many aspects of the demonstration including pay equity, classification decisions, and career development opportunities. A full range of measures will be collected during project evaluation (Section VII).

D. Participating Organization

AVRDEC has approximately 785 employees covered by the project. Approximately 59 percent of the employees are located at the Federal Center, St. Louis, Missouri, with the remaining located at the following sites: Moffett Field, California; St. Paul, Minnesota; Fort Eustis, Virginia; Hampton, Virginia, and Washington, DC.

Successor organization(s) which may result from actions associated with the 1995 Base Realignment and Closure Commission will continue coverage in the demonstration project.

E. Participating Employees

The demonstration project includes civilian appropriated funded employees in the competitive and excepted service paid under the General Schedule (GS) pay system. Scientific and Professional (ST) employees will only be included for the provisions of performance appraisal, awards, and employee development; their classification, staffing, and compensation will not change. Senior Executive Service employees, Federal Wage System employees, and employees in the Civilian Intelligence Personnel Management System will not be covered in the demonstration project. Additionally, DA interns will not be converted to the demonstration until they complete their intern program. Personnel added to the laboratory in like positions covered by the demonstration (either through appointment, promotion, reassignment, change to a lower grade or where their functions and positions have been transferred into the laboratory) will be converted to the demonstration project

F. Labor Participation

The National Federation of Federal Employees (NFFE) Local 405 *currently* represents many GS employees at AVRDEC, St. Louis. However, based upon the 1995 Base Realignment and Closure (BRAC) commission action disestablishing ATCOM, these employees will be transferred to a newly established major subordinate command *prior* to their participation in the demonstration project. It is uncertain, at this time, as to what labor organization, if any, will represent AVRDEC employees at the time the demonstration project is implemented.

Therefore, NFFE has not been involved in the development of the project. As a courtesy, NFFE was briefed, along with all potentially affected employees, prior to the submission of this plan. However, it is noted that, if an exclusive representative is recognized prior to final implementation of the demonstration project, the AVRDEC may have bargaining obligations to that representative and is prepared to fulfill such prior to implementation.

Currently, no union represents AVRDEC employees at the Moffett Field, Fort Eustis, and Hampton geographic locations.

G. Project Design

As a result of the 1995 BRAC recommendation transferring the AVRDEC to Redstone Arsenal; the subsequent identification of the

AVRDEC as an Army Science and Technology Reinvention Laboratory; and ATCOM and the U.S. Army Missile Command (MICOM) management decisions to maintain two RDECs at Redstone Arsenal with common functional areas merged within the MRDEC; the Executive Director, AVRDEC, decided to accelerate the AVRDEC role in the civilian personnel demonstration project to that of an initial demonstration site. Since the two RDECs will be collocated at Redstone Arsenal, the Executive Director decided to formulate the AVRDEC personnel demonstration proposal based on the MRDEC proposal, taking maximum advantage of the MRDEC experience and lessons learned in developing its proposal. The following is a brief synopsis of the combined AVRDEC/MRDEC demonstration project design.

An Integrated Process Team approach was used to develop the attributes of this personnel demonstration proposal. The team was lead by MRDEC management, and team members came from managers and associates from the MRDEC, AFGE Local 1858, the Civilian Personnel Office (CPO), and several other major functional organizations within MICOM. The AVRDEC assembled a similar team using management, business management, and CPO personnel.

This personnel system design has been subjected to critical reviews by both MRDEC and MICOM. Additionally, negotiations with AFGE Local 1858 have influenced the design in areas of significant concern to bargaining unit employees.

The design was based upon exhaustive study of broadbanding systems currently practiced in the Federal sector. Additionally, consultation was provided by the designers of the broadbanding systems practiced by the Navy China Lake experiment and the National Institute of Standards and Technology. The preliminary demonstration concept was briefed to the ATCOM Command Group and the AVRDEC workforce, at all geographic locations. During these briefing sessions, employees were afforded the opportunity to ask questions and were given a list of points of contact for concerns and questions. Subsequent concept revisions have evolved from critical reviews by headquarters elements of the Department of the Army, Department of Defense, and the Office of Personnel Management.

H. Personnel Management Board

The AVRDEC intends to establish an appropriate balance between the personnel management authority and accountability of supervisors and of the oversight responsibilities of a Personnel Management Board (PMB). The Executive Director will delegate management and oversight of the Project at AVRDEC to a Personnel Management Board whose members, Chairperson, and staff will be appointed by the Executive Director. The PMB membership include representation from the major geographic locations of the AVRDEC and will be tasked with the following:

1. Overseeing the civilian pay budget,
2. Determining the composition of the pay-for-performance pay pools in accordance with the guidelines of this proposal and internal procedures,
3. Administering funds allocation to pay pool managers,
4. Reviewing operation of AVRDEC pay pools,
5. Reviewing hiring and promotion salaries as well as exceptions to pay-for-performance salary increases,
6. Providing guidance to pay pool managers,
7. Monitoring award pool distribution by organization or any other special categorization,
8. Selecting participants for the Expanded Developmental Opportunity Program, long term training, and any special developmental assignments,
9. Managing promotions to stay within ''high grade'' controls,
10. Addressing in-house budget neutrality issues to include tracking of average salaries,
11. Assessing the need for changes to demonstration procedures and policies.

III. Personnel System Changes

A. Broadbanding

Occupational Families

Occupations at the AVRDEC will be grouped into occupational families. Occupations will be grouped according to similarities in type of work, customary requirements for formal training or credentials, and in consideration of the business practices at the AVRDEC. The common patterns of advancement within the occupations as practiced at DoD Laboratories and in the private sector will also be considered. The current occupations and grades have been examined, and their characteristics and distribution have served as guidelines in the development of the four occupational families described below:

1. *Engineers and Scientists* (E&S). This occupational family includes all technical professional positions, such as engineers, physicists, and mathematicians. Predominantly, specific course work or educational degrees are required for these occupations.

2. *E&S Support.* This occupational family contains positions that directly support the E&S mission: it includes specialized functions in such fields as technical information management, librarians, equipment specialists, quality assurance, and engineering and electronics technicians. Employees in these jobs may or may not require college course work. However, training and skills in the various electrical, mechanical, chemical or computer crafts and techniques are generally required.

3. *Business Management.* This occupational family contains specialized functions in such fields as accounting, administrative, counsel, finance, management analysis, personnel, procurement, public information, and safety. Analytical ability and specialized knowledge in administrative fields or special degrees are required.

4. *General Support.* This occupational family is composed of positions for which minimal formal education is needed, but for which special skills, such as office automation or shorthand, are usually required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Other support functions include the work of secretaries and office automation clerks.

Paybands

Each occupational family will be composed of discrete paybands (levels) corresponding to recognized advancement within the occupations. These paybands will replace grades. They will not be the same for all occupational families. Each occupational family will be divided into four to five paybands; each payband covering the same pay range now covered by one or more grades. A salary overlap, similar to the current overlap between GS grades, will be maintained.

Ordinarily an individual will be hired at the lowest salary in a payband. Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead to a higher entrance level within a band.

The proposed paybands for the occupational families and how they relate to the current GS grades are shown in Figure 1. Application of the Fair Labor Standards Act (FLSA) within each payband is also shown in Figure 1. This payband concept has the following advantages:

1. It may reduce the number of classification decisions required during an employee's career.

2. It simplifies the classification decision-making process and paperwork. A payband covers a larger scope of work than a grade, and thus will be defined in shorter and simpler language.

3. It supports delegation of classification authority to line managers.

4. It provides a broader range of performance-related pay for each level. In many cases, employees whose pay would have been frozen at the top step of a grade will now have more potential for upward movement in the broader payband.

5. It prevents the progression of low performers through a payband by mere longevity, since job performance serves as the basis for determining pay.

The AVRDEC broadbanding plan expands the broadbanding concept used at China Lake and NIST by creating Payband V of the Engineers and Scientists occupational family. This payband is designed for Senior Technical Managers and Senior Scientists/Engineers.

Current OPM guidelines covering the Senior Executive System and Scientific and Professional (ST) positions do not fully meet the needs of AVRDEC. The SES designation is appropriate for executive level managerial positions whose classification exceeds the GS–15 grade level. The primary knowledges and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are designed for bench research scientists and engineers. OPM guidelines state that the duties and responsibilities of ST positions must not include any managerial or supervisory responsibility.

AVRDEC currently has several division/office chief positions that have characteristics of both SES and ST classifications. These division/office chiefs in AVRDEC are responsible for supervising other GS–15 positions, including function supervisors and non-supervisory researcher engineers and scientists. AVRDEC management considers the primary requirement for division/office chiefs to be knowledgeable of and have expertise in the specific scientific and technology areas related to the mission of their organizations. The ability to manage, while important, is considered secondary. Historically, these positions have been filled by employees who possess primarily scientific/engineering credentials and who are considered experts in their field by the scientific community. While it is clear these positions warrant classification beyond the GS-15 level, attempts to classify most of the positions as SES have been difficult because the size of the organizations and their location in the Center are not competitive with other SES level positions. Classification of the positions as ST is also not an option because the supervisory responsibilities cannot be ignored.

As preeminent scientists and engineers, incumbents of ST positions are responsible for specific research and development efforts that are continuing and long range, generally requiring the efforts of a team. These ST positions usually serve as team leaders which means there is some responsibility for assigning work, coordinating results, and redirecting efforts. It is administratively convenient for these research team leaders to also participate in performance management. The restriction of including supervisory authorities in ST jobs has forced AVRDEC to exclude any mention of the team leader responsibilities in these position descriptions for fear that they will be interpreted as characteristic of SES rather than ST positions. Consequently, AVRDEC has some positions that do not strictly conform to OPM definitions of either the SES or ST.

The purpose of Payband V is to overcome the difficulties identified above by creating a category for two types of positions—the Senior Technical Manager (with full supervisory authority) and the Senior Engineer/Scientist (less than full supervisory authority or no supervisory authority). Current GS–15 division/office chiefs will convert into the demonstration project at Payband IV. After conversion they will be reviewed against established criteria added to determine if they should be reclassified to Payband V. Other positions possibly meeting criteria for classification to Payband V will be reviewed on a case-by-case basis. The proposed salary range is the same as currently exists for ST positions (minimum of 120% of the minimum rate of basic pay for GS–15 with a maximum of the basic rate of pay established for Level IV of the Executive Schedule).

Vacant positions in Payband V will be competitively filled to ensure that selections are made from among the world's preeminent researchers and technical leaders in the specialty fields. AVRDEC will capitalize on the efficiencies that can accrue from central recruiting by continuing to use the expertise of the Army Materiel Command SES Office as the recruitment agent. Panels will be created to assist in filling Payband V positions. Panel members will be selected from a pool of current AVRDEC SES members, ST employees and those in Payband V, and an equal number of individuals of equivalent stature from outside the Center to ensure impartiality, breadth of technical expertise, and a rigorous and demanding review. The panel will apply criteria developed largely from the current OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level. The same procedure will be used for evaluating Senior Technical Manager positions except the rating criteria will be adjusted to account for the difference in the positions, such as greater emphasis on technical program management and supervisory abilities.

The final component of Payband V is the management of all Payband V assets. Specifically, this includes authority to classify, create, downgrade or abolish positions as circumstances warrant; recruit and reassign employees in this payband; set pay and to have their performance appraised under this project's Pay for Performance System. This authority will be executed within parameters to be established at the DA level, to include controls on the numbers of Payband V positions and recruitment/promotion criteria. The specific details regarding control and management of Payband V assets will be included in the demonstration's operating procedures. The laboratory wants to demonstrate increased effectiveness by gaining greater managerial control and authority, consistent with merit, affirmative action, and equal employment opportunity principles.

BILLING CODE 6325–01–P

Figure 1. Paybands and Occupational Families

Occupational Families	Bands															
Corresponding GS grades	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
Engineers & Scientists DB	I N				II *							III E		IV E		V E
E&S Support DE	I N				II *					III *			IV E		V E	
Business Mgt DJ	I N				II *					III *			IV E		V E	
General Support DK	I N				II *		III *		IV *							

FLSA CODES: N - Nonexempt
E - Exempt
*** - Nonexempt or Exempt**

*** Note: Although typical exemption status under the various paybands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.**

BILLING CODE 6325–01–C

Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and nonexemption determinations will be made consistent with criteria found in 5 CFR Part 551. There are eight paybands (see Figure 1) where employees can be either exempt or nonexempt from overtime provisions. For these eight paybands, supervisors with classification authorities will make the determinations on a case-by-case basis by comparing the duties and responsibilities assigned, the classification standards for each payband, and the 5 CFR part 551 FLSA criteria. Additionally, the advice and assistance of the Civilian Personnel Advisory Center/Civilian Personnel Operations Center (CPAC/CPOC) will be obtained in making determinations as part of the performance review process. The benchmark position descriptions will not be the sole basis for the determination. Basis for exemption will be documented and attached to each description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the CPAC/CPOC, as appropriate.

Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that the AVRDEC have increased flexibility to assign individuals. Broadbanding can be used to address this need. As a result of the assignment to a particular level descriptor, the organization will have increased flexibility to assign an employee, without pay change, within broad descriptions consistent with the needs of the organization, and the individual's qualifications and rank or level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level and area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current level descriptor.

Such assignments within the coverage of the generic descriptors are accomplished without the need to process a personnel action. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows a broader latitude in assignments and further streamlines the administrative process and system.

Promotion

A promotion is a move of an employee to (1) a higher payband in the same occupational family or (2) a payband in another occupational family in combination with an increase in the employee's salary. Positions with known promotion potential to a specific band within an occupational family will be identified when they are filled. Not all positions in an occupational family will have promotion potential to the same band. Movement from one occupational family to another will depend upon individual knowledge, skills, and abilities, and needs of the organization.

Promotions will be processed under competitive procedures in accordance with merit principles and requirements and the local merit promotion plan. The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same payband and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer or reinstatement to a position having promotion potential no

greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction in force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion, or detail to a position in a higher payband, of 180 days or less.

(f) Reclassification to include impact of person on-the-job promotions.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(h) Consideration of a candidate not given proper consideration in a competitive promotion action.

(i) Impact of person on the job and Factor IV process (application of the Research Grade Evaluation Guide, Equipment Development Grade Evaluation Guide, Part III, or similar guides) promotions.

Link Between Promotion and Performance

Career ladder promotions and promotions resulting from the addition of duties and responsibilities are examples of promotions that can be made noncompetitively. Promotions can be made noncompetitively when contributions and achievements are such that a higher payband is achieved when comparing the overall position to the Equipment Development Grade Evaluation Guide, Part III or the Research Grade Evaluation Guide. To be promoted noncompetitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of B or better (see *Performance Evaluation*) or equivalent under a different performance management system. Selection of employees through competitive procedures will require a current performance rating of B or better.

B. Pay-for-Performance Management System

Performance Evaluation

Introduction

The performance evaluation system will link compensation to performance through annual performance appraisals and performance scores. The performance evaluation system will allow optional use of peer evaluation and/or input from subordinates as determined appropriate by the Personnel Management Board. The system will have the flexibility to be modified, if necessary, as more experience is gained under the project.

Performance Objectives

Performance objectives are statements of job responsibilities based on the work unit's mission, goals and supplemental benchmark position descriptions. Employees and supervisors will jointly develop performance objectives which will reflect the types of duties and responsibilities expected at the respective pay level. In case of disagreements, the decision of the supervisor will prevail. Performance objectives deal with outputs and outcomes of a particular job. The performance objectives, representing joint efforts of employees and their rating chains, should be in place within 30 days from the beginning of each rating period.

Performance Elements

Performance elements are generic attributes of job performance, such as technical competence, that an employee exhibits in performing job responsibilities and associated performance objectives. New performance elements and rating forms will be designed to implement a new scoring and rating system. The new performance evaluation system will be based on critical and non-critical performance elements defined in Appendix C. Each performance element is assigned a weight between a specified range. The total weight of all elements in a performance plan is 100 points. The supervisor assigns each element some portion of the 100 points in accordance with its importance for mission attainment. As a general rule, essentially identical positions will have the same critical elements and the same weight. These weights will be developed along with employee performance objectives.

Mid-Year Review

A mid-year review between a supervisor and employee will be held to determine whether objectives are being met and whether ratings on performance elements are above an unsatisfactory level. Performance objectives should be modified as necessary to reflect changes in planning, workload, and resource allocation. The weights assigned to performance elements may be changed if necessary. Additional reviews may be held as deemed necessary by the supervisor or requested by the employee. The supervisor will provide periodic feedback to the employee on their level of performance. If the supervisor determines that the employee is not performing at an acceptable level on one or more elements, the supervisor must alert the employee and document the problem(s). This feedback will be provided at any time during the rating cycle.

Performance Appraisal

A performance appraisal will be scheduled for the final weeks of the annual performance cycle, although an individual performance appraisal may be conducted at any time after the minimum appraisal period of 120 days is met. The performance appraisal process brings supervisors and employees together for formal discussions on performance and results in (1) written appraisals, (2) performance ratings, (3) performance scores, and (4) other individual performance-related actions as appropriate. A performance appraisal shall consist of two meetings held between employee and supervisor: the performance review meeting and the evaluation feedback meeting.

Performance Review Meeting Between Employee and Supervisor

The review meeting is to discuss job performance and accomplishments. Supervisors will not assign performance scores or performance ratings at this meeting. The supervisor notifies the employee of the review meeting in time to allow the employee to prepare a list of accomplishments. Employees will be given an opportunity at the meeting to give a personal performance assessment and describe accomplishments. The supervisor and employee will discuss job performance and accomplishments in relation to the performance elements, objectives, and planned activities established in the performance plan.

Evaluation Feedback Meeting Between Employee and Supervisor

In this second meeting between employee and supervisor, the supervisor informs the employee of management's appraisal of the employee's performance on performance objectives, and the employee's performance score and rating on performance elements. During this second meeting, the supervisor and employee will discuss and document performance objectives for the next rating period.

Performance Scores

The overall score is the sum of individual performance element scores. Employees will receive an academic-type rating of A, B, C, or U depending upon the score attained. These summary ratings are representative of pattern E (a 4 level system) in summary level chart

in 5 CFR 430.208(d)(1). This rating will become the rating of record, and only those employees rated C or higher will receive general increases, performance pay increases (i.e., basic pay increases), and/or performance bonuses. A rating of A will be assigned for scores from 85 to 100 points, B for scores from 70 to 84, C for scores from 50 to 69, and U for scores from 0 to 49 or a failure to achieve at the 50% level of any critical element. The academic-type ratings will be used to determine performance payouts and to award additional RIF retention years as follows:

Rating	Compensation	RIF retention yrs. added
A	4 shares + c*	10
B	2 shares + c	7
C	1 share + c	3
U	0	0

**c* = GS General Increase (Title 5, Section 5303).

Selection of the weighted points to assign to an employee's performance on performance elements is assisted by use of benchmark performance standards (Appendix D). These benchmark performance standards are modified versions of the performance standards used by the National Institute of Standards and Technology (NIST), National Bureau of Standards. Each benchmark performance standard describes the level of performance associated with a particular point on a rating scale. Supervisors may add supplemental standards to the performance plans of the employees they supervise to further elaborate the benchmark performance standards.

Performance-Based Actions

AVRDEC will implement a process to deal with poor performers. This process may lead to involuntary separations, with grievance or appeal rights. The process may start at any time during the rating period that the supervisor identifies a deficiency(ies) causes the level of performance to be at the U (unsatisfactory) level based on a composite score that is less than 50 for all elements or a score on any critical element of less than 50 percent.

When the employee's performance is determined to be unsatisfactory at the close of the annual rating period, the Unsatisfactory (U) rating will become the rating of record for all matters relating to pay or Reduction-in-Force (RIF).

There are two processes to deal with poor performers:

1. Change in Assignment—Because it is recognized that employees may be assigned to a position for which they are not suited, an attempt will be made to place poor performers in a position better suited to their skills and capabilities. The offer of change in assignment will be contingent upon the employee's concurrence and will be either within the same band or in the next lower payband. If reassigned, the employee will receive written notification that they will be given a reasonable opportunity period of no less than 30 calendar days in length to demonstrate performance at a level that is at least equal to that of a summary level C rating. The period of time considered to be reasonable will be determined, in part, by whether the employee's reassignment is to a substantially similar or the same position under a different supervisor, or in a different office, or in a substantially different position. Essential training and mentoring will be provided as appropriate during this opportunity period. Failure to achieve a level of performance that is at least equal to that of a summary level C rating (following the above-referenced opportunity period) will place the employees in Step 3 of this process. There will be no further opportunity period.

2. Performance Improvement Plan (PIP)—If the employee does not accept an offer of change in assignment, or if there is no appropriate, available position to assign an employee, the supervisor will develop a PIP that will be monitored for a reasonable period of time (no less than 30 calendar days). When an employee is placed in a PIP, the employee will be informed in writing, that unless their level of performance improves to, and is sustained at a level at least equal to that of a summary level C rating, the employee may be removed from the position (change in assignment, reduction in pay, or removal from the Federal service).

If, during or at the conclusion of the PIP, the employee's level of performance improves to a level at least equal to that of a summary level C rating and is again determined to deteriorate to below level C in any area during one year from the beginning of the PIP, the AVRDEC may initiate action to remove the employee from the position with no additional opportunity to improve. An employee whose level of performance improves to a level at least equal to that of a summary level C rating for one year from the beginning of the PIP, and then deteriorates again to below level C again in any area, during succeeding rating periods, will be placed in a second PIP before initiating action to remove the employee from the position.

If and when performance improves during the period in which the employee is otherwise ineligible for the general increase, then the general increase shall be restored. Such restoration is not retroactive and is separate and apart from incentive pay.

3. Removal—If the employee fails to demonstrate a level of performance at least equal to that of a summary level C rating after completing either Step 1 or Step 2, the employee will be given a written notice of proposed removal from the position. The notice period will be a minimum of 30 calendar days and the employee will have a reasonable period of time in which to reply. The employee will be given a written notice of decision to include all applicable grievance and appeal rights.

Note: Performance-based adverse actions may be taken under 5 U.S.C., Chapter 75, rather than Chapter 43.

A decision to remove an employee for poor performance may be based only on those instances of poor performance that occurred during the opportunity period (Step 1) or during the one-year period ending on the date of proposed removal (Step 2). The notice of decision will specify the instances of poor performance on which the action is based and will be given to the employee at or before the time the action will be effective.

The AVRDEC will preserve all relevant documentation concerning an action taken for poor performance and make it available to review by the affected employee or designated representative. At a minimum, the record will consist of a copy of the notice of proposed action; the employee's written reply, if provided, or a summary if the employee makes an oral reply. Additionally, the record will contain the written notice of decision and the reasons therefore, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate improved performance. An employee who sustains their performance at a level at least equal to a summary level C rating for one year, will have all relevant documentation removed from their record.

Employee Relations

Employees covered by the project will be evaluated under a performance evaluation system that affords grievance or appeal rights comparable to those provided currently.

Senior Executive Service and 5 U.S.C. 3104 (ST) Employees

Members of the SES will remain under the current SES performance appraisal system. Title 5 U.S.C. 3104 (ST) employees will be included in the project performance evaluation system, but will not be in the project pay-for-performance system.

Awards

The AVRDEC currently has an extensive awards program consisting of both internal and external awards. On-the-spot, special act (which are both performance related and nonperformance related), and other internal awards (both monetary and nonmonetary) will continue under the project, and may be modified or expanded as appropriate. MACOM, DA, and DoD awards and other honorary noncash awards will be retained.

Teams may distribute an award pool among themselves where appropriate. Thus, a team leader or supervisor may allocate a sum of money to a team for outstanding completion of a special task, and the team may decide the individual distribution of the total dollars among themselves.

The AVRDEC Executive Director will have the authority to grant awards to covered employees of up to $10,000 for a special act. The scale of the award will be determined using criteria in AR 5–17.

Members of the SES will remain under their current awards system and will not participate in the project performance recognition bonus awards program. Title 5 U.S.C. 3104 (ST) employees will be eligible for cash awards.

Pay Administration

Introduction

The objective is to establish a pay system that will improve the ability of the AVRDEC to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a redistribution of pay resources based upon individual performance.

Pay-for-Performance

AVRDEC will use a simplified performance appraisal system that will permit both the supervisor and the employee to focus on quality of the work. The proposed system will permit the manager/supervisor to base incentive pay increases entirely on performance or value added to the goals of the organization. This system will allow managers to withhold pay increases from nonperformers, thereby giving the nonperformer the incentive to improve performance or leave government service. For example, employees with ratings of U will receive no performance pay increase, general increase, or performance bonus. This action may result in the employee's pay falling below the minimum rate of their current payband because the minimum rate is increased by the general increase (5 U.S.C. 5303). Under these transitory conditions, the employee's payband designator will remain the same. Since there is no reduction in band level or pay, there is no adverse action.

Pay for performance has two components: performance pay increases and/or performance bonuses. All covered employees will be given the full amount of locality pay adjustments when they occur regardless of performance. The funding for performance pay increases and/or performance bonuses is composed of money previously available for within-grade increases, quality step increases, promotions from one grade to another where both grades are now in the same payband, and for some performance awards. Additionally, funds will be obtained from performance pay increases withheld for poor performance (see *Performance Evaluation*).

Performance Pay Pool

The performance pay pool is composed of a base pay fund and a bonus pay fund. The payouts made to employees from the performance pay pool will be a mix of base pay increases and bonus payments, subject to the amounts available in the respective funds. The funding for the base pay fund is composed of money previously available for within-grade increases, quality step increases, and promotions between grades that are banded under the demonstration project. The bonus pay fund is separately funded within the constraints of the organization's overall performance award budget. Some portion of the performance award budget will be reserved for special ad hoc awards—e.g., suggestion awards or special act awards—and will not be included as part of the performance pay pool.

The MRDEC Management of Operations and Business Office, in consultation with Executive Director, AVRDEC, and supporting personnelists, will calculate the total performance pay increase fund and allocate pay pools to Major Organizational Units or teams, as determined by the Executive Director.

Performance Pay Increases and/or Performance Bonuses

A pay pool manager is accountable for staying within pay pool limits. The pay pool manager assigns performance pay increases and/or performance bonuses to individuals on the basis of an academic-type rating, the value of the performance pay pool resources available, and the individual's current basic rate of pay within a given payband. A pay pool manager may request approval from the Personnel Management Board (PMB) or its designee to grant a performance pay increase to an employee that is higher than the compensation formula for that employee to recognize extraordinary achievement or to provide accelerated compensation for local interns.

Performance payouts will be calculated for each individual based upon a performance pay pool value that will be initially 3 percent (e.g., 2.0% performance pay + 1.0% performance bonus) of the combined basic rates of pay of the assigned employees. This percentage, a payout factor, will be adjusted as necessary to compensate for changing employee demographics which impact the elements used in the GS system, such as the amount of step raises, quality step increases, and promotions. Performance payouts will be calculated so that a pay pool manager will not exceed the resources that are available in the pay pool. An employee's performance payout is computed as follows:

$$\text{Performance Payout} = \frac{\text{Pool Value} * \text{SAL} * \text{N}}{\text{SUM}\left(\text{SALj} * \text{Nj}\right);\ \text{j} = 1 \text{ to n}}$$

Where: Pool Value = F * SUM (SALk); k = 1 to n

n = Number of employees in pay pool

N = Number of shares earned by an employee based on their performance rating (0 to 4)

SAL = An individual's basic rate of pay

SUM = The summation of the entities in parenthesis over the range indicated

F = Payout Factor

Once the individual performance payout amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. A base pay share factor is derived by dividing the amount of the base pay fund by the amount of the total performance pay pool. This factor is multiplied by the individual performance payout amounts to derive each individual's projected base pay increase. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of pay in an assigned payband, when the mid-point principle applies (see below), and when the 50 percent rule applies (see below).

If the organization determines it is appropriate, it may reallocate a portion (up to the maximum possible amount) of the unexpended base pay funds for capped employees to uncapped employees. This reallocation must be made on a proportional basis so that all uncapped employees receive the same percentage increase in their base pay share (unless the reallocation adjustment is limited by a pay cap). Any dollar increase in an employee's projected base pay increase will be offset, dollar for dollar, by an accompanying reduction in the employee's projected bonus payment. Thus, the employee's total performance payout is unchanged.

A midpoint principle will be used to determine performance pay increases. This principle requires that employees in all paybands must receive a B rating or higher to advance their basic rate of pay beyond the midpoint dollar threshold of their respective paybands. If the performance payout formula yields a basic pay increase for a C-rated employee that would increase their basic rate of pay beyond the midpoint dollar threshold, then their basic rate of pay will be adjusted to the midpoint dollar threshold and the balance converted to a performance bonus. Once an employee has progressed beyond the midpoint dollar threshold, future performance pay increases will require a B rating or greater. If an employee attains a C rating and is beyond the midpoint dollar threshold, incentive pay increases will be restricted to performance bonuses only.

Annual performance pay increases will be limited to (1) 50 percent of the difference between the particular maximum band rate and the employee's current basic rate of pay, or (2) the projected performance pay increase, whichever is less, with the balance converted to a performance bonus. This means that employees whose pay has reached the upper limits of a particular payband will receive most performance incentives as a performance bonus. Performance bonuses will not become a part of employee basic rate of pay.

Supervisory Pay Adjustments

Supervisory pay adjustments may be used at the discretion of the AVRDEC Executive Director, to compensate employees assuming positions entailing supervisory responsibilities. Supervisory pay adjustments are increases to the supervisor's basic rate of pay, ranging up to 10 percent of that pay rate, subject to the constraint that the adjustment may not cause the employee's basic rate of pay to exceed the payband maximum rate. Only employees in supervisory positions with formal supervisory authority meeting that required for coverage under the OPM GS Supervisory Guide may be considered for the supervisory pay adjustment. Criteria to be considered in determining the pay increase percentage include the following organizational and individual employee factors: (1) Needs of the organization to attract, retain, and motivate high quality supervisors; (2) budgetary constraints; (3) years of supervisory experience; (4) amount of supervisory training received; (5) performance appraisals and experience as a group or team leader; (6) their organizational level of supervision; and (7) managerial impact on the organization. The supervisory pay adjustment will not apply to 5 U.S.C. 3104 (ST) positions.

Conditions, after the date of conversion into the demonstration project, under which the application of a supervisory pay adjustment may be considered are as follows:

(1) New hires into supervisory positions will have their initial rate of basic pay set at the supervisor's discretion within the pay range of the applicable payband. This rate of pay may include a supervisory pay adjustment determined using the ranges and criteria outlined above.

(2) A career employee selected for a supervisory position that is within the employee's current payband may also be considered for a supervisory pay adjustment.

If a supervisor is already authorized a supervisory pay adjustment and is subsequently selected for another supervisory position, within the same payband, then the supervisory pay adjustment will be redetermined.

Within the demonstration project rating system, the performance element ''Supervision/EEO'' is identified as a critical element. Changes in the rating value for this element awarded to a supervisor with a supervisory pay adjustment may generate a review of the adjustment and may result in an increase or decrease to that adjustment. Decrease to a supervisory pay adjustment is not an adverse action if this action results from changes in supervisory duties or supervisory ratings.

Supervisors, upon initial conversion into the demonstration project into the same, or substantially similar position, will be converted at their existing basic rate of pay and will not be offered a supervisory pay adjustment.

The initial dollar amount of the adjustment will be removed when the employee voluntarily leaves the supervisory position. The cancellation of the adjustment under these circumstances is not an adverse action and is not appealable. If an employee is removed from a supervisory position for personal cause (performance or conduct), the adjustment will be removed under adverse action procedures. However, if an employee is removed from a non-probationary supervisory position for conditions other than voluntary or for personal cause, then the grade and pay retention provisions of 5 CFR part 536 will prevail where ''payband level'' is substituted for ''grade.''

Supervisory Pay Differentials

Supervisory differentials may be used, at the discretion of the AVRDEC Executive Director, to incentivize and reward supervisors who are in paybands III and IV of the E&S occupational family in supervisory positions with formal supervisory authority meeting that required for coverage under the OPM GS Supervisory Guide. A supervisory pay differential is a cash incentive that may range up to 10 percent of the supervisor's basic rate of pay. It is paid on a pay period basis and is not included as part of the supervisor's basic rate of pay. Criteria to be considered in determining the amount of this supervisory pay differential includes those identified for Supervisory Pay Adjustments.

The supervisory pay differential may be considered, either during conversion into or after initiation of the demonstration project, if the supervisor has subordinate employees in the same payband. The differential must be terminated if the employee is removed from a supervisory position, regardless of cause.

As specified in Supervisory Pay Adjustments, after initiation of the demonstration project, all personnel actions involving a supervisory

differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the AVRDEC Executive Director's discretion. The termination or reduction of the differential is not an adverse action and is not subject to appeal.

Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the basic rate of pay for level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B.

In addition, each payband will have its own pay ceiling, just as grades do in the current system. Pay rates for the various paybands will be directly keyed to the GS rates. Except for retained rates, basic pay will be limited to the maximum rates payable for each payband.

Pay Setting for Promotion

Upon promotion to a higher payband, an employee will be entitled to a 6% pay increase or the lowest level in the payband to which promoted, whichever is greater. Highest previous rate also may be considered in setting pay upon promotion, under rules similar to the highest previous rate rules in 5 CFR 531.203 (c) and (d).

C. Classification

Introduction

The objectives of the new classification system are to simplify the classification process, make the process more serviceable and understandable, and place more decision-making authority and accountability with line managers. All positions listed in Appendix A will be in the classification structure. Provisions will be made for including other occupations as employment requirements change in response to changing technical programs.

Occupational Series

The present GS classification system has over 400 occupations (also called series), which are divided into 22 groups. The occupational series will be maintained. New series, established by OPM, may be added as needed to reflect new occupations in the work force. Appendix A lists the occupational series currently represented at the AVRDEC by occupational family.

Classification Standards

AVRDEC will use a classification system that is a modification of the system now in use at the U.S. Navy, Naval Command, Control and Ocean Surveillance Center, San Diego, California. The present classification standards will be used to create local benchmark position descriptions for each payband, reflecting duties and responsibilities comparable to those described in present classification standards for the span of grades represented by each payband. There will be at least one benchmark position description for each payband. A supervisory benchmark position description will be added to those paybands that include supervisory employees. Present titles and series will continue to be used in order to recognize the types of work being performed and educational backgrounds and requirements of incumbents. Locally developed specialty codes and OPM functional codes will be used to facilitate titling, making qualification determinations, and assigning competitive levels to determine retention status.

Position Descriptions and Classification Process

The AVRDEC Executive Director will have delegated classification authority and may redelegate this authority to subordinate managers. New benchmark position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, the functional code, the specialty code, payband level, and the appropriate acquisition codes. The manager will document these decisions on a cover sheet similar to the present DA Form 374.

Specialty codes will be developed by Subject Matter Experts (SMEs) to identify the special nature of work performed. Functional codes are those currently found in the OPM Introduction to the Classification Standards which define certain kinds of activities, e.g., Research, Development, Test and Evaluation, etc., and covers Engineers & Scientists.

Classification Appeals

An employee may appeal the occupational family, occupational series, or payband of his or her position at any time. The employee may accomplish this by exercising any of the following options: (a) The employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing; (b) If the employee is not satisfied with the supervisory response, the employee may appeal to the appellate level within DoD or may appeal directly to Office of Personnel Management (OPM); (c) If the employee elects to first appeal to DoD, but is not satisfied with the response, he/she may appeal to the OPM. Appellate decisions from OPM are final.

The evaluation of a classification appeal is based on the AVRDEC Personnel Demonstration Project Classification Standards.

D. Hiring and Appointment Authorities

1. Hiring Authority

A candidate's basic eligibility will be determined using Office of Personnel Management's (OPM) Qualification Standards Handbook for General Schedule Positions. Candidates must meet the minimum standards for entry into the payband. For example if the payband includes positions in grades GS–5 and GS–7, the candidate must meet the qualifications for positions at GS–5 level. Specific experience/education required will be determined based on whether a position to be filled is at the lower or higher end of the band. Selective placement factors can be established in accordance with the OPM Qualification Handbook when judged to be critical to successful job performance. These factors will be communicated to all candidates for particular position vacancies and must be met for basic eligibility. Under the demonstration authority, the AVRDEC will modify qualification standards only as authorized in the General Policies and instructions (paragraph 8) of the Qualification Standard Handbook.

2. Appointment Authority

Under the demonstration project, there will continue to be career and career conditional appointments and temporary appointments not to exceed one year. These appointments will use existing authorities and entitlements. Non-permanent positions (exceeding one year) needed to meet fluctuating or uncertain workload requirements will be filled using a Contingent Employee appointment authority.

Employees hired for more than one year, under the contingent employee appointment authority, are given term appointments in the competitive service for no longer than five years. The AVRDEC Executive Director is authorized to extend a contingent appointment one additional year. These employees are entitled to the same rights and benefits as term employees and will serve a one year trial period. The Pay-for-Performance Management System described in III.B applies to contingent employees.

Appointments will be made under the same appointment authorities and processes as regular term appointments,

but recruitment bulletins must indicate that there is a potential for conversion to permanent employment.

Employees hired under the contingent employee authority may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career-conditional appointment at a later date; (2) served two years of continuous service in the term position; (3) be selected under merit promotion procedures for the permanent position ; and (4) have a current rating of B or better.

Employees serving under regular term appointments at the time of conversion to the Demonstration Project will be converted to the new contingent employee appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional appointment if they have a current rating of B or better (or one of the top two ratings on the current evaluation system), and are selected under merit promotion procedures for their permanent position after having completed two years of continuous service. Time served in temporary or term positions prior to conversion to the contingent employee appointment is creditable, provided the service was continuous.

3. Extended Probationary Period

The current one year probationary period will be extended to two years for all newly hired employees in the Engineers and Scientists, E&S Support, and Business Management occupational families. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a cycle of work (such as research, program development and execution, and technology transfer) and to fully evaluate an employee's contribution and conduct. Employees in the General Support occupational family will serve a one year probationary period.

Aside from extending the time period, all other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee appointed prior to the implementation date will not be affected. The two year probation will apply to new hires or those who do not have reemployment rights or reinstatement privileges.

Probationary employees will be terminated when the employee fails to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When the AVRDEC decides to terminate an employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate their fitness or qualifications for continued employment, it shall terminate his/her services by written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum consists of the manager's conclusions as to the inadequacies of their performance or conduct.

4. Supervisory Probationary Periods

Supervisory probationary periods will be made consistent with 5 CFR part 315, Subchapter 315.901. Employees that have successfully completed the initial probationary period will be required to complete an additional one year probationary period for the initial appointment to a supervisory position. If, during the probationary period, the decision is made to return the employee to a nonsupervisory position for reasons solely related to supervisory performance, the employee will be returned to a comparable position of no lower payband and pay than the position from which they were promoted.

5. Voluntary Emeritus Program

Under the demonstration project, the AVRDEC Executive Director will have the authority to offer retired or separated individuals (engineers and scientists) voluntary assignments in the Center. This authority will include individuals who have retired or separated from Federal service. Voluntary Emeritus Program assignments are not considered ''employment'' by the Federal government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The Voluntary Emeritus Program will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. The program will be of most benefit during manpower reductions as senior S&Es could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. Voluntary service will not be used to replace any employee.

To be accepted into the emeritus program, a volunteer must be recommended by Center managers to the AVRDEC Executive Director. Everyone who applies is not entitled to a voluntary assignment. The AVRDEC Executive Director must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the AVRDEC Executive Director and the CPAC/CPOC Director. The agreement will be reviewed by the local Legal Office for ethics determinations under the Joint Ethics Regulation. The agreement must be finalized before the assumption of duties and shall include:

(a) A statement that the voluntary assignment does not constitute an appointment in the civil service and is without compensation, and any and all claims against the Government (because of the voluntary assignment) are waived by the volunteer,

(b) A statement that the volunteer will be considered a federal employee for the purpose of injury compensation,

(c) Volunteer's work schedule,

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years),

(e) Support provided by the AVRDEC (travel, administrative, office space, supplies),

(f) A one page Statement of Duties and Experience,

(g) A provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay,

and leave as a result of being a member of the Voluntary Emeritus Program,

(h) A provision allowing either party to void the agreement with 10 working days written notice, and

(i) The level of security access required (any security clearance required by the assignment will be managed by the AVRDEC while the volunteer is a member of the Voluntary Emeritus Program).

E. Employee Development

1. Expanded Developmental Opportunity Program

The AVRDEC Expanded Developmental Opportunity Program will be funded by the AVRDEC, and it will cover all demonstration project employees in the Engineers and Scientists and the E&S Support occupational families. An expanded developmental opportunity complements existing developmental opportunities such as (1) long term training, (2) one year work experiences in an industrial setting via the Relations With Industry Program, (3) one year work experiences in laboratories of allied nations via the Science and Engineer Exchange Program, (4) rotational job assignments within the AVRDEC, (5) up to one year developmental assignments in higher headquarters within the Army and Department of Defense, and (6) self directed study via correspondence courses and local colleges and universities.

Each developmental opportunity period should benefit the AVRDEC, as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching or research, or on-the-job work experience with public or non-profit organizations. Employees will be eligible after completion of seven years of Federal service. Final approval authority will rest with the AVRDEC Executive Director, and selection of an employee to be granted an expanded developmental opportunity will be on a competitive basis. An expanded developmental opportunity period will not result in loss of (or reduction in) pay, leave to which the employee is otherwise entitled, or credit for time or service. Employees accepting an expanded development opportunity do not have to sign a continued service agreement cited in 5 U.S.C. 4108(a)(1) (Supplement 1995).

The opportunity to participate in the Expanded Developmental Opportunity Program will be announced annually. Instructions for application and the selection criteria will be included in the announcement. Final selection for participation in the program will be made by the Personnel Management Board. The position of employees on an expanded developmental opportunity may be backfilled with employees temporarily promoted, contingent employees, or employees assigned via the simplified assignment process in III.A. However, that position or its equivalent must be made available to the employee returning from the expanded developmental opportunity.

2. Training for Degrees

Degree training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training in the academic environment of laboratories is also a critical tool for recruiting and retaining employees with or requiring critical skills. Constraints under current law and regulation limit degree payment to shortage occupations. In addition, current government wide regulations authorize payment for degrees based only on recruitment or retention needs. Degree payment is not permitted for non-shortage occupations involving critical skills.

The AVRDEC proposes to expand the authority to provide degree payment for purposes of meeting critical skill requirements, to ensure continuous acquisition of advanced and specialized knowledge essential to the organization, and to recruit and retain personnel critical to the present and future requirements of the organization. Degree payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. It is expected that the degree payment authority will be used primarily and largely for advanced degrees, except where an undergraduate program is necessary to the attainment of an advanced degree or credits. Any variance from this policy must be rigorously determined and documented.

The AVRDEC will develop guidelines to ensure competitive approval of degree payment and that such decisions are fully documented. In addition, this proposal shall be implemented consistent with 5 U.S.C. 4107(b)(2).

F. Revised Reduction-in-Force (RIF) Procedures

Introduction

Modifications include limiting competitive area to occupational families and increasing the emphasis on performance in the RIF Process. Retention criteria are in the following order; tenure, veterans' preference, service credit adjusted by a sum of the last three performance ratings. Current reduction in force regulations/procedures have been adjusted in the context of the occupational family and the payband classification system. Also regulations are being modified by substituting ''same payband'' for ''same grade'' and ''one payband lower'' for ''three grades lower'.

Competitive Areas

The AVRDEC employees located at Ft. Eustis (to include Hampton, VA), Moffett Field, CA, and Redstone Arsenal, AL (to include individuals duty-stationed at Washington, DC and St. Paul, MN), will each be in separate competitive areas. Within each geographic competitive area, each of the four occupational families will be a separate competitive area. Bumps and retreats will occur only within the competitive area and only to positions for which the employee is qualified in the same or next lower payband.

Competitive levels will be established based on the payband, classification series, and where responsibilities are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an employee may be reassigned to any of the other positions within the level without requiring significant training or causing undue interruption. Separate competitive levels will be established for positions in the competitive and excepted service; for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis; and separate levels will be established for positions filled as a trainee or developmental.

Retention

Competing employees are listed on a retention register in the order shown below. Each tenure group has three subgroups (30% or higher compensable veterans, other veterans, and non-veterans) and employees appear on the retention register in that order. Within each subgroup, employees are in order of years of service adjusted to include performance credit.

Tenure I—(Career employees)
Tenure II—(Career-Conditional employees)
Tenure III—(Contingent employees)

In the Demonstration Project an employee can bump into a position, in the same occupational family in the same payband or one below, that is currently held by another employee in a lower retention subgroup. An

employee may retreat within the same occupational family in the same band or one payband below the one that is currently held by another employee in the same subgroup who has lower adjusted RIF service computation date. A preference eligible with a compensable service-connected disability of 30 percent or more may displace employees in positions equivalent to five GS grades below the minimum grade level of his/her current band.

An employee with a current annual performance rating of U has assignment rights only to a position held by another employee who has a U rating. An employee who has been given a written decision of removal because of unacceptable performance will be placed at the bottom of the retention register for his/her competitive level.

Link Between Performance and Retention

An employee will have additional years of service added to the service computation date for retention purposes. The credit is applied for each of the last three annual performance ratings of record, received over the last four years, for a potential credit of 30 years. If an employee has less than three annual performance ratings of record, then for each missing rating, a rating of C will be assumed. Ratings given under nonDemo systems will be converted to the demo rating scheme and provided the equivalent rating credit.

Rating A adds 10 years
Rating B adds 7 years
Rating C adds 3 years
Rating U adds no credit for retention

Grade and Pay Retention

Except where waived or modified in the waivers section of this plan, grade and pay retention will follow current law and regulations.

IV. Training

Introduction

The key to the success or failure of the proposed demonstration project will be the training provided for all involved. This training will not only provide the necessary knowledge and skills to carry out the proposed changes, but will also lead to program commitment on the part of participants.

Training at the beginning of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include: (1) a description of the personnel system, (2) how employees are converted into and out of the system, (3) the pay adjustment and/or bonus process, (4) familiarization with the new position descriptions and performance objectives, (5) the performance evaluation management system, (6) the reconsideration process, and (7) the demonstration project administrative and formal evaluation process.

Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, skills training in using the classification system, position description preparation, and performance evaluation. Additional training may focus on nonproject procedural techniques such as interpersonal and communication skills.

Administrative Staff

The administrative staff, generally personnel specialists, technicians, and administrative officers, will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will need training in the procedural and technical aspects of the project.

Employees

The AVRDEC, in conjunction with the education and development assets of the CPAC/CPOC, will train employees covered under the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

V. Conversion

Conversion to the Demonstration Project

a. Initial entry into the demonstration project will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate payband without loss of pay. Employees serving under regular term appointments at the time of the implementation of the demonstration project will be converted to the contingent employee appointment. Position announcement, etc. will not be required for these contingent employee appointments. An automatic conversion from current GS/GM grade and pay into the new broadband system will be accomplished. Each employee's initial total salary under the demonstration project will equal the total salary received immediately before conversion. Employees who enter the demonstration project later by lateral reassignment or transfer will be subject to parallel pay conversion rules. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

b. Employees who are on temporary promotions at the time of conversion will be converted to a payband commensurate with the grade of the position to which promoted. At the conclusion of the temporary promotion, the employee will revert to the payband which corresponds to the grade of record. When a temporary promotion is terminated, the employee's pay entitlements will be determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the AVRDEC. In no case may those adjustments increase the pay for the position or record beyond the applicable pay range maximum rate. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases actions to make the temporary promotion permanent will be considered, and if implemented, will be subject to all existing priority placement programs.

c. Employees who are covered by special salary rates, prior to the demonstration project, will no longer be considered a special rate employee under the Demonstration Project. These employees will, therefore, be eligible for full locality pay. The adjusted salaries of these employees will not change. Rather, the employees will receive a new basic pay rate computed by dividing their adjusted basic pay (higher of special rate or locality rate) by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in total salary.

d. During the first 12 months following conversion, employees will receive pay increases for non-competitive promotion equivalents

when the grade level of the promotion is encompassed within the same broadband, the employee's performance warrants the promotion and promotions that would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a prorated step increase equivalent as defined below.

e. At the time of conversion, each employee's salary will include a pro-rated increase for the time credited to the employee toward what would have been the employee's next within-grade increase. This adjustment to an employee's base pay will be computed by: calculating the ratio of the number of weeks the employee will have spent in the current step through the week prior to the day of conversion, to the total number of weeks in the employee's current waiting period for a regular within-grade increase; and multiplying that ratio by the dollar value of the employee's next within-grade increase at the time of conversion.

Conversion or Movement from a Project Position to a General Schedule Position

If a demonstration project employee is moving to a General Schedule (GS) position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project payband to a GS-equivalent grade and the employee's project rate of pay to GS equivalent rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

a. Grade-Setting Provisions: An employee in a payband corresponding to a single GS grade is converted to that grade. An employee in a payband corresponding to two or more grades is converted to one of those grades according to the following rules:

(1) The employee's adjusted rate of basic pay under the demonstration project (including any locality payment) is compared with step 4 rates in the highest applicable GS rate range. (For this purpose, a ''GS rate range'' includes a rate in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(2) If the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(3) If the employee's adjusted project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second highest grade in the employee's payband. If the employee's adjusted rate equals or exceeds step 4 rate of the second highest grade, the employee is converted to that grade.

(4) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(5) Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described ''step 4'' rule but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(6) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has undergone a reduction in band.

b. Pay-Setting Provisions: An employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to GS rate of pay in accordance with the following rules:

(1) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(2) An employee's adjusted rate of basic pay under the project (including any locality payment) is converted to a GS adjusted rate on the highest applicable rate range for the converted GS grade. (For this purpose, a ''GS rate range'' includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(3) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

(4) If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

c. Within-Grade Increase—Equivalent Increase Determinations: Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. Supporting personnel specialists will continue to process personnel-related actions and provide consultative and other appropriate services.

Automation

The AVRDEC will continue to use the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing

will continue from the respective payroll offices.

Local automated systems will be developed to support computation of performance related pay increases and awards and other personnel processes and systems associated with this project.

Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The AVRDEC will make minor modifications, such as changes in the occupational series in a occupational family without further notice. Major changes, such as a change in the number of occupational families, will be published in the Federal Register.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration. The project evaluation plan adequately addresses how each intervention will be comprehensively evaluated for at least the first 5 years of the demonstration. Major changes and modifications to the interventions can be made through announcement in the Federal Register and would be made if formative evaluation data warranted. At the 5 year point, the entire demonstration will be reexamined for either: (a) permanent implementation, (b) change and another 3–5 year test period, or (c) expiration.

VII. Evaluation Plan

Chapter 47 (Title 5 U.S.C.) requires that an evaluation system be implemented to measure the effectiveness of the proposed personnel management interventions. An evaluation plan for the entire laboratory demonstration program covering 24 DoD labs was developed by a joint OPM/DOD Evaluation Committee. A Comprehensive evaluation plan was submitted to the Office of Defense Research & Engineering in 1995 and subsequently approved (Proposed Plan for Evaluation of the Department of Defense S&T Laboratory Demonstration Program, Office of Merit Systems Oversight & Effectiveness, June 1995). The overall evaluation effort will be coordinated and conducted by OPM's Personnel Resources and Development Center (PRDC). The primary focus of the evaluation is to determine whether the waivers granted result in a more effective personnel system than the current as well as an assessment of the costs associated with the new system.

The present personnel system with its many rigid rules and regulations is generally perceived as an impediment to mission accomplishment. The Demonstration Project is intended to remove some of those barriers and therefore, is expected to contribute to improved organizational performance. While it is not possible to prove a direct causal link between intermediate and ultimate outcomes (improved personnel system performance and improved organizational effectiveness), such a linkage is hypothesized and data will be collected and tracked for both types of outcome variables.

An intervention impact model (Appendix B) will be used to measure the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified consistent with expected effects. Measures may also be deleted when appropriate. Activity-specific measures may also be developed to accommodate specific needs or interests which are locally unique.

The evaluation model for the Demonstration Project identifies elements critical to an evaluation of the effectiveness of the interventions. The overall evaluation approach will also include consideration of context variables that are likely to have an impact on project outcomes: e.g., HRM regionalization, downsizing, cross-service integration, and the general state of the economy. However, the main focus of the evaluation will be on intermediate outcomes, i.e., the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment, and customer satisfaction.

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual data will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of data will be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews, and focus groups; (4) local activity histories; and, (5) core measures of laboratory effectiveness.

VIII. Demonstration Project Costs

Costs associated with the development of the personnel demonstration system include software automation, training, and project evaluation. All funding will be provided through the ATCOM/AVRDEC (prior to BRAC implementation) and the U.S. Army Aviation and Missile Command and AVRDEC budgets (after BRAC implementation). The projected annual expenses for each area is summarized in Table 1.

TABLE 1—PROJECTED DEVELOPMENTAL COSTS

[Then-year dollars in thousands]

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
Training	.....	$33	$16K	.....	.....	.....
Project Evaluation	$13	25	25	$25	$25	$25
Automation	.....	6	1	.....	.....	.....
Totals	13	64	42	25	25	25

IX. Required Waivers to Law and Regulation

Public Law 103–337 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for implementation of the Demonstration Project. In due course, additional laws and regulations may be identified for waiver request.

1. Title 5, U.S. Code

Chapter 31, Section 3111: Acceptance of Volunteer Service—the extent that the acceptance of retired or separated engineers and scientists are not included as volunteers under current statute.

Chapter 33, Section 3324: Appointment to positions classified above GS–15.

Chapter 41, Section 4107: Pay for Degrees.

Chapter 41, Section 4108: Employee Agreements; Service after Training—To the extent that employees who accept an expanded developmental opportunity (sabbatical) do not have to sign a continued service agreement.

Chapter 43, Sections 4301(3): Definitions.

Chapter 43, Section 4302: Establishment of Performance Appraisal Systems.

Chapter 43, Section 4303(a), (b), and (c): Actions based on Unacceptable Performance.

Chapter 51, Sections 5101–5111: Related to classification standards and grading; to the extent that white collar employees will be covered by broadbanding. Pay category determination criteria for federal wage system positions remain unchanged.

Chapter 53, Sections 5301, 5302 (8) and (9), 5303, and 5304: sections 5301, 5302, and 5304 are waived only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of pay. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

Chapter 53, Section 5305: Special Rates.

Chapter 53, Sections 5331–5336: General Schedule pay rates.

Chapter 53, Sections 5361–5366: Grade and pay retention—This waiver applies only to the extent necessary to (1) replace ''grade'' with ''pay band''; (2) allow demonstration project employees to be treated as General Schedule employees; (3) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; and (4) provide that an employee on pay retention whose performance rating is ''U'' is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position. This waiver does not apply to ST employees unless they move to a GS-equivalent position under the demonstration project under conditions that trigger entitlement to pay retention.

Chapter 55, Section 5545: Hazardous duty differential—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to ST employees.

Chapter 57, Section 5753, 5454, and 5755: Recruitment and Relocation Bonuses, Retention Allowances and Supervisory Differentials—This waiver applies only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

Chapter 75, Section 7512(3): Adverse actions—This waiver applies only to the extent necessary to replace ''grade'' with ''pay band'.

Chapter 75, Section 7512(4): Adverse actions—This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory pay adjustment upon voluntary movement to nonsupervisory positions.

2. Title 5, Code of Federal Regulations.

Part 300.601–605, Time-in-Grade requirements (Restrictions eliminated under the demonstration).

Part 308.101 through 308.103 Volunteer Service (to the extent that retired engineers/scientists can perform voluntary services).

Part 315.801 and 315.802, Probationary Period (Demonstration project employees in some occupational families will have extended probationary period).

Part 316.301, Term Appointments (adding years to exceed 4).

Part 316.303, Tenure of Term Employees (Demonstration allows for conversion).

Part 316.305, Eligibility for Within-Grade Increases.

Part 351.402(b) Competitive Areas (Demonstration establishes Competitive Areas by Occupational Family.

Part 351.504, Credit for Performance: as it relates to years of credit.

Part 351.701, Assignment Involving Displacement: to the extent that employees bump and retreat rights will be limited to one payband except in the case of 30% preference eligibles which is a position equivalent to five GS grades below the minimum grade level of his/her payband.

Part 430 Subpart B Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees: Employees under the demonstration project will not be subject to the requirements of this subpart.

Part 432: Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay, reduced in pay without a reduction in band level, and reduced in band level without a reduction in pay based on unacceptable performance. Also modified to delete reference to critical element. For employees who are reduced in band level without a reduction in pay, Sections 432.105 and 432.106(a) do not apply.

Part 432, Sections 104 and 105: Proposing and Taking Action Based on Unacceptable Performance: In so far as references to ''critical elements'' are deleted and adding that the employee may be ''reduced in grade, or pay, or removed'' if performance does not improve to acceptable levels after a reasonable opportunity. In addition, requirements waived to the extent that a reduction in band level is taken based on skill utilization criteria when there is no reduction in pay.

Part 511 Classification Under the General Schedule: (to the extent that grades are changed to broadbands, and that white collar positions are covered by broadbanding).

Part 530, Subpart C: Special salary rates.

Part 531, Subparts B, D, and E: Determining rate of basic pay, within-grade increases, and quality step increases.

Part 531, Subpart F: Locality pay—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees, and basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

Part 536, Grade and pay retention—This waiver applies only to the extent necessary to (1) replace ''grade'' with ''pay band''; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to

the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; and (3) provide that an employee on pay retention whose performance rating is ''U'' is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position. This waiver does not apply to ST employees unless they move to a GS-equivalent position under the demonstration project under conditions that trigger entitlement to pay retention.

Part 550.703: Severance Pay—This waiver applies only to the extent necessary to modify the definition of ''reasonable offer'' by replacing ''two grade or pay levels'' with ''one band level'' and ''grade or pay level'' with ''band level''.

Part 550.902: Hazardous Duty Differential—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to ST employees.

Part 575, Subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances, and Supervisory Differentials—This waiver applies only to the extent necessary to allow employees and position under the demonstration project covered by broad banding to be treated as employees and positions under the General Schedule. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

Part 591, Subpart B: Cost-of-Living Allowances and Post Differential-Nonforeign Areas—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as employees under the General Schedule. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

Part 752.401 (a)(3): Adverse Actions—This waiver applies only to the extent necessary to replace ''grade'' with ''pay band''.

Part 752.401 (a)(4): Adverse Actions—This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory pay adjustment upon voluntary movement to nonsupervisory positions.

Appendix A: Occupational Series by Occupational Family

I. Engineers & Scientists
- 0180 Engineering Research Psychologist, Engineering Psychologist
- 0801 General Engineer, Human Factors Engineer, Value Analysis Engineer
- 0806 Materials Engineer
- 0830 Mechanical Engineer
- 0850 Electrical Engineer
- 0854 Computer Engineer
- 0855 Electronics Engineer
- 0861 Aerospace Engineer, Senior Research Scientist
- 0896 Industrial Engineer
- 1301 Physical Scientist
- 1515 Operations Research Analyst
- 1520 Mathematician

II. E&S Support
- 0301 Data & Configuration Management, Standardization
- 0334 Computer Specialist
- 0346 Logistics Management Specialist
- 0802 Aerospace Engineering Technician
- 0856 Electronics Technician
- 1082 Technical Information Writer
- 1083 Technical Publications Editor
- 1084 Visual Information Specialist
- 1103 Industrial Property Management Specialist
- 1410 Librarian (Physical Sciences & Engineering)
- 1412 Technical Information Specialist
- 1601 Maintenance Program Specialist, Equipment Manager
- 1670 Equipment Specialist
- 1910 Quality Assurance Specialist
- 2001 General Supply Specialist
- 2181 Aircraft Pilot

III. Business Management
- 0018 Safety & Occupational Specialist
- 0201 Personnel Management Specialist
- 0301 Misc Administrative & Program
- 0341 Administrative Officer
- 0343 Management/Program Analyst
- 0510 Operating Accountant
- 0560 Budget Analyst
- 0905 Attorney Advisor
- 1035 Public Affairs Officer
- 1060 Photographer
- 1071 TV Production Specialist
- 1102 Contract Specialist

IV. General Support
- 0303 Misc Clerk and Assistant
- 0312 Clerk-Stenographer
- 0318 Secretary
- 0326 Office Automation Clerk
- 0344 Management Assistant
- 0525 Accounting Technician
- 0561 Budget Assistant
- 1105 Purchasing Agent
- 1106 Procurement Technician, Procurement Assistant
- 2005 Supply Clerk, Supply Technician
- 2134 Shipping Clerk

BILLING CODE 6325–01–P

Appendix B: Project Evaluation and Oversight

Intervention Impact Model - DoD Lab Demonstration Program

1. Compensation

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
a. Broadbanding	-increased organizational flexibility	-perceived flexibility	-attitude survey
	-reduced administrative workload, paperwork reduction	-actual/perceived time savings	-personnel office data, PME results, attitude survey
	-advanced in-hire rates	-starting salaries of banded v. non-banded employees	-workforce data
	-slower pay progression at entry levels	-progression of new hires over time by band, career path	-workforce data
	-increased pay potential	-mean salaries by band, career path, demographics -total payroll cost	-workforce data
	-increased satisfaction with advancement	-employee perceptions of advancement	-workforce data
	-increased pay satisfaction	-pay satisfaction, internal/external equity	-attitude survey
	-improved recruitment	-offer/acceptance ratios	-personnel office data
	-no change in high grade (GS-14/15) distribution	-percent declinations -number/percentage of high grade salaries pre/post banding	-workforce data
b. Conversion buy-in	-employee acceptance		-attitude survey
		-employee perceptions of equity, fairness	-workforce data
		-cost as a percent of payroll	

2. Performance Management

INTERVENTION	EXPECTED BENEFITS	MEASURES	DATA SOURCES
a. Cash awards/ bonuses	-reward/motivate performance	-perceived motivational power	-attitude survey
	-to support fair and appropriate distribution of awards	-amount and number of awards by career path, demographics, -perceived fairness of awards -satisfaction with monetary awards	-workforce data -attitude survey -attitude survey
b. Performance/ contribution based pay progression	-increased pay-performance link -improved performance feedback	-perceived pay-performance link -perceived fairness of ratings -satisfactions with ratings -employee trust in supervisors -adequacy of performance feedback	-attitude survey -attitude survey -attitude survey -attitude survey -attitude survey
	-decreased turnover of high performers/increased turnover of low performers	-turnover by performance rating category	-workforce data
	-differential pay progression of high/low performers	-pay progression by performance rating category, career path	-workforce data
	-alignment of organizational and individual performance expectations and results	-linkage of performance expectations to strategic plans/ goals -performance expectations	-performance expectations, strategic plans -attitude survey/ focus groups
	-increased employee involvement in performance planning and assessment	-perceived involvement -performance management procedures	-attitude survey/ focus groups -personnel regulations
c. New appraisal process	-reduced administrative burden -improved communication	-employee and supervisor perception of revised procedures -perceived fairness of process	-attitude survey -focus group -focus groups
d. Performance development	-better communication of performance expectations	-feedback and coaching procedures used -time, funds spend on training by demographics	-personnel office data -training records
	-improved satisfaction and quality of workforce	-organizational commitment -perceived workforce quality	-attitude surveys

3. "White Collar" Classification

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
a. Improved classification systems with generic standards	-reduction in amount of time and paperwork spent on classification	-time spent on classification procedures -reduction of paperwork/number of personnel actions (classification/promotion)	-personnel office data
	-ease of use	-managers' perceptions of time savings, ease of use, improved ability to recruit	-attitude survey
	-improved recruitment of employees with appropriate skills	-quality of recruits -perceived quality of recruits -GPA's of new hires, educational levels	-focus groups/ interviews -personnel office data
b. Classification authority delegated to managers	-increased supervisory authority/accountability	-perceived authority	-attitude survey
	-decreased conflict between management and personnel staff	-number of classification disputes/appeals pre/post -management satisfaction with service provided by personnel office	-personnel records -attitude survey
	-no negative impact on internal pay equity	-internal pay equity	-attitude survey
c. Dual career ladder	-increased flexibility to assign employees	-assignment flexibility	-focus groups, surveys
	-improved internal mobility	-sup/non-sup ratios	-workforce data
	-increased pay equity	-perceived internal mobility	-attitude survey
	-flatter organization	-perceived pay equity -supervisory/non-supervisory ratios	-attitude survey -workforce data
	-improved quality of supervisory staff	-employee perceptions of quality of supervisors	-attitude survey

4. RIF

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
Modified RIF	-prevent loss of high performing employees with needed skills -contain cost and disruption	-separated employees by demographics, performance -satisfaction with RIF process -cost comparisons of traditional v. modified RIF -time to conduct RIF -number of appeals/ reinstatements	-workforce data -attitude survey/ focus groups -attitude survey/ focus groups

5. COMBINATION OF ALL INTERVENTIONS

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
All	-improved organizational effectiveness -improved management of R&D workforce -improved planning -cross functional coordination -increased product success -cost of innovation	-combination of personnel measures -employee/management satisfaction -planning procedures -perceived effectiveness of planning procedures -actual/perceived coordination -customer satisfaction -project training/development cost (staff salaries, contract cost, training hours per employee)	-all data sources -attitude survey -strategic planning documents -organizational charts -attitude survey -customer satisfaction surveys -demo project records -contract documents

6. CONTEXT

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
a. Regionalization	-reduced servicing ratio/ cost	-HR servicing ratio	-workforce data/ personnel office data
		-average cost per employee served	-workforce data/ personnel office data
	-no negative impact on service quality	-service quality, timeliness	-attitude survey/ focus groups
b. GPRA	-improved organizational performance	-other measures to be developed	-as established

BILLING CODE 6325–01–C

Appendix C: Performance Elements

All employees will be rated against at least the five generic performance elements listed through ''e'' below. Technical competence is a mandatory critical element. Other elements may be identified as critical by agreement between the rater and the employee. Generally, any performance element weighted 25 or higher should be critical. However, only those employees whose duties require manager/leader responsibilities will be rated on element ''f.'' Supervisors will be rated against an additional critical performance element, listed at ''g'' below:

a. *Technical Competence.* Exhibits and maintains current technical knowledge, skills, and abilities to produce timely and quality work with the appropriate level of supervision. Makes prompt, technically sound decisions and recommendations that add value to mission priorities and needs. For appropriate career paths, seeks and accepts developmental and/or special assignments. Adaptive to technological change. (Weight range: 15 to 50)

b. *Working Relationships.* Accepts personal responsibility for assigned tasks. Considerate of others' views and open to compromise on areas of difference, if allowed by technology, scope, budget, or direction. Exercises tact and diplomacy and maintains effective relationships, particularly in immediate work environment and teaming situations. Always willing to give assistance. Shows appropriate respect and courtesy. (Weight Range: 5 to 15)

c. *Communications.* Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and cogent. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions. (Weight Range: 5 to 15)

d. *Resource Management.* Meets schedules and deadlines, and accomplishes work in order of priority; generates and accepts new ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; supports organization's resource development and conservation goals. (Weight Range: 15 to 50)

e. *Customer Relations.* Demonstrates care for customers through respectful, courteous, reliable and conscientious actions. Seeks out and develops solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customer informed and prevents surprises. Within the scope of job responsibility, seeks out and develops new programs and/or reimbursable customer work. (Weight Range: 10 to 50)

f. *Management/Leadership.* Actively furthers the mission of the organization. As appropriate, participates in the development and implementation of strategic and operational plans of the organization. Develops and implements tactical plans. Exercises leadership skills within the environment. Mentors junior personnel in career development, technical competence, and interpersonal skills. Exercises due responsibility of technical/acquisition/ organizational positions assigned to them. (Weight Range: 0 to 50)

g. *Supervision/EEO.* Works toward recruiting, developing, motivating, and retaining quality team members; takes timely/appropriate personnel actions, applies EEO/merit principles; communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members. (Weight Range: 15 to 50)

BILLING CODE 6325–01–P

Appendix D. Benchmark Performance Standards

ELEMENT POINT-RANGES AND PERFORMANCE STANDARDS

THESE BENCHMARK PERFORMANCE STANDARDS ARE USED TO EVALUATE AND SCORE PERFORMANCE AGAINST THE WEIGHTED PERFORMANCE ELEMENTS. THIS SHEET MUST BE USED IN CONJUNCTION WITH BENCHMARK JOB DESCRIPTION AND PERFORMANCE OBJECTIVES

ELEMENT WEIGHTS

100% Performance elements were attained demonstrating exceptional initiative, versatility, originality, and creativity. This individual demonstrates the ability to grasp, understand, organize, and convey complex issues to others and carry the job assignment to successful completion with minimum direct supervision. Performance elements were effectively achieved utilizing cooperation, responsiveness, conflict avoidance, or conflict resolution. Written and oral communications were appropriately demonstrated effectively and efficiently. Performance elements were achieved with demonstrated leadership, integrity, competency, commitment, candor, and sense of duty.	50	45	40	35	30	25	20	15	10	5
	49	44	39	34	29					
	48					24				
		43	38				19			
	47	42		33	28					
	46		37			23		14		
		41		32						
	45		36		27		18		9	
		40		31		22				
	44		35							
	43	39		30	26					
		38	34				17			
	42			29	25	21				
	41	37	33							
	40	36	32	28	24	20	16	12	8	4
	39	35	31		23					
	38	34		27		19				
			30				15			
	37	33		26	22			11		
	36		29			18				
		32		25						
70% Performance elements were attained effectively and efficiently with consistently high quality and quantity of work. This individual has demonstrated the ability to complete the job assignments in an efficient, orderly sequence that culminated in results that were timely, correct, thorough and cost effective. Performance elements were attained with consistently above average quality and reliability while effectively utilizing accepted procedures and resolving problems with skill and resourcefulness. Performance elements were attained with consistently productive cooperative efforts and with clear, precise, and convincing written and oral communication.	35		28		21		14		7	
		31		24						
	34		27			17				
	33	30		23	20			10		
			26				13			
	32	29		22		16				
	31	28	25		19					
	30	27	24	21	18	15	12	9	6	3
	29	26	23							
	28			20	17	14				
		25	22				11			
	27	24		19	16					
	26		21							
		23		18		13				
50% Performance elements were accomplished, were mostly reliable, and delivered without unacceptable delays. Procedures were minimally correct and problems were dealt with satisfactorily. Attained performance elements, using work methodology that demonstrated a reasonable degree of cooperation with others with clear and concise written and oral communications.	25		20		15		10		5	
UNSATISFACTORY	24	22	19	17	14	12	9	7	4	2

Performance elements were not successfully completed because of failure in quality, quantity, completeness, responsiveness, or timeliness of work. Performance elements products were deficient, because they were contrary to direction or guidelines; did not meet minimum specifications; were inconsistent with organizational procedures; were significantly flawed or substandard in quality; demonstrated insufficient technical knowledge or skill; were incomplete; were unacceptably late; lacked essential cooperative involvement or support; or problems that arose during performance of performance elements activities were not satisfactory resolved.

[FR Doc. 97–6171 Filed 3–10–97; 8:45 am]
BILLING CODE 6325–01–C

federal register

Wednesday
March 12, 1997

Part IX

Environmental Protection Agency

40 CFR Part 132

Revisions to the Polychlorinated Biphenyl Criteria for Human Health and Wildlife for the Water Quality Guidance for the Great Lakes System; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–5708–8]

RIN 2040–AC94

Final Revisions to the Polychlorinated Biphenyl Criteria for Human Health and Wildlife for the Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is publishing final revisions to the polychlorinated biphenyl (PCB) ambient water quality criteria for human health and wildlife for the final Water Quality Guidance for the Great Lakes System that was published in March 1995 (the 1995 Guidance). The final revisions are limited to the method for calculating a composite baseline bioaccumulation factor (BAF) for PCBs and the method for calculating a composite octanol-water partition coefficient (K_{ow}) for PCBs. After reviewing all public comments, EPA concluded that the approach it proposed in October 1996 for calculating a composite baseline BAF, using the second alternative proposed for calculating a composite K_{ow}, for PCBs would be preferable to the approach used in the 1995 Guidance because it would more appropriately relate the concentrations of the PCB congeners in tissue to the concentrations of the PCB congeners in water. Consequently, EPA is today revising the human health cancer criterion for PCBs from 3.9E–6 ug/L to 6.7E–6 ug/L, and the wildlife criterion for PCBs from 7.4E–5 ug/L to 1.2E–4 ug/L. EPA believes that these revisions more accurately represent the numerical limits necessary to protect human health and wildlife in the Great Lakes System.

EFFECTIVE DATE: March 12, 1997.

ADDRESSES: The public docket for this rulemaking, including the proposal, public comments in response to the proposal, other major supporting documents, and the index to the docket are available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Mary Willis Jackson (telephone 312–886–3717).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460 (202–260–0312).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Potentially Affected Entities

Entities potentially affected by this final rule are those discharging pollutants to waters of the United States in the Great Lakes System. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Industry	Industries discharging PCBs to waters in the Great Lakes System as defined in 40 CFR 132.2.
Municipalities	Publicly-owned treatment works discharging PCBs to waters of the Great Lakes System as defined in 40 CFR 132.2.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities that EPA is now aware could potentially be affected by this action. To determine whether your facility may be affected by this final rule, you should examine the definition of ''Great Lakes System'' in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the purpose of water quality standards such as those established in this 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.

B. Great Lakes Water Quality Guidance

In March 1995, EPA promulgated the final Water Quality Guidance for the Great Lakes System (the 1995 Guidance) required under section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). See 60 FR 15366–425 (March 23, 1995). The ambient water quality criteria (AWQC) included in the 1995 Guidance to protect human health and wildlife set maximum ambient concentrations for harmful pollutants to be met in all waters in the Great Lakes System unless site-specific criteria are derived and approved. See 40 CFR Part 132, Tables 3 and 4. Great Lakes States and Tribes must adopt criteria consistent with EPA's criteria by March of 1997. CWA section 118(c)(2). If any State or Tribe fails to meet that deadline, EPA must promulgate criteria that will apply in that State's or Tribe's jurisdiction. *Id*. Once the criteria take effect, permits for discharges of such pollutants into the Great Lakes System must include limits as necessary to attain the criteria.

EPA promulgated human health and wildlife criteria for a class of closely related toxic pollutants known as polychlorinated biphenyls (PCBs). The PCB criteria for human health and wildlife incorporate bioaccumulation factors (BAFs) which reflect the fact that PCBs magnify at several steps in aquatic food chains, so that humans and wildlife that eat fish from the Great Lakes may be exposed to PCB concentrations many times higher than the PCB concentration in the waters of the Lakes. Different members of the class of PCBs (called ''congeners'') have different potentials to bioaccumulate. In the 1995 Guidance, EPA derived a single baseline BAF for PCBs for each trophic level by computing a weighted geometric mean baseline BAF from the baseline BAFs for each trophic level for approximately 50 PCB congeners.

Based on issues raised as part of a lawsuit on the 1995 Guidance, in 1996 EPA proposed a different approach for calculating a single BAF for the class of PCBs. EPA also decided to call this single BAF a ''composite baseline BAF.'' The new approach also required EPA to calculate a composite K_{ow} for PCBs. EPA proposed two different approaches for this calculation. EPA, however, presented calculations of revised BAFs and revised ambient water quality criteria based on only one of the two K_{ow} alternatives. For a more complete discussion of the 1995 Guidance and the revised approach in the 1996 proposal, refer to 60 FR 15366 (March 23, 1995) and 61 FR 54748 (October 22, 1996).

After considering all comments, EPA has decided to follow the proposed approach. EPA selected the second of the two alternatives to calculating a composite K_{ow}. As a result, the numerical values for the final BAFs and the final criteria differ very slightly from those that EPA presented in the proposal. The discussion below explains the reasons for the changes.

II. Background

The BAFs in the 1995 Guidance relate the concentration of a chemical measured in water to the concentration of the same chemical measured in fish tissue. Under the methodology for the 1995 Guidance, the calculation of a BAF that is to be used for calculating AWQC for a non-polar organic chemical involves three steps for each trophic level. First, EPA obtains a ''total'' BAF based on the total concentrations of the chemical in the water and in the aquatic biota, based on field measurements. Second, EPA converts this initial total BAF into a ''baseline'' BAF that reflects the amount of lipid (fat) in the aquatic biota that was assessed and the amount

of freely dissolved chemical that was estimated in the water. This permits better extrapolation of data from one species to another and from one water body to another. Third, EPA computes a final ''total'' BAF based on the total concentration of the chemical in the water and the organisms at the site to be protected. In this notice, EPA will refer to the first ''total'' BAF as the ''initial total'' BAF, and the final as the ''final total'' BAF. The initial and final total BAFs generally differ because they usually apply to different bodies of water.

An important factor in the calculation of the baseline BAF and both total BAFs for a chemical is the K_{ow} for that chemical. The K_{ow} is a measure of the affinity of a chemical to partition between octanol and water and is used as an estimate of the partitioning between the lipids (fatty tissues) of an aquatic organism and water. The higher the K_{ow}, all other factors being constant, the greater the affinity of the chemical to concentrate in fish tissue. Each chemical has a K_{ow} value. The K_{ow} value for a chemical is usually reported as the log K_{ow} for the chemical. When calculating total and baseline BAFs for a chemical, the chemical-specific K_{ow} is used to estimate the freely dissolved fraction of the chemical in the water.

When this methodology is used to derive human health and wildlife AWQC for a class of chemicals, the normal ''single'' values for baseline and total BAFs for an individual chemical are replaced by composite baseline and composite total BAFs for the class to simplify the equations. Using a composite value in a calculation for the class gives the same result as summing the results of calculations for each member of the class. When calculating a composite baseline BAF or a composite total BAF for all of the chemicals in a class at a trophic level, it is necessary to use a composite K_{ow}. This composite K_{ow} is used to estimate the composite freely dissolved fraction of the class of chemicals in the Great Lakes waters.

EPA based the PCB BAFs in the 1995 Guidance on a field study conducted in the Great Lakes by Oliver and Niimi (1988). The study collected data on numerous PCB congeners, and EPA calculated a separate baseline BAF for each congener using separate, congener-specific K_{ow}s. EPA, however, needed to calculate composite baseline BAFs and composite total BAFs representing all congeners at a trophic level in order to calculate AWQC for human health and wildlife, because there is a single ''cancer potency factor'' which is used for evaluating human health cancer risk for all PCBs. Similarly, for wildlife, there is a single toxicity factor which is used in the derivation of the wildlife criterion. Consequently, composite baseline and total BAFs were needed in order to be consistent with the toxicity data available to derive human health and wildlife criteria.

In the 1995 Guidance, EPA calculated a composite baseline BAF for PCBs for trophic level 3 and a composite baseline BAF for trophic level 4 by computing a weighted geometric mean of the baseline BAFs for individual PCB congeners at each trophic level. The weighted geometric mean baseline BAF was 55,281,000 for trophic level 3 and 116,553,000 for trophic level 4. As explained above, when calculating a composite baseline BAF for PCBs, EPA must also use a composite K_{ow}. In the 1995 Guidance, EPA calculated a weighted geometric mean K_{ow} of 3,885,000 (mean log K_{ow} of 6.589) by weighting the log K_{ow}s for the individual PCB congeners by the concentrations of the PCB congeners in fish. The weighted mean log K_{ow} of 6.589 was then used to estimate the freely dissolved fraction of the PCB congeners in the study of Oliver and Niimi (1988). The log K_{ow}s for the individual PCB congeners used in the final Guidance came from Hawker and Connell (1988).

Using the composite baseline BAF for each trophic level and the weighted mean log K_{ow} of 6.589, EPA calculated composite final total BAFs of 520,900 for trophic level 3 and 1,871,000 for trophic level 4 for use in calculating human health criteria. The PCB human health cancer criterion calculated using these BAFs was 3.9E–6 ug/L. For wildlife, the composite final total BAFs were 1,850,000 for trophic level 3 and 6,224,000 for trophic level 4. The PCB wildlife criterion derived using these BAFs was 7.4E–5 ug/L.

Various industries and trade associations challenged the human health and wildlife criteria for PCBs. *AISI v. EPA*, D.C. Cir. No.95–1348 and consolidated cases. Among the issues they raised was the calculation of the composite baseline BAF as the weighted geometric mean for PCBs. The AISI petitioners alleged that the equation was mathematically inappropriate for a variety of reasons. As a result of this challenge, EPA re-examined the basis for the calculation of the composite baseline BAF as the weighted geometric mean. For a more complete discussion of bioaccumulation and the approach used in the 1995 Guidance, refer to 58 FR 20803 (April 16, 1993), and the Procedure to Determine Bioaccumulation Factors (''TSD for BAFs'')(EPA–820–B–95–005).

III. Revised Method for Calculating Composite Baseline BAFs for PCBs

A. The Proposed Approach

On October 22, 1996, EPA proposed a revised approach for calculating the composite baseline BAF for PCBs for each trophic level. The revised approach uses the sum of all concentrations of PCB congeners in tissue and the sum of all concentrations of PCB congeners in the ambient water, as reported in Oliver and Niimi (1988), to calculate a composite initial total BAF for PCBs at each trophic level. This approach is equivalent to using a weighted arithmetic mean of all the measured initial total BAFs from the PCB congeners, where the weights are the concentrations of the PCB congeners in water. EPA believes this approach is consistent with the definition of bioaccumulation factor and appropriately relates the sum of the concentrations of the PCB congeners in tissue to the sum of the concentrations of the PCB congeners in water. EPA further believes that this approach will provide an accurate composite initial total BAF for the class of PCBs.

As part of the October 22, 1996 proposal, EPA also proposed to revise its approach for calculating the composite K_{ow} used in the calculation of the composite baseline and total BAFs. EPA proposed two alternatives: the first alternative used the median log K_{ow} of the PCB congeners to derive a composite K_{ow}; the second used the sum of the concentrations of the K_{ow}s for all congeners together with the sum of all of the freely dissolved concentrations of the congeners in water. For a more complete discussion of the revised approach for calculating composite BAFs and K_{ow}s, refer to 61 FR 54748 (October 22, 1996).

B. Comments on the Proposed Approach

EPA received three comments on the proposal. Two commenters opposed the revised approach for calculating composite BAFs for PCBs. One of the commenters who opposed the proposal argued that the revised approach yielded less stringent criteria for PCBs and that this action was contradictory to the principle of zero discharge, and inconsistent with what the public had been told about the 1995 Guidance methodology being a superior method yielding more stringent criteria. This commenter also argued that the resulting higher criteria would allow backsliding for pollution prevention scenarios currently established and

operating for existing permitted discharges of PCBs. The other commenter who opposed the proposal was concerned that data (congener specific K_{ow}s, tissue and water PCB concentrations) used in the revised approach were taken from reports that were published a decade ago and that more recent data on the behavior of PCBs in the environment, their activity as carcinogenic promoters, and the tendency of ''weathered'' PCBs to be more toxic than the parent compounds, have not been considered. This commenter argued that the revised approach did not provide as much protection against the tendency for PCBs to become more toxic over time. In addition, the commenter argued that, if EPA were to revise the 1995 approach, it should not use the median value because the median ignores extremely high or low values, disregards population trends, and does not weigh skewness, which is a characteristic of the PCBs. In fact, the commenter recommended that EPA compute and use a BAF at the 90 percent confidence level. Finally, the commenter also noted that, since a higher K_{ow} also affects the amount of pollutant that is freely dissolved, the change in the K_{ow} value has a large impact on the final criterion. For these reasons the commenter argued that the 1995 approach, which produces the lowest composite K_{ow} was preferable. However, the commenter concluded that, if EPA revised its approach, it should use the second of the two alternatives proposed, because it produces a lower K_{ow} than the first alternative.

Finally, one commenter supported the revised approach stating that the proposed modifications to the equation used to calculate the composite BAFs for PCBs are scientifically and mathematically appropriate. However, the commenter further stated that it disagrees with many other issues arising from the 1995 Guidance and EPA's derivation of BAFs for PCBs, which are issues outside the scope of this rulemaking.

C. Response to Comments

EPA appreciates those who provided comments on this rulemaking. In regard to the first comment, EPA disagrees that it has misinformed the public concerning either the 1995 Guidance methodology or the 1996 revised methodology. EPA also disagrees with the prediction that the revised criteria will result in backsliding. Although the revised criteria are less stringent than the 1995 criteria, they are not less stringent than the PCB criteria currently in effect in the Great Lakes States. Currently, the range of water quality criteria being implemented in the Great Lakes Basin to protect human health from PCBs is 0.1 to 0.00008 ug/L. EPA's revised methodology produces a human health criterion for PCBs that is about 10 to 10,000 times more stringent than those currently being implemented. For the protection of wildlife the disparity is even more dramatic because many of the Great Lakes States do not have criteria for PCBs to protect wildlife. For the three Great Lakes States that do have criteria for PCBs to protect wildlife, EPA's revised approach produces a wildlife criterion that is approximately 10 to 1,000 times more stringent than those currently being implemented. Given this information, EPA does not believe that permit limits for PCBs based on criteria for human health and wildlife produced by the revised methodology will result in less protection or backsliding. Further, EPA interprets the concept of zero discharge in the Great Lakes Agreement as a goal toward which it is working. The revised PCB criteria, which are still more stringent than criteria currently in effect in the Great Lakes States, are a reasonable and substantial step toward that goal.

EPA also disagrees with the comment that asserts that EPA should chose an approach to calculating a composite K_{ow} that leads to a more conservative PCB criterion because the current criteria may not sufficiently take into account the effects of ''weathering'' or data from new studies suggesting that PCBs might cause reproductive and developmental toxicity effects. EPA believes that the BAF should estimate bioaccumulation as accurately as possible. EPA believes it is more appropriate to account for the commenter's concerns—if warranted—by adjusting its estimate of PCB's toxicity. Further, EPA believes that it has adequately accounted for weathering. PCBs were first introduced into the Great Lakes Basin in the 1930s. Researchers in the Great Lakes have spent a significant amount of time gathering data and studying the fate and effects of PCBs in this system. Given the length of time some of the PCBs have resided in the Great Lakes Basin, any increased toxicity due to ''weathering'' would be reflected in the data collected in 1986. Therefore, EPA does not agree that it needs to retain the 1995 approach to ensure protection against the possible impacts of weathering.

EPA agrees that some recent data indicate that PCBs, particularly co-planar PCBs, might cause reproductive and developmental toxicity through processes such as endocrine disruption. Because concentrations associated with such potential adverse effects are under evaluation, EPA can not yet predict whether such effects might occur at concentrations above or below those associated with the cancer risks modeled by the 1995 Guidance. EPA does not believe that it has enough information concerning these additional, potential effects to revise the criteria at this time. As stated in the 1995 Guidance, EPA is committed to improving the science supporting its methodologies and criteria, and will continue to evaluate and revise them in future rulemakings in light of new information, as appropriate.

EPA agrees with the comment that the median K_{ow} of the PCB congeners should not be used as the composite K_{ow} and that the second alternative set forth in the proposal is more appropriate. EPA also agrees with some of the limitations identified by the commenter that are associated with using a median. However, EPA's reason for adopting the second alternative to calculate a composite K_{ow} as part of this final rule is not because it introduces, as the commenter suggests, a more protective value, but because EPA believes that the second alternative more accurately reflects how PCBs behave in the Great Lakes System. The second alternative provides the same result as would be obtained by performing the relevant calculations for each congener and then summing the results.

D. Final Action

As described above, the approach for this final rule uses the sum of the concentrations of all PCB congeners in tissue and the sum of the concentrations of all PCB congeners in the ambient water to calculate a composite initial total BAF for PCBs at each trophic level. The approach also uses individual PCB congener K_{ow} to calculate the composite K_{ow}. The calculations of the composite baseline BAFs for PCBs, the composite final total BAFs to be used in the calculation of AWQC for wildlife and human health, and the PCB criteria for wildlife and humans using the new PCB BAFs are presented below. EPA is not revising the data used in the calculation of the composite BAFs or composite K_{ow}s or other aspects related to the derivation of the human health and wildlife criteria for PCBs. The fish tissue data, water column data, and log K_{ow} values used to calculate the new composite BAFs and composite K_{ow} are identical to those used in the 1996 proposal.

1. Calculation of Composite Baseline BAFs for PCBs

The equation used to calculate a baseline BAF for an individual chemical for each individual trophic level in this final rule is the same as was used in the 1995 Guidance and the 1996 proposal (61 FR 54748). The equation to calculate a baseline BAF when a field-measured BAF is available for a chemical, as is the case with PCBs, is (each of the three components for calculating a baseline BAF is discussed below):

$$\text{Baseline BAF} = \left[\frac{\text{Measured BAF}_T^t}{f_{fd}} - 1\right]\left(\frac{1}{f_l}\right)$$

Where:

Measured BAF^t_T = BAF based on total concentration in tissue and water (i.e., a total BAF).

f_l = fraction of the tissue that is lipid.

f_{fd} = fraction of the total chemical in the ambient water that is freely dissolved.

By comparison, the equation for calculating a composite baseline BAF is:

$$\text{Composite Baseline BAF} = \left[\frac{\text{Composite Initial Total BAF}}{\text{Composite } f_{fd}} - 1\right]\left(\frac{1}{f_l}\right)$$

a. Composite Initial Total BAF

To calculate a composite initial total BAF for trophic level 4, the data needed are the total concentration of the chemical in the tissue of a trophic level 4 species and the total concentration of the chemical in ambient water at the site of sampling. The trophic level 4 species used in the 1995 Guidance, the 1996 proposal and this final rule are salmonids. To calculate a composite initial total BAF for trophic level 3, the data needed are the total concentration of the chemical in the tissue of a trophic level 3 species and the total concentration of the chemical in ambient water at the site of sampling. The trophic level 3 species used in the 1995 Guidance, the 1996 proposal and this final rule are sculpins and alewives. The average of the values for the sculpins and alewives is used to represent the trophic level 3 values. The equation to calculate a composite total BAF is:

$$\text{Composite Total BAF} = \frac{\text{Total concentration of chemical in tissue}}{\text{Total concentration of chemical in ambient water}}$$

For trophic level 4, the total concentration of PCB congeners in fish tissue (salmonids) is 4057.3 ng/g and the total concentration of PCB congeners in ambient water is 1006.1 pg/L. For trophic level 3, the average of the total concentrations of PCB congeners in tissue from sculpins and alewife is 1393.15 ng/g. These values were derived in the 1996 proposal from Oliver and Niimi (1988).

$$\text{Composite Initial Total BAF} - \text{Trophic Level 4} = \frac{(4057.3\ \text{ng/g})(1000\ \text{pg/ng})(1000\ \text{g/L})}{1006.1\ \text{pg/L}} = 4{,}033{,}000$$

$$\text{Composite Initial Total BAF} - \text{Trophic Level 3} = \frac{(1393.15\ \text{ng/g})(1000\ \text{pg/ng})(1000\ \text{g/L})}{1006.1\ \text{pg/L}} = 1{,}385{,}000$$

The resulting composite initial total BAF is 4,033,000 for trophic level 4 and 1,385,000 for trophic level 3 (rounded to four significant figures as discussed on page G–2 of the TSD for BAFs).

b. Composite Fraction Freely Dissolved

To estimate the fraction of PCBs that are freely dissolved in the ambient water requires information on the particulate organic carbon (POC) and dissolved organic carbon (DOC) in the ambient water where the samples were collected and the K_{ow} of the chemical. As in the 1995 Guidance and the 1996 proposal, the equation for calculating the fraction freely dissolved for an individual chemical is:

$$f_{fd} = \frac{1}{\left[1 + (POC \times K_{ow}) + (DOC \times K_{ow}/10)\right]}$$

Where:

POC=concentration of particulate organic carbon (kg/L).

DOC=concentration of dissolved organic carbon (kg/L).

K_{ow}=n-octanol water partition coefficient for the chemical.

By comparison, to calculate a composite fraction freely dissolved for a group of chemicals, the equation is:

$$\text{Composite } f_{fd} = \frac{1}{\left[1 + \left(\text{POC} \times \text{Composite } K_{ow}\right) + \left(\text{DOC} \times \text{Composite } K_{ow} / 10\right)\right]}$$

The log K_{ow}s used for the individual PCB congeners come from Hawker and Connell (1988), which were included in the 1996 proposal. To calculate the composite K_{ow}, as explained above, EPA will not employ the first alternative that uses the median log K_{ow} from the log K_{ow}s presented in Table 1 of the 1996 proposal (61 FR 54752), but will instead use the second alternative for calculating a composite K_{ow}. As proposed, the formula for calculating the second alternative composite K_{ow} is:
Where:

$$\text{Composite } K_{ow} = \left(\frac{1}{\frac{\text{DOC}}{10} + \text{POC}}\right)\left(\frac{\sum_{i=1}^{n} C_w^t}{\sum_{i=1}^{n} C_w^{fd}} - 1\right)$$

Where:
i=1, 2, * * * *n congeners.*
C^t_w=total concentration of the congener in water.
C^{fd}_w=freely dissolved concentration of the congener in water.
The second alternative for calculating the composite K_{ow} was derived algebraically from the following definition of the fraction freely dissolved, f_{fd}, for a single congener, as given in the 1995 Guidance and the 1996 proposal :

$$f_{fd} = \frac{C_w^{fd}}{C_w^t} = \frac{1}{1 + (\text{POC})(K_{ow}) + \frac{(\text{DOC})(K_{ow})}{10}}$$

In the second alternative for the composite K_{ow}, the ratio of the sum of the total concentrations of all of the congeners in water over the sum of the freely dissolved concentrations of all of the congeners in water is substituted for the ratio of the total over freely dissolved concentration of a single congener in water. Using the data provided in Table 1 of the 1996 proposal, these equations yield a composite K_{ow} of 2,189,000 (rounded to four significant figures).

$$\text{Composite } K_{ow} = \left(\frac{1}{\frac{2.0 \times 10^{-6}}{10} + 0}\right)\left(\frac{1006.1}{699.72} - 1\right) = 2{,}189{,}000$$

This differs slightly from the composite K_{ow} value of 2,238,721 derived in the proposal using the median log K_{ow} approach.

In the 1995 Guidance and the 1996 proposal, the POC value used was 0.0 kg/L and the DOC value used was 2.0×10^{-6} kg/L for the study of Oliver and Niimi (1988). In this final rule, EPA is not changing these values. Using these values and the revised composite K_{ow} value of 2,189,000 the composite fraction freely dissolved in this final rule is 0.6955, as shown below:

$$\text{Composite } f_{fd} = \frac{1}{\left[1 + (0 \times 2{,}189{,}000) + \left(2.0 \times 10^{-6} \times 2{,}189{,}000 / 10\right)\right]} = 0.6955$$

Again, this differs slightly from the fraction freely dissolved presented in the 1996 proposal. The difference stems from the use of the second alternative for calculating a composite K_{ow}.

c. Fraction Lipid

In addition, EPA is not changing the fraction lipid content of the salmonids (0.11) or sculpin (0.08) or alewife (0.07) that were used in the 1995 Guidance and the 1996 proposal for the study of Oliver and Niimi (1988). The average fraction lipid for sculpin and alewife is 0.075.

d. Composite Baseline BAF

Based on the information presented above and using the equation for calculating composite baseline BAFs, EPA calculates for this final rule a new composite baseline BAF for PCBs for trophic level 4 of 52,720,000 and a new composite baseline BAF for PCBs for trophic level 3 of 26,550,000 (rounded to four significant figures). Composite Baseline BAF TL4

$$\text{Composite Baseline BAF TL3} = \left[\frac{1{,}385{,}000}{0.6955} - 1\right]\left(\frac{1}{0.075}\right) = 26{,}550{,}000$$

2. Calculation of Composite Final Total BAFs for Use in AWQC

The data required to calculate a composite final total BAF for use in deriving a AWQC for PCBs are the composite baseline BAF, the fraction lipid of the aquatic species consumed by the population of interest whether that is humans or wildlife and the composite fraction freely dissolved in the ambient water for the area of interest.

Composite Total BAF for AWQC = [(Composite Baseline BAF)(Fraction Lipid of Aquatic Species Consumed) + 1](Composite f_{fd})

a. Composite Baseline BAF

The new composite baseline BAFs derived above in section III.D will be used: 52,720,000 for trophic level 4 and 26,550,000 for trophic level 3.

b. Composite Freely Dissolved Fraction

The equation for calculating the composite freely dissolved fraction is presented above. EPA is using the same values for POC and DOC used in the 1995 Guidance and the 1996 proposal (4.0 x 10–8 kg/L for POC and 2.0 x 10^{-6} kg/L for DOC). These values represent POC and DOC concentrations in Lake Superior and were used to calculate all of the final total BAFs that were used to derive the AWQC in the 1995 Guidance. Both the composite K_{ow} and the composite freely dissolved fraction must be calculated using the Lake Superior values for POC and DOC. The relative total concentrations of the PCB congeners in Lake Superior will be assumed to be the same as in Oliver and Niimi (1988). The resulting composite K_{ow} is 2,107,000 and the composite f_{fd} is 0.6642 (both rounded to four significant figures).

$$\text{Composite } K_{OW} = \left(\frac{1}{\frac{2.0\times10^{-6}}{10} + 4.0\times10^{-8}} \right) \left(\frac{1006.1}{668.2} - 1 \right) = 2{,}107{,}000$$

$$\text{Composite } f_{fd} = \frac{1}{\left[1 + \left(4.0\times10^{-8}\times2{,}107{,}000\right) + \left(2.0\times10^{-6}\times2{,}107{,}000/10\right)\right]} = 0.6642$$

The freely dissolved fraction of 0.6642 differs slightly from the value of 0.6505 presented in the 1996 proposal. The difference is due to the change in the method for calculating the composite K_{ow}.

c. Lipid Fraction

EPA is not changing the lipid values used in the 1995 Guidance and the 1996 proposal. The lipid fraction of the aquatic species consumed by humans in the Great Lakes region is 1.82 for trophic level 3 and 3.10 for trophic level 4. For wildlife, the lipid fraction for trophic level 3 is 6.46 and for trophic level 4 is 10.31.

d. Composite Final Total BAFs for Calculating AWQC

Using the above values for the composite baseline BAFs, composite freely dissolved fraction for Lake Superior and fraction lipid, EPA today is promulgating the following composite final total BAFs (rounded to four significant figures) to be used in deriving the human health and wildlife AWQC for PCBs:

Human Health BAF for Trophic Level 4 = [(52,720,000)(0.0310) +1] 0.6642 = 1,086,000

Human Health BAF for Trophic Level 3 = [(26,550,000)(0.0182) +1] 0.6642 = 321,000

Wildlife BAF for Trophic Level 4 = [(52,720,000)(0.1031) +1] 0.6642 = 3,610,000

Wildlife BAF for Trophic Level 3 = [(26,550,000)(0.0646) +1] 0.6642 = 1,139,000

3. Human Health Cancer Criteria

Based on the BAFs presented above, EPA today is revising the human health cancer criteria for PCBs in Table 3 of the 1995 Guidance from 3.9E–6 µg/L to 6.7E–6 µg/L. The equations used to calculate the human health cancer criteria for PCBs in this final rule are the same as were used in the 1995 Guidance and the 1996 proposal (61 FR 54753).

4. Wildlife Criterion

For wildlife, EPA today is revising the PCB criterion from 7.4E–5 µg/L to 1.2E–4 µg/L based on using the BAFs presented above. The equations used to calculate the wildlife criterion for PCBs in this final rule are the same as were used in the 1995 Guidance and the 1996 proposal (61 FR 54754).

IV. Effective Date

Section 553(d)(3) of the Administrative Procedure Act requires Federal agencies to publish final rules at least 30 days before they take effect unless they find that they have ''good cause'' to waive the notice requirement. EPA finds that it has good cause to waive the 30-day notice requirement for these revisions to the PCB criteria. EPA needs to make this rule effective as soon as possible to maximize the ability of the States and Tribes to use the new criteria in their Guidance submissions that are due in March 23, 1997. Also, in this case an immediate effective date does not conflict with the goal of the notice requirement (giving the public the opportunity to adjust behavior before the rule imposes penalties). The revised criteria will not affect any member of the public until they are adopted by a Great Lakes State or Tribe (or promulgated by EPA where a State or Tribe fails to submit adequate criteria). EPA anticipates that these processes will take at least 30 days, so that the public will receive adequate notice of the revised requirements before they become binding.

V. 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

Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is not a ''significant regulatory action'' and is therefore not subject to OMB review.

VI. 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).

VII. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605.

Under the CWA, EPA's promulgation of water quality standards establishes standards that the States implement through the National Pollutant Discharge Elimination System (NPDES) permit process. The States have discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While State implementation of federally-promulgated water quality standards may result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's rule imposes obligations on the Great Lakes States but, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of EPA's action here, the Great Lakes States will need to ensure that permits they issue include any limitations on discharges necessary to comply with the criteria in today's rule. Until actions are taken to implement the 1995 Guidance, there will be no economic effect of the 1995 Guidance on any entities, large or small. States and Tribes must both adopt their own criteria and implement them before impacts are felt. The implementation regulations provide States and Tribes with a variety of flexible alternatives which can affect the burden felt by any small entity as a result of State or Tribal action to implement this final rule, including total maximum daily load (TMDL) calculations and waste load allocations (WLAs). Impacts will not be felt until States and Tribes select and put in place implementation measures.

The RFA requires analysis of the impacts of a rule on the small entities *subject to the rules' requirements.* See *United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. (''[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule,'''* *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution court*).) The Agency is thus certifying that today's rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Furthermore, today's final rule results in human health cancer criteria and wildlife criteria less stringent than those currently in the 1995 Guidance. If States or Tribes adopt criteria consistent with today's final rule, they should reduce any adverse economic impact that might have been imposed by State or Tribal adoption of the 1995 criteria. Consequently, the economic effect of today's final rule relative to the 1995 Guidance should be positive. Any adverse economic impact on small entities associated with measures taken to implement the current provisions of the 1995 Guidance should be reduced by adoption of the final revisions.

VIII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 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 the 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.

As noted above, this final rule is limited to the method for deriving a composite BAF for PCBs and for deriving a composite K_{ow} for PCBs, which will result in human health cancer criteria and wildlife criteria for PCBs less stringent than those currently in the 1995 Guidance. If States or Tribes adopt criteria consistent with today's final rule, they will reduce any adverse economic impact that might have been imposed by State or Tribal adoption of

the 1995 criteria. Consequently, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this final 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. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

IX. Paperwork Reduction Act

There are no information collection requirements in this final rule and therefore there is no need to obtain OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

X. References

Great Lakes Water Quality Technical Support Document for the Procedure to Determine Bioaccumulation Factors (EPA–820–B–95–005). NITS Number: PB95187290. ERIC Number: D049.

Great Lakes Water Quality Initiative Criteria Documents for the Protection of Human Health (EPA–820–B–95–006). NITS Number: PB95187308. ERIC Number: D050.

Great Lakes Water Quality Initiative Criteria Documents for Protection of Wildlife: DDT; Mercury; 2,3,7,8–TCDD; PCBs (EPA–820–B–95–008). NITS Number: PB95187324. ERIC Number: D052.

Hawker D.W. and D.W Connell. 1988. Octanol-Water Partition Coefficients of Polychlorinated Biphenyl Congeners. Environ. Sci. Technol., 22(4):382–387.

Oliver, B.G. and A.J Niimi. 1988. Trophodynamic Analysis of Polychlorinated Biphenyl Congeners and Other Chlorinated Hydrocarbons in the Lake Ontario Ecosystem. Environ. Sci. Technol., 22(4):388–397.

U.S. Environmental Protection Agency. Water Quality Guidance for the Great Lakes System and Correction; Proposed Rules. Vol. 58, No.72. April 16, 1993. pp.20802–21047.

U.S. Environmental Protection Agency. Water Quality Guidance for the Great Lakes System; Notice of Data Availability. Vol. 59. August 30, 1994. pp.44678–44685.

U.S. Environmental Protection Agency. Final Water Quality Guidance for the Great Lakes System; Final Rule. Vol. 60, No.56. March 23, 1995. pp.15366–15425.

U.S. Environmental Protection Agency. Proposed Revisions to the Polychlorinated Biphenyl Criteria for Human Health and Wildlife for the Water Quality Guidance for the Great Lakes System; Proposed Rule. Vol. 61, No.205. October 22, 1996. pp.54748–54756.

List of Subjects in 40 CFR Part 132

Environmental protection, Administrative practice and procedure, Great Lakes, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 6, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for Part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Table 3 to Part 132 is amended by revising the entry for PCBs(class) to read as follows:

TABLE 3.—WATER QUALITY CRITERIA FOR PROTECTION OF HUMAN HEALTH

Chemical	HNV (ug/L)		HCV (ug/L)	
	Drinking	Nondrinking	Drinking	Nondrinking
* * * * * * *				
PCBs(class)	.....	.....	6.7E–6	6.7E–6
* * * * * * *				

3. Table 4 to Part 132 is amended by revising the entry for PCBs(class) to read as follows:

TABLE 4.—WATER QUALITY CRITERIA FOR PROTECTION OF WILDLIFE

Chemical	Criteria (ug/L)
* * * * *	
PCBs(class)	1.2E–4
* * * * *	

[FR Doc. 97–6215 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
March 12, 1997

Part X

Department of Labor

Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection Plan; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 500

RIN 1215–AA93

Migrant and Seasonal Agricultural Worker Protection Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the definition of ''employ'' under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) to include a definition of ''independent contractor'' and to clarify the definition of ''joint employment'' under MSPA, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty and to better guide the Department's enforcement activities.

DATES: This final rule is effective April 11, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Hancock, Office of Enforcement Policy, Farm Labor Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–7605. This is not a toll-free number. Copies of this Final Rule in alternative formats may be obtained by calling (202) 219–7605, (202) 219–4634 (TDD). The alternative formats available are large print, electronic file on computer disk and audio-tape.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act of 1995

This Final Rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

II. Background

The MSPA statutory definition of ''employ'', 29 U.S.C. 1802(5), from which the concept of ''joint employment'' is drawn, is the FLSA statutory definition of ''employ,'' 29 U.S.C. 203(g), incorporated by reference. The MSPA definition of ''joint employment,'' 29 CFR 500.20(h)(4), is amended by this Final Rule to clarify and provide more accurate and complete information to the regulated community, thereby making the MSPA regulations more ''user-friendly.'' The regulation, as amended, comports more fully with (1) the Fair Labor Standards Act (FLSA) regulations at 29 CFR 791; (2) seminal court decisions regarding the employment relationship; and (3) the MSPA legislative history. In keeping with the President's Executive Order directive (No. 12866, ''Regulatory Planning and Review,'' September 30, 1993 [58 FR 51735 (October 4, 1993)]) to Federal agencies to identify rules that could be clarified to provide more complete and understandable guidance to the regulated community, the Department is amending the MSPA ''joint employment'' regulation. The Department published a Notice of Proposed Rulemaking in the Federal Register on March 29, 1996 (61 FR 14035–14039). The public comment period on the proposed regulatory changes closed on June 12, 1996.

III. Comments to the Proposed Regulatory Revision

A. Comments to the Proposed Rule

Comments to the Notice of Proposed Rulemaking (NPRM) were received from organizations, public officials and individuals representing the views of members of Congress, farmworker advocacy groups, farmworker labor unions, agricultural associations, agricultural employers, farmworker legal services programs, religious organizations serving farmworkers, lawyers representing farmworkers, and individuals. These 41 comments were submitted on behalf of over 91 organizations and individuals, 63 generally supportive of the NPRM and 28 generally opposed. The Department also received comments from the United States Department of Agriculture (USDA) after the public comment period and during the course of review of the final regulation pursuant to Executive Order 12866.

The commenters were broadly representative of two points of view: those who support the NPRM, and those who oppose the proposal and contend it should be withdrawn. The supporters of the NPRM assert that the change in the regulation is necessary to correct the confusion which has developed under the current regulation, and that the proposal accurately reflects the law governing the determination of independent contractor and joint employment status. Those opposed to the NPRM contend that it effectively creates a ''strict liability'' [1] rule which will automatically result in the determination that an agricultural employer who uses a farm labor contractor is a joint employer of the workers in the contractor's crew. Consequently, these commenters suggest that the NPRM be withdrawn and the current regulation be left undisturbed.

The comments from the Members of Congress, farmworker unions, service organizations, and legal services programs primarily focused on two subjects: the broad scope of ''employ'' in MSPA (particularly as it pertains to the statutory term ''suffer or permit to work'') which is the statutory basis of ''independent contractor'' and ''joint employment''; and suggested changes to the precise formulation of the analytical factors set forth in the NPRM. The comments from agricultural employers and associations also focused on two subjects: asserting that the Department was creating a strict liability joint employment standard which would always result in a finding of joint employment whenever an agricultural employer/association utilizes the services of a farm labor contractor; and questioning the Department's legal authority to adopt the proposed regulation.

B. Summary of Comments

1. Members of Congress

A joint comment was submitted by Rep. George Miller and Rep. Howard Berman supporting the Department's proposed rule.

2. Agricultural Employers and Associations

Comments were submitted by Agricultural Producers, American Farm Bureau Federation, California Grape and Tree Fruit League, Florida Fruit and Vegetable Association, Hood River Grower-Shipper Association, Maine Farm Bureau Association, Michigan Farm Bureau, Midwest Food Producers Association, National Cotton Ginners' Association, New England Apple Council, Nisei Farmers League, Pennsylvania Farm Bureau, United States Sugar Corporation, Venture County Agricultural Association, Virginia Farm Bureau Federation, Washington State Growers Clearing House Association, and the Washington State Farm Bureau. All of these comments struck common themes most fully expressed in the comments from the National Council of Agricultural Employers (NCAE). NCAE asserts that the NPRM proposes to create an unlawful strict liability joint employment standard for agricultural employers or associations who use the

[1] Strict liability as used by the commenters appears to mean ''per se'' liability. Per se liability in this context means that agricultural employers/associations are responsible for violations committed by the farm labor contractor if they merely retain or benefit from the services of the farm labor contractor.

services of farm labor contractors, and the Department has not stated a legally sufficient factual basis for the proposed regulatory change. The NCAE comments will be addressed below.

In addition to NCAE and other similar comments, three agricultural organizations submitted comments that addressed issues not fully explored in the NCAE comments. The American Pulpwood Association and the American Forest & Paper Association both suggest that reforestation contractors which the industry engages are independent contractors and would not be joint employers with the industry under the proposed rule. Further, these organizations suggest that the Department should clarify the analytical factor—set out in the NPRM at 500.200(h)(5)(iv)(H)—pertaining to the maintenance of payroll records and provision of field sanitation facilities. These issues are addressed below.

Florida Citrus Mutual (FCM) submitted comments in which it contends that the primary test for joint employment is control, i.e., who exercises direct control over the workers. Further, FCM contends that the House Education and Labor Committee Report relied upon by the Department in developing the NPRM is neither lawful nor appropriate guidance. Finally, FCM suggests that some of the listed analytical criteria are inappropriate for the joint employment determination. These issues too are addressed below.

3. Labor Organizations, Farmworker Advocates, Legal Services Organizations and Attorneys

Comments submitted by the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), California Rural Legal Assistance, California Rural Legal Assistance Foundation, Columbia Legal Services of Washington, Farmworker Justice Fund, Friends of Farmworkers of Pennsylvania, Garry Geffert, Migrant Farmworker Justice Project of Florida, Migrant Legal Action Program, National Council of La Raza, North Carolina Council of Churches, the United Farm Workers of America, and United Farm Workers-Texas Division, on behalf of themselves and many other organizations, generally supported the proposed regulations. These comments endorsed the general approach of the NPRM but suggested that additional changes should be considered to make the definitions of ''employ,'' ''independent contractor,'' and ''joint employment'' clearer and unambiguous.

C. Analysis of Comments

1. Congressional Comments

Representatives George Miller and Howard Berman support the NPRM, stating that it implements the legislative intent to create a broad standard of coverage under MSPA by incorporating the definition of ''employ'' from the Fair Labor Standards Act (FLSA). Further, their joint comment contends that the NPRM corrects the current regulation's incomplete and inaccurate guidance to the public and the courts concerning the scope of employer responsibility under MSPA. The commenters also assert that Congress intentionally adopted an expansive definition of ''employ'' when it incorporated the FLSA definition and eschewed the traditional common law ''right to control'' test.[2]

The Congressional commenters further state that in the enactment of MSPA, Congress recognized that the adoption of the broad FLSA definition of ''employ'' would result in the frequent imposition of liability on growers because the types of relationships Congress intended to cover through joint employment are common in agriculture. In floor debate on the bill, Rep. Miller (a cosponsor) had pointed out that the FLSA concept of joint employment ''presented the best means by which to insure that the purpose of this Act would be fulfilled''[3] and that incorporating FLSA joint employment into MSPA would fix ''* * * responsibility on those who ultimately benefit from [the workers'] labor—the agricultural employer.''[4]

For these and other reasons stated in their comment, the Congressional commenters support the proposed rule and urge its speedy adoption.

2. The American Pulpwood Association and American Forest and Paper Association

The American Pulpwood Association (AP Assoc.) and American Forest & Paper Association (AF&PA) contend the proposed regulation fails to afford primacy to the common law test of ''right to control'' in determining joint employment. According to AP Assoc. and AF&PA, the test for joint employment is properly viewed as a question of the contractual relationship between the farm labor contractor (FLC) and the agricultural employer/association. Further, the organizations assert that under this analysis the typical arrangement in the reforestation industry will fall outside the scope of joint employment.

The Department disagrees that the proper legal analysis should turn exclusively on contractual arrangements among an FLC and the agricultural employer/association. The proposed rule is carefully crafted to reflect the analytical framework within which a determination of independent contractor and joint employment is to occur. Because such an analysis is dependent on all the facts of a particular situation, it is impossible to conclude that the relationships described by these commenters as typical in the reforestation context—that is, where the reforestation contractor has all the indicia of common law right to control—could not result in a determination of joint employment.

The current regulation and the proposed amendment make clear that neither independent contractor nor joint employment determinations under MSPA are reached only by the ''traditional common law test of 'right to control''' as suggested by the AP Assoc. and the AF&PA. While ''right to control'' is one of several factors that must be considered in the analysis, the absence of such control on the part of a forestry company does not conclusively determine that a reforestation contractor is a bona fide independent contractor or that there is no joint employment relationship between the forestry operator and the workers in the reforestation crew. As stated in the proposed regulation, the determination ''depends upon all the facts in the particular case * * * [n]o one factor is critical to the analysis * * *''[5] Contractual designations or notions of common law control, while certainly relevant, are not controlling.

The AP Assoc. and the AF&PA also contend that it is inappropriate to include ''maintaining payroll records'' as a factor in the joint employer analysis at proposed regulation 500.20(h)(5)(iv)(H). The associations point out that an agricultural employer or association is obligated under MSPA to ''retain'' and ''keep'' payroll records created by a farm labor contractor, regardless of joint employer status. The associations suggest that the proposed rule would use this legal obligation as a factor in determining joint employment and thus creates an untenable choice for the agricultural employer or association: ''retain'' and ''keep'' these FLC payroll records (''maintain'' them) and thereby create indicia of employment that will come to

[2] H.R. Rep. No. 885, 97th Cong., 2d Sess. 1, *reprinted in* 1982 U.S.C.C.A.N. 4547 (''House Comm. Rept.'').

[3] 128 Cong. Rec. 26,009 (1982) (statement of Rep. George Miller).

[4] Id, at 26,008.

[5] § 500.20(h)(5),(h)(5)(iv).

play in a joint employment analysis, or violate the law by not maintaining the FLC payroll records in order to avoid that result. The associations' concern in this regard is based on what the Department views as a reasonable but unintended interpretation of the word ''maintaining'' in the proposed rule. This word is used in the proposed rule in the active sense of ''preparing'' or ''making,'' rather than in the passive sense of merely ''retaining'' or ''keeping.'' However, the Department agrees that some clarification in the regulatory language would be helpful in order to convey that the proper consideration is not who ''retains'' the payroll records but rather who ''prepares or makes'' the payroll records. The obligation to ''make'' payroll records is clearly an employer function under MSPA, 29 CFR 500.80(a), and is appropriate to consider in the joint employer analysis. The Final Rule provides this clarification.

The AP Assoc. and the AF&PA suggest that a similar flaw exists in the proposed regulation at 500.20(h)(5)(iv)(H) regarding the provision of field sanitation facilities. The Department does not agree. While retaining copies of FLC-created payroll records is not indicative of employer status, the provision of field sanitation facilities is an obligation which rests with employers under the Occupational Safety and Health Act regulations.[6] When a putative employer voluntarily assumes responsibility for workplace obligations that the law imposes on employers, this voluntary assumption of such responsibility indicates the putative employer's assumption of employer status for other purposes and is relevant to whether or not the employees were economically dependent upon the putative employer for a workplace protection or benefit, such as field sanitation facilities. Therefore, the provision of field sanitation facilities is an appropriate fact to be considered in the joint employment analysis.

3. Florida Citrus Mutual

Florida Citrus Mutual (FCM) raises a number of issues (some of which will be addressed more fully in the analysis of the NCAE comments below) that question both the legality of the proposed regulation and the extent to which the NPRM factors reflect the proper considerations in determining joint employment.

The question of legality hinges largely on the FCM contention that the Department inappropriately relies on MSPA legislative history, specifically the 1982 House Committee Report, to guide its interpretation of ''employ'' and the definition of independent contractor and joint employment. The Department disagrees. When developing implementing regulations, the Department can and should be guided by the Congressional purpose as expressed in the statutory language and the legislative history. MSPA arose in the House Education and Labor Committee, Subcommittee on Labor Standards. That Committee's view of the purpose it was seeking to serve by incorporating the FLSA definition of ''employ'' into MSPA provides essential guidance to the Department in construing that term. The Department has an obligation to consider this Congressional guidance in implementing legislation through regulations. Therefore, the NPRM seeks to incorporate the Congressional intent as well as the construction given to the critical term by the courts over the last 50 years.

FCM's contention that the Committee Report does not reflect Congressional intent is unfounded. Committee reports are one of the most important sources of legislative history. As one court has explained, where ''Congress does enact a statute, the committee reports explaining it may have considerable significance in guiding interpretation'' and may serve as an indication of ''expressed purposes of the drafters of statutory language * * *''[7] In the case of MSPA, the Committee Report was particularly thorough and precise. It included the text of the bill, described its contents and purposes, and gave reasons for the Committee's recommendations including the recommendation on ''employ'' and joint employment which was adopted by Congress via enactment of the bill. The Committee's extensive treatment of the joint employment issue evidences the importance of the principle as a ''central foundation'' of the statute.

Further, this FCM argument regarding use of legislative history to develop regulations ignores the other bases for this proposed regulation. The Department did not rely solely on legislative history but also looked to its own enforcement experience under MSPA and the substantial amount of case law construing joint employment.

FCM also disagrees with the proposed rule's analytical framework for considering questions of independent contractor and joint employment status, both of which arise from the definition of ''employ''. FCM states that ''it is virtually impossible for unskilled manual laborers, offering nothing more than two willing hands, to be an independent contractor''; a view shared by the Department as to the likely status of such workers. However, while FCM acknowledges that unskilled farmworkers will be the employees of someone, FCM takes issue with the proposed analytical framework for identifying the workers' employer or joint employers in that the regulation would look to factors beyond the terms of any contractual agreement between the agricultural employer/association and the FLC. FCM's position is that to the extent any other factors are relevant and appropriate for consideration, only common law right to control should be considered.

FCM contends that relationships between an agricultural employer/association and FLC fall into two categories. In the first, the FLC is so controlled by the agricultural employer/association that ''* * * he is a foreman/employee of the farmer * * *'' rather than an independent contractor doing business with the farmer, and all the workers in the crew are direct employees of the agricultural employer/association. The Department agrees that an FLC could very well operate as an employee of the agricultural employer/association, and his/her crew members would also be direct employees of that employer. However, the Department disagrees with the basis for FCM's assertion. Court cases on this issue make it clear that it is not simply control but all the facts bearing on economic dependence that determine the status of the FLC.[8] The agricultural employer/association's control of the FLC is probative but not necessarily determinative of the FLC's employee/independent contractor status. Acknowledgment must be given to the extensive case law which evaluates economic dependence by looking beyond the control factor to consider other factors such as those set out in the proposed rule at 500.20(h)(4)(i)–(v).

The second category of relationship identified by FCM is one in which it is determined that the FLC is an independent contractor and not an employee of the agricultural employer/association; the FLC's crew members are his/her employees. FCM asserts that in such circumstances the two tests of joint employment on the part of the agricultural employer/association should be the contractual agreement

[6] 29 CFR 1928.110(b)(i)-(iii); (c).

[7] *American Hospital Ass'n* v. *NLRB*, 899 F.2d 651, 657 (7th Cir. 1990), *aff'd* 499 U.S. 606 (1991).

[8] *Beliz* v. *W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1327 (5th Cir. 1985); *Castillo* v. *Givens*, 704 F.2d 181, 192 (5th Cir.), *cert. denied*, 464 U.S. 850 (1983); *Fahs* v. *Tree Gold Co-op Growers of Florida, Inc.*, 166 F.2d 40, 43 (5th Cir. 1948).

between that party and the FLC, and the extent to which the agricultural employer/association retains the contractual right to control the workers. To the extent that it is appropriate to look beyond the terms of any contractual agreement, FCM asserts that control factors alone should govern the determination of joint employment by an agricultural employer/association and an independent contractor FLC.

The Department disagrees with the contention that common law control elements should be given undue weight in the joint employment analysis. As established by the courts and the current MSPA regulation, the test for joint employment under MSPA does not allow, much less require, that the determination be made exclusively or primarily by considering the description of control in any FLC contractual agreement or the actual exercise of control over the agricultural workers. Such unwarranted reliance on contractual labels and common law control was one of the primary reasons why Congress incorporated the FLSA definition of ''employ'' into MSPA.[9]

The legislative history and case law are clear that ''it is the economic reality, not contractual labels * * *'' that determines the employment relationships under the Act.[10] Further, Congress stated that ''* * * even if a farm labor contractor is found to be a bona fide independent contractor,* * * this status does not as a matter of law negate the possibility that an agricultural employer or association may be a joint employer of the harvest workers and jointly responsible for the contractor's employees.''[11] While a finding that there are sufficient indicia of control to satisfy the common law test of an employment relationship would most likely result in a similar determination under MSPA/FLSA, a finding of common law control is not a prerequisite to finding that a joint employment relationship exists.[12]

4. The National Council of Agricultural Employers

The National Council of Agricultural Employers (NCAE), a Washington, D.C. based association representing growers and agricultural organizations on agricultural labor and employment issues, submitted extensive comments on the proposed regulation. NCAE is strongly opposed to any change in the current regulatory definition of joint employment. NCAE asserts that the Department is inappropriately and unlawfully seeking to discourage the use of farm labor contractors by establishing a strict liability standard for agricultural employers/associations who use the services of FLCs; that the proposed rule is without a factual or legal foundation; that the proposed rule violates the Administrative Procedure Act because it is arbitrary and capricious; that the proposed rule is not user-friendly; and that the proposed rule ignores existing law. These issues are addressed below.

a. Strict Liability

NCAE contends that the proposed regulation effectively establishes a strict liability test for joint employment. The motive ascribed to the Department is that the Department is seeking to discourage agricultural employers/associations from using FLCs, thereby driving FLCs from the labor market, disrupting the agricultural labor supply, and empowering unions to substitute for FLCs in providing labor to employers. Further, the NCAE asserts that the alleged strict liability standard would allow the Department and farmworker legal services lawyers to reach into the deep pockets of agricultural employers/associations when violations occur, without the need to produce adequate evidence bearing on the joint employment determination. Finally, NCAE asserts that creation of the alleged strict liability through a regulatory change would be an illegitimate attempt to establish a legal standard which Congress and the courts have been unwilling to adopt. For the reasons stated below, the Department disagrees with the contention that the NPRM creates a strict liability standard.

The proposed definition of joint employment is a reiteration of well-established legal principles developed by the courts and explicitly endorsed by Congress when it enacted MSPA. Both the analytical framework set out in the proposed regulation (economic dependence) and the test used to examine economic dependence (the analytical factors) were derived from the cases found in the legislative history and other cases deciding joint employer issues both before and since MSPA's enactment. The Department has very specifically avoided creating ''strict liability'' through any regulatory test which would operate based on a presumption that a joint employment relationship exists. The current regulation as well as the proposed regulation expressly states that the presence or absence of one or more of the analytical factors is not dispositive. All the facts in each particular case must be considered using the factors identified in the regulation and any other relevant factors. The Department has not proposed any result-oriented ''strict liability'' or presumption test for determining either independent contractor or joint employment status. Instead, the Department has proposed a flexible test for joint employer which is consistent with the case law, the legislative history, and the current regulation which (as explained in the NPRM) is clarified and made more user-friendly by the proposed changes.

Some of the concerns expressed by NCAE may be attributable to the statement in the current and proposed regulations that joint employment relationships are ''common'' in agriculture. As Congress recognized when it enacted MSPA, the joint employment doctrine is ''the central foundation of this new statute; it is the indivisible hinge between certain important duties imposed for the protection of migrant and seasonal workers and those liable for any breach of those duties.''[13] Citing favorably the U.S. Supreme Court's characterization of ''employ'' under FLSA in *United States* v. *Rosenwasser*, 323 U.S. 360 (1945), the Committee stated that ''a broader or more comprehensive coverage of employees within the stated concept would be difficult to frame.''[14] However, the recognition that the definition of ''employ'' (of which joint employment is one aspect) is very broad under MSPA does not lead to the presumption that joint employment is always present. The proposed rule does not create a strict liability standard that mandates the finding of joint employment in every instance in which an agricultural employer/association retains the services of a FLC. As the Department and the courts have recognized in the current definition of ''joint employment'' under MSPA, ''* * * joint employment relationships are common in agriculture. * * *'',[15] but that observation does not require or

[9] House Comm. Rept. at 4552–53.

[10] House Comm. Rept. at 4553; *Real* v. *Driscoll Strawberry Assoc. Inc.*, 603 F.2d 748, 755 (9th Cir. 1979), citing *Rutherford Food Corp.* v. *McComb*, 331 U.S. 722, 729 (1947); *Usery* v. *Pilgrim Equip. Co.*, 527 F.2d 1308, 1315 (5th Cir.), *cert. denied*, 429 U.S. 826 (1976); *Hodgson* v. *Griffin and Brand of McAllen Inc.*, 471 F.2d 235, 237–238 (5th Cir.), *cert. denied*, 414 U.S. 819 (1973).

[11] House Comm. Rept. at 4553; *Griffin and Brand* at 237.

[12] House Comm. Rept. at 4553; *Hodgson* v. *Okada*, 472 F.2d 965 (10th Cir. 1973); *Zavala* v. *Harvey Farms*, No. 94–225–M Civil (D.N.M., February 1, 1996) (Joint employer found even though court determined the FLC exercises the supervisory control).

[13] House Comm. Rept. at 4552.

[14] *Ibid.*

[15] 29 CFR 500.20(h)(4)(ii); *Aimable* v. *Long & Scott Farms*, 20 F.3d 434, 438 (11th Cir.), *cert. denied*, 115 S.Ct. 351 (1994).

inevitably lead to the creation of a strict liability standard or presumption.

The NCAE assertion that the proposed rule creates strict liability is misplaced for another reason. The structure and language of the proposed rule disavow any such presumption by expressly requiring an examination of all the facts of each case using a multifactor analytical framework to resolve the ultimate question of economic dependence, which NCAE concedes is the relevant inquiry. While the proposed rule sets out certain factors that are probative of the joint employment relationship, the proposed rule makes it abundantly clear that the ultimate test is ''* * * whether the worker is so economically dependent upon the agricultural employer/association as to be considered its employee. * * *'' NPRM at 500.20(h)(5)(iii). The factors are merely tools to be used to answer the ultimate question of economic dependence and are neither to be used as a checklist nor as an exhaustive list of relevant factors.[16]

Each potential joint employment situation must be examined on its peculiar or special facts. The legislative history is clear that there are a broad range of factual situations, and that each must be assessed based on its own distinct circumstances.[17] In the proposed rule, the Department more clearly, completely, and accurately sets out the appropriate method for analyzing these circumstances.

There is no presumption or automatic joint employment. There are circumstances which do not constitute joint employment. Some of the factors in the proposed rule are frequently present in the typical agricultural situation and, therefore, might lead to a determination of employment or joint employment status on the part of the agricultural employer/association. But such a determination must be made on all the facts in a particular case. Despite NCAE's assertion, the proposed rule does not compel a determination that joint employment exists whenever a farm labor contractor or other service provider is utilized.

For example, in some crops, a grower may sell his/her entire crop to a harvesting company, which becomes responsible for harvesting and transporting the crop to storage or market; or a grower may turn his/her entire harvesting operation over to a farm labor contractor, who makes all the meaningful decisions regarding the harvesting of the crops and provides his/her own materials and equipment needed in the harvest, such as with custom combiners who harvest grain crops or other custom harvesting operations common in many agricultural commodities.

Another example is where an agricultural employer/association secures the services of a FLC and sets out ultimate performance standards for the job, but then has no right to control or further involvement in the work or the employment, all of which are in the FLC's hands. The FLC and his/her employees are free to schedule work under any other contracts. The FLC provides all the equipment, tools and resources necessary to complete the job for which his/her services were retained and to manage all aspects of the workers' employment. The FLC has the financial and managerial ability to conduct his/her business without the involvement or assistance of the agricultural employer/association and undertakes all the responsibilities commonly performed by an employer. This and similar arrangements are not uncommon in agriculture. In such situations, an application of the economic dependence analysis is unlikely to result in a determination that the grower is an employer or joint employer under the MSPA.

In both of the above examples, it is quite common for the agreement between the agricultural employer/association and the farm labor contractor to explicitly state which party has responsibility for meeting certain obligations. The mere fact that the agricultural employer/association enters into an agreement making the farm labor contractor exclusively responsible for functions and activities that are commonly performed by employers—such as setting wage rates, paying wages, supervising, directing and controlling the workers, providing worker's compensation—does not indicate that the agricultural employer/association may be a joint employer. On the other hand, merely so providing in the contract is not controlling if the agricultural employer/association in fact retains the power to, or actually performs, such functions. As the legislative history and the case law make abundantly clear, it is the economic reality of the relationship, not contractual labels, that determine joint employment. In order to allay any confusion that may exist and to clarify the effect of this regulation, language has been added to the regulation to reiterate that this regulation does not create strict or per se liability and that no single factor or set of factors is determinative of joint employment. As has been stated repeatedly, joint employment can only be determined by an examination of all the facts in a particular case.

NCAE asserts that the effect of the proposed rule will be the elimination of the use of FLCs and consequent disruption in the agricultural labor market. This assertion fails to recognize that the issue of joint employment under MSPA does not govern whether agricultural employers/associations will have access to the services provided by FLCs. No FLC will be precluded by anything in the proposed regulation from pursuing his/her business. Even where the agricultural employer/association is determined to be the employer or a joint employer for purposes of MSPA, the employer/association may still use the FLC's services for all the tasks which FLCs may perform under MSPA—recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker. The sole effect of a joint employment determination is, where appropriate, to make an agricultural employer/association jointly responsible in the event the FLC does not perform the employer functions in a lawful manner.

The American Farm Bureau Federation—a broad-based organization similar to NCAE, which represents the business and economic interests of more than 4 million agricultural families—has addressed many of the same concerns raised by the NCAE comments but without predicting the same dire consequences for agricultural employers/associations who accept responsibility for FLCs' actions. In its *Farm Bureau Grower's Handbook: A Compliance Guideline To Federal Agricultural Labor Laws*, April, 1991, the Farm Bureau acknowledged that applying the economic dependence analysis to the typical agricultural circumstance will ''* * * probably be enough for him [the grower] to be a joint employer with the labor contractor. * * *'' In light of this potential outcome, the Farm Bureau suggested two alternative courses of action for its members:

> ''A grower has two choices. First, you may try to distance yourself from your farm labor contractor so that you will not be found to be a joint employer if a lawsuit is brought against him. Second, you may accept that the way in which you want your operation to work does not allow you to avoid being a joint employer, and decide to plan ahead to avoid legal liability. As for the first choice, you should be aware that the trend of court decisions, especially where workers covered by [MSPA] are concerned, is to find that the

[16] *See Antenor* v. *D & S Farms*, 88 F.3d 925, 932 (11th Cir. 1996).

[17] House Comm. Rept. at 4553.

growers are *joint* employers. Generally speaking, this option is available only where the workers are skilled and where the grower takes a hands-off approach to supervising the work and the employees. * * * On the other hand, planning ahead to take responsibility for complying with FLSA and [MSPA] does not need to be an unreasonable burden. Several of the steps that are required may be taken by either the grower or the contractor. * * * A plan to take all necessary steps to comply with FLSA and [MSPA] is a better defense against a lawsuit than trying to avoid joint employment.''

Id. at 49–50.

The Farm Bureau acknowledges that joint employment in the typical agricultural context is common but not inevitable. As will be addressed in greater detail below, the Farm Bureau also lists factors used in the joint employment analysis that closely track those set out in the proposed rule and which NCAE suggests are inappropriate.

b. Application of the Analytical Factors in the Proposed Rule

NCAE suggests that under the proposed rule a finding of ''any control or authority on the part of the grower'' will result in a finding of economic dependence and joint employment. NCAE construes the proposed rule as requiring that joint employment be found where *any* of the delineated factors are present. However, NCAE misconstrues (or perhaps overlooks) the express language of the proposed rule which states that the factors ''are analytical tools to be used in determining the ultimate question of economic dependence. The factors are not to be applied as a checklist. * * * No one factor is critical to the analysis * * * Rather, how the factors are weighed depends upon all the facts and circumstances.'' NPRM at 500.20(h)(5)(iv).

NCAE asserts that the analytical factors identified in the proposed rule are distorted or inappropriate for various reasons. This contention appears to overlook the fact that each of the proposed rule's analytical factors is drawn from the case law regarding ''employ'' and joint employment, as discussed below.

The American Farm Bureau Federation's published guidance for its members (1991 *Handbook*) expressly recognizes a list of analytical factors bearing on the joint employment determination. While the Farm Bureau's factors do not identically track the factors set out in the proposed rule, they are notably similar and their recognition by the Farm Bureau is at odds with NCAE's assertions about the propriety and relevance of factors such as the skills of workers, relative investment, and permanency and exclusivity of the work. The Farm Bureau's *Handbook* lists the relevant factors for determining as joint employment as follows:

- Who owns the property where the work is done?
- How much skill is needed to do the job?
- Who has investment in land, equipment and facilities?
- How permanent and exclusive is the job?
- Who has the right to control the work?
- Who supervises the work?
- Who sets the rates of pay or methods of payment and employment policies?
- Who has the right to hire, fire, discipline, and otherwise affect the workers' employment?
- Who prepares the payroll and pays the workers?

The NCAE's comments also address individual factors set forth in the proposed rule, as follows:

i. Control/Supervision

Among the factors set forth in the proposed rule, this factor tests the putative employer's power (directly or indirectly, exercised or unexercised) to control or supervise the workers or the work performed. NCAE suggests that the only relevant consideration under the control factor should be the extent to which the grower actually exercises control and then only if the exercise of control is substantial. The Department disagrees with such a narrow view of control in the determination of joint employment.

Courts addressing this matter have held that it is not the actual exercise of direct control of the work but rather the power or ability to do so that is relevant to the joint employment inquiry.[18] Further, the courts have recognized that the exercise of control can be accomplished directly or indirectly through others, such as by conveying instructions through a FLC to the workers.[19]

As one court observed when considering the control factor, ''* * * the *right* to control, not necessarily the actual exercise of that control is important. The absence of the need to control should not be confused with the absence of the right to control.''[20] Where the agricultural employer/association retains any right to control the workers or the work, this would constitute control indicative of an employment relationship. For instance, where the agricultural employer/association retains the right to direct details of the work, this fact is indicative of control and therefore relevant to the joint employment analysis.

Even the *Aimable* decision cited by NCAE in support of its comments to the proposed rule does not necessarily support NCAE's position. Having observed that in this case the FLC ''* * * exercised absolute, unfettered and sole control over [the workers] and their employment,'' the *Aimable* court simply never addressed any circumstance in which the putative joint employer retained the right to control but did not exercise it. *Aimable* at 440.

The Department does believe that the words ''exercised or unexercised'' in the proposed regulation language are redundant, inasmuch as the ''power'' to control, direct, or supervise necessarily implies the concept of unexercised control. Therefore, to avoid confusion or misunderstanding and to bring greater clarity to the regulation, the words ''exercised or unexercised'' are not included in the Final Rule.

The courts have determined that the requisite control of the work may be exercised directly or indirectly through others.[21] Indirect control or supervision may be accomplished through instructions delivered to the FLC to be communicated to the workers. As one court said, ''The fact that the defendant often effected this supervision by speaking to the crew leaders, who in turn spoke to the farmworkers, rather than speaking directly to the plaintiffs, does not negate the obviously extensive degree of on-the-job supervision that existed. Reality can not be so easily masked by transparent attempts to cover over the truth with a deceptive label.''[22]

It should be noted that indirect control sufficient to indicate the existence of an employment relationship between a grower and a FLC's crewmembers would not be established solely by contractual terms through which the grower's ultimate standards or requirements for the FLC's performance are defined (e.g., the

[18] *Beliz* at 1329–30; *Haywood* v. *Barnes,* 109 F.R.D. 568, 589 (E.D.N.C. 1986). *Contra Aimable,* at 440–441.

[19] *Aimable* at 441; *Griffin and Brand* at 238; *Monville* v. *Williams,* 107 Lab. Cas. (CCH) P34,978, at 45,252–253 (D. Md. 1987).

[20] *Haywood* at 589; cited in *Barrientos* v. *Taylor,* 917 F. Supp. 375, 383 (E.D.N.C. 1996).

[21] *Griffin & Brand* at 237; *Barrientos* at 382; *Monville* at 44,253; *Leach* v. *Johnston,* 812 F. Supp. 1198, 1207 (M.D. Fla. 1992); *Antunez* v. *G & C Farms, Inc.,* 126 Lab. Cas. (CCH) P33,015, at p. 46,174 (D.N.M. 1993).

[22] *Haywood* at 589 citing *Griffin & Brand* at 238. *See also Aimable* at 441 (''It is well-settled that supervision is present whether orders are communicated directly to the laborer or indirectly through the contractor.''); *Beliz* at 1328; *Castillo* at 189 n.17, 191–92.

grower's specification of the size or ripeness of the produce to be harvested, or of the date for the FLC's completion of a job). Such stated performance standards or objectives—which are common in contracts for services in the agricultural industry and in other contexts—would not, in themselves, constitute indirect control of the work by the person for whose benefit the services are to be performed (e.g., the grower). However, the greater a grower's involvement in the assurance and verification that the FLC is meeting or will meet the contract's ultimate performance requirements, the greater the likelihood that the grower would demonstrate sufficient indirect control to indicate an employment relationship with the FLC's crewmembers. Where the grower not only specifies in the contract the size or ripeness of the produce to be harvested, but also appears in the field to check on the details of the work and communicates to the FLC any deficiencies observed, the circumstances must be closely examined to determine if the grower is demonstrating sufficient indirect control of the workers to indicate there may be an employment relationship with them. The agricultural employer/association may certainly take action during or after the conclusion of the work to confirm satisfaction of the contract's ultimate performance standards (including appearing in the field and communicating with the FLC about general observations concerning performance of the contract standards, such as ripeness or size of the produce harvested) without this action alone being considered an indicium of joint employment. The critical question to be considered is not whether the agricultural employer/association was in the field or communicated with the FLC, but rather what that presence in the field and those communications indicate about the nature and degree of the agricultural employer/association's control over the work or the employment. To avoid any possible confusion in this regard, Factor (A) has been amended to provide that a reasonable degree of contract performance oversight and coordination with third parties such as packing houses and processors is permissible.

ii. Power to Hire, Fire, Modify Employment Conditions or Determine Pay Rates or Methods of Payment

As with the control factor, NCAE argues that it should be only the actual exercise, not the power to effect, these activities that should be considered. NCAE recognizes that these important employer functions are significant in the determination of joint employment. A putative employer's direct or indirect exercise of the power to hire, fire or modify employment conditions, set pay rates or method of payment is obviously relevant to employer status, as courts have stated.[23] For example, a putative employer may expressly agree on a rate of pay for the workers in his/her contract with an FLC[24] or may effectively determine the workers' compensation rates through the amount of the payments to the FLC.[25]

Equally relevant is the putative employer's power or authority to exercise these functions should it be in his/her best interest to do so. Courts have recognized that agricultural employers retain the ability to exercise significant control over the employment but may never find the need to exercise that power.[26] The retention of power is revealing of the economic dependence of the workers on the putative employer just as is the actual exercise of power.

The current regulation, which NCAE urges the Department to retain, includes the same factor bearing on employment that NCAE asserts is objectionable.[27] This factor is merely preserved in the amended rule.

iii. Provision of Housing, Transportation, Tools and Equipment, or Other Materials Required for the Job

NCAE asserts that this factor should not be considered in a joint employment analysis. Many courts have recognized the appropriateness of identifying the person or entity which provides the housing, transportation, tools, equipment, machinery and other resources related to the employment.[28] The Department—along with the courts—considers this factor to be relevant.

It is the Department's view that this factor is sufficiently similar to the consideration of employer-provided services or benefits in factor (H) of the NPRM that the factors should be consolidated in the Final Rule. A fuller discussion of the relevance of these facts is found in part vii below, which deals with new combined factor (G) of the Final Rule.

iv. Degree of Permanency of the Relationship

NCAE contends that this factor should not be considered because it was rejected by the court in *Aimable*. However, the Department recognizes that, despite *Aimable*, the great weight of the case law supports consideration of the degree of permanency and exclusivity in the relationship between the workers and the putative employer in the context of the agricultural operation in question.[29] The duration of that operation necessarily affects the duration or permanency of the relationship. Where an FLC and the workers are engaged for the duration of the operation and are obligated to work only for or be available to the agricultural employer/association at his/her discretion during that period, that information bears directly on the question of the workers' economic dependence. Other courts have found this factor relevant and the Department believes that duration of the relationship should be one of the factors considered in determining joint employment.

v. Unskilled Work

NCAE suggests that this factor is designed to predetermine a finding of joint employment, apparently based on the assumption that nearly all agricultural work involves repetitive, rote tasks requiring little skill or training even though NCAE also acknowledges that many agricultural jobs require considerable skill and experience. The Department recognizes that the worker's skill—like each of the other factors identified in the case law and this regulation—is only one of several factors which are to be considered in making the ultimate determination as to the worker's economic dependence. In almost all cases, the courts have considered the worker's degree of skill to be a relevant and probative factor in the determination of such dependence.[30] In common experience in the agricultural industry and other contexts, there is a reasonable correlation between the worker's degree of skill and the marketability and value of his/her services. In the free market

[23] *Beliz at 1328; Castillo* at 192; *Griffin & Brand* at 237–38; *Antunez* at p 46,173; *Haywood* at 587.

[24] *Beliz* at 1328; *Griffin & Brand* at 238; *Alviso-Medrano* v. *Harloff*, 868 F. Supp. 1367, 1373 (M.D. Fla. 1994); *Haywood* at 590–91; *Monville* at 45,253.

[25] *Beliz* at 1328; *Castillo* at 192; *Alviso-Medrano* at 1373; *Monville* at 45,253; *Maldonado* at 487.

[26] *See, e.g., Beliz* at 1322, 1328; *Maldonado* at 487.

[27] *See* 29 CFR 500.20(h)(4)(ii)(C) The Power to determine the pay rates or the methods of payment of the workers; (D) The right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers.

[28] *Rutherford* at 731; *Antenor* at 937–938 & n.15; *Beliz* at 1328; *Castillo* at 192; *Barrientos* at 383; *Haywood* at 587, 588–89; *Monville* at 45,253. *But see Aimable* at 443.

[29] *Ricketts* v. *Vann*, 32 F.3d F1, F4 (rth Cir. 1994); *Lauritzen, Secretary of Labor* v. *Beliz* at 1328; *Fahs* at 44; *Haywood* at 589; *Donovan* v. *Gillmor*, 535 F. Supp. 154, 162–63 (N.D. Ohio), *appeal dismissed*, 708 F.2d 723 (6th Cir. 1982).

[30] *Ricketts* at 74; *Beliz* at 1328; *Castillo* at 190; *Real* at 755; *Antunez* at 46,174; *Fahs* at 44. *But cf. Aimable* at 444.

place, an unskilled task which may easily be learned and performed by almost any worker is a task for which many workers (both trained and untrained) can realistically compete, and is also a task for which the competing workers would not be able to demand or expect high wages. The lower the worker's skill level, the lower the value and marketability of his/her services, and the greater the likelihood of his/her economic dependence on the person utilizing those services. Conversely, the higher the worker's skill level, the greater the value and marketability of his/her services in the market place and, consequently, the lesser the likelihood that he/she would be economically dependent on any particular person who utilizes his/her services.

The Department concludes that, in light of the great weight of the case law, the factor of the worker's degree of skill is an appropriate factor for consideration in the determination of economic dependence; the regulation therefore identifies this factor as one of several to be considered.[31]

vi. Activities of the Workers Integral to Overall Business Operation and Work Performed on Premises Owned or Controlled by Putative Employer

NCAE asserts that these two factors are included in the proposed rule to assure that the agricultural employer/association always will be found to be a joint employer. NCAE cites no authority for rejecting these as relevant factors for determining joint employment. In fact, no case has rejected these factors and they are invariably included among the factors considered by courts.[32]

This MSPA regulation is an embodiment and distillation of the case law, which consistently demonstrates that many factors—including the worker's performance of a function integral to the putative employer's operation, and the location of the work on the putative employer's premises—are relevant and probative factors in the determination of the ultimate question of the worker's economic dependence.[33] The exclusion of one or more of these factors would not only be an unjustifiable distortion of the courts' decisions, but would also result in an incomplete analysis of the economic realities upon which the ultimate issue of an employment relationship is based.

In the agricultural industry, as in other parts of the free market place, there is a logical and appropriate correlation between the ''centrality'' of a function in a business operation and the certainty of the business' performance of that function through the use of whatever resources or methods are necessary, including the use of labor. In other words, where a function is a central or core part of the business (*i.e.*, important enough to be ''integral'' to the business; often performed on the business' premises), common experience shows that that business would be virtually certain to assure that the function is performed, and would obtain the services of whatever workers are needed for that function. The workers so engaged can reasonably anticipate that the work will be available for so long as the function in question must be performed. The Eleventh Circuit, recognizing the importance of the putative employer's providing the place where the work is performed, stated in *Antenor*: ''[t]his element is probative of joint-employment status for the obvious reason that without the land, the workers might not have work, and because the business that owns or controls the worksite will likely be able to prevent labor law violations, even if it delegates hiring and supervisory responsibilities to labor contractors.'' 88 F.3d at 936–937. The court applied a similar rationale in holding that ''a worker who performs a routine task that is a normal and integral phase of the grower's production is likely to be dependent on the grower's overall production process.'' The workers' reliance upon a particular business as a source or place of work (and, consequently, a source of income in the form of wages for services) can appropriately be considered in the determination of an employment relationship.

Conversely, where the work is not performed on the putative employer's premises or is not integral to the putative employer's business operation, these facts would indicate that the existence of a joint employment relationship is somewhat less likely.

After carefully reviewing the case law and considering the NCAE comment, the Department has concluded that the analysis of the workers' economic dependency on the putative employer necessarily includes the consideration of these two factors bearing on the ''centrality'' of the function in the putative employer's operation. However, the Department reiterates that neither of these factors (or any other factor) is controlling in the analysis.

vii. Putative Employer Provides Services, Materials or Functions Commonly Performed by an Employer

As stated in the discussion under part iii above, factor (C) of the NPRM has been combined with factor (H) of the NPRM to create a new factor (G) in the Final Rule because the substance of the two NPRM factors is similar. Both NPRM factors focused on services, tools, equipment, and materials which are commonly provided or performed by employers. Factor (C) dealt with transportation and housing, which are common indices of employment for transient workers or those who have no other means of transportation to work. Factor (H) dealt with services and benefits such as providing workers' compensation insurance and handling payroll, which are commonly performed by employers.

In addition to the issues raised by the American Pulpwood Association and others, discussed above, NCAE suggests that consideration of this factor is inappropriate in that a putative employer may take such actions or provide materials or services because he/she handle them better or more economically than can the FLC. The Department recognizes that an agricultural employer/association may be more skilled, efficient, or better capitalized than the FLC and that this may be a reason for performance of various ''employer'' functions. However, the Department does not consider efficiency, motive, or capitalization to be a reason to negate the relevance of this factor in assessing joint employment. The courts have considered these facts to be relevant and probative in the joint employment analysis.

Where a putative employer provides materials or services, or undertakes functions normally performed by an employer (such as providing workers' compensation, paying FICA taxes, transporting or housing workers, providing the tools and equipment necessary to the work), such behavior indicates that it is in his/her interest to perform such functions that are commonly performed by employers rather than rely on the FLC.[34] Further, workers who use the services, materials or functions are in a very tangible way economically dependent on the entity

[31] *Ricketts* at 74; *Beliz* at 1328; *Castillo* at 190; *Real* at 755; *Antunez* at 46,174; *Fahs* at 44. *But cf. Aimable* at 444.

[32] *Rutherford Food* at 726, 729–730; *Aimable* at 444; *Griffin & Brand* at 237–238; *Beliz* at 1328; *Castillo* at 192; *Fahs* at 42–43.

[33] *Rutherford Food* at 726, 729–730; *Aimable* at 444; *Griffin & Brand* at 237–238; *Beliz* at 1328; *Castillo* at 192; *Fahs* at 42–43.

[34] *Antenor* at 937; *Griffin & Brand* at 237; *Fahs* at 42; *Beliz* at 1328.

performing these functions.[35] Thus, the performance of these ''employer'' functions by a putative employer is both an objective manifestation of employer status and strong evidence of the workers' economic dependence upon him/her.

The Final Rule contains some modifications made in response to these commenter's concerns. The word ''normally'' in the NPRM has been changed to ''commonly'' as a more accurate and precise word in this context. Further, the NPRM has been amended to consider the amount of the investment in tools and equipment when considering these items in the joint employment analysis.

The Department recognizes that ownership of housing is not determinative. To the extent that an agricultural employer/association relinquishes all control of housing it owns to a third party, the mere ownership of the housing by the agricultural employer/association would not in itself be a consideration in the joint employment analysis.

The Department also recognizes that benefits, services or functions performed by an agricultural employer/association may directly benefit the workers, and that some persons might argue that these matters should not be considered in the joint employment analysis to avert the unintended and undesirable consequence that agricultural employers/associations would be dissuaded from providing these benefits. While workers may be benefited if an agricultural employer/association provides workers' compensation, withholds and pays employment taxes, or provides housing or transportation, the benefit realized by the workers does not negate, but rather reinforces the relevance of the provision of these services in determining the economic dependence of the workers. As set out above, the courts have held these facts to be probative of joint employment.

Nonetheless, it is not the Department's intention nor desire to create unnecessary disincentives for agricultural employers/associations to provide employment related benefits to agricultural workers or more closely oversee farm labor contractor activities to ensure compliance with legal obligations. Therefore, the MSPA regulation on the assessment of civil money penalties, 29 CFR 500.143 is amended to include as an example of ''good faith efforts to comply with the Act'' an agricultural employer/association providing benefits to workers or taking reasonable measures to ensure FLC compliance with legal obligations. These reasonable measures will be considered by the Department as a mitigating factor in assessing any civil money penalties resulting from violations which arise from the joint employment relationship.

The Department further recognizes that an agricultural employer/association may be harmed by an FLC who violates his/her contract with the agricultural employer/association for the provision of labor and, in so doing, fails to meet an employment obligation to the workers. If an agricultural employer/association is found to be a joint employer, and therefore jointly liable with the FLC for employment obligations to the workers (*e.g.*, payment of wages), the agricultural employer/association would be required to ''make good'' on such obligations where the FLC failed to do so. The joint and several liability inherent in the concept of joint employment requires this result. However, nothing in the case law on joint employment or in this MSPA regulation should be construed as in any way prejudicing any rights the agricultural employer/association may have against the FLC to recover for damages resulting from the FLC's breach of the contract to provide labor to the agricultural employer/association. Thus, if the FLC in that contract agreed to pay the wages of the workers but failed to do so, the agricultural employer/association found to be a joint employer may well have legal recourse against the FLC for any money the agricultural employer/association is required to pay to the workers.

Some employer commenters assert that certain activities are undertaken by the agricultural employer/association not because of an employment relationship with the workers or because it can handle the activity more efficiently or economically than the FLC, but because the agricultural employer/association is obligated under some other law to engage in or refrain from engaging in certain activity. One example is the landowner's obligation under Environmental Protection Agency (EPA) regulations to prevent workers from reentering fields that were recently sprayed with pesticides. The Department takes the view that where an action or inaction is taken under compulsion of a legal requirement which is unrelated to an employment relationship, such action or inaction is not to be considered in the determination of whether an employment relationship exists for purposes of MSPA. Thus, while a grower's action in barring workers from a particular field at a particular time might be viewed as an exercise of the grower's control over the workers' hours and places of work (indicative of an employment relationship), the Department would not take this activity into account in the employment relationship analysis where the grower's action is only that required to fulfill his/her legal obligations under EPA requirements based on his/her status as a landowner and not on any status as an employer.

c. Administrative Procedure Act

NCAE and other commenters assert that the Department has failed to demonstrate a compelling rationale for the proposed rule, *i.e.*, that the Department presented no ''data'' to support the proposal and, therefore, the rule is arbitrary and capricious. The proposed regulation is intended by the Department to clarify the current regulation, to provide more complete and accurate information to affected parties (farm labor contractors, agricultural employers/associations, and agricultural workers), and to make the regulation more useful to the public. NCAE asserts that the rationale is insufficient because the proposed regulation is longer rather than shorter than the current regulation and because, in NCAE's opinion, the regulated community is not confused and, therefore, needs no clarification. Further, these commenters suggest that the proposed rule is fatally flawed because in their opinion courts will not grant deference to the new rule because it is at odds with the current rule (promulgated shortly after MSPA's enactment) and with the *Aimable* decision. The Department has considered these concerns and believes them to be without foundation.

The current regulation is not being repudiated by the proposed rule. Rather, the substance of the current regulation is being reorganized and restated for purposes of clarity, and additional guidance is being offered to the regulated community. In the 13 years since the enactment of MSPA, it has become apparent that the regulation needs to be updated to reflect the Department's enforcement experience and a substantial body of court decisions construing joint employment. Enforcement experience and judicial decisions have highlighted the need for clarification and elaboration of the proper analysis of joint employment.

Since the current regulation was promulgated in 1983, it has become

[35] *Antenor* at 936 (''[T]he farmworkers were dependent on the growers to obtain financial compensation for job-related injuries * * * They relied on [the growers] to see that the social security payments were made as well.')

clear to the Department that the regulation does not offer complete guidance on joint employment and may lead to misunderstanding and confusion. The regulation has been misconstrued in as much as the five factors delineated in 500.20(h)(4)(ii)(A)–(E) have sometimes been viewed as an exhaustive list of factors that the Department believes are probative of joint employment. This has never been the position of the Department, as shown by the express qualification in the existing regulation, which states that the determination of joint employment is not limited to the regulation's list of factors. 29 CFR 500.20(h)(4)(ii). However, some of the regulated community and some courts have taken the position that these are ''*the* five regulatory factors'' (emphasis added), treating them as an exclusive or exhaustive list. *Aimable* at 439.

The five factors identified in the current regulation continue to be an essential part of the consideration of joint employment. The proposed rule is intended to place them in the proper context as part of the economic dependence analysis. The five factors, consolidated into two, apply within the broader context of the economic dependence analysis and the more complete list of factors found relevant by the courts and by the Department in conducting this analysis.

The proposed regulation is thus a more complete and accurate description of the appropriate joint employment analysis than is the current regulation. The proposed rule is intended to give better guidance to the regulated community about the purposes to be served by the MSPA joint employment principles and provide additional guidance about the ultimate question to be resolved in both the independent contractor and joint employer analysis—*i.e.*, economic dependence. The Department has set out a nonexclusive list of factors which it believes will help provide the proper framework for deciding whether or not a joint employment relationship (or independent contractor status) exists; the proposed rule preserves the current rule's express notice that factors in addition to those identified in the regulation may be appropriate for consideration. Through the proposed rule, the regulated community is being provided with more complete guidance, the courts will have the benefit of the Department's complete views on these questions, and the Department's enforcement of MSPA will be made more efficient and effective.

The need for clarification has become apparent to the Department. Some recent court decisions—such as *Aimable*—have applied the current regulation as a checklist, or as a rigid formula in which factors simply are entered in two columns with little analysis beyond a comparison of the totals at the bottom of the columns ''for'' and ''against'' joint employment. The most recent case to consider the joint employment in agriculture issue [36] has instructed that this analytical method is not what was intended by the courts in the seminal cases [37] or by Congress in its express adoption of the FLSA's broad concepts of ''employ'' and joint employment. The proposed rule is intended to assist in focusing on and applying the flexible multifactor analysis which is required.

Further, the Department's enforcement experience indicates a need to better articulate and apply Congress's intentions for MSPA joint employment. Studies have shown that the use of farm labor contractors is increasing, thereby exacerbating the harmful effects which FLCs who operate in violation of the laws have in this labor market. [38] These studies have shown that in comparison with growers, farm labor contractors pay lower wages and provide fewer benefits. [39] To the extent that farmworkers, who are entitled to the protections of MSPA, are denied their rights because of misunderstanding of or incorrect application of joint employment principles under the current regulation, it is the Department's belief that the proposed regulation will enable more agricultural employers/associations to understand and fulfill their obligations if, as the American Farm Bureau Federation's Grower Handbook says, they will ''accept that the way you want your operation to work does not allow you to avoid being a joint employer.''

5. AFL–CIO Comment

The AFL–CIO commented in support of the proposed rule as being fully consistent with the statutory language, its legislative history and its intended purposes. Further, the AFL–CIO expresses the view that the proposed rule is likely to better inform the regulated community about its obligations under the Act and thereby promote greater compliance among employers, thus reducing government enforcement expense.

The AFL–CIO found support for its views in the definition of ''employ'' under the FLSA and the Supreme Court's observation that ''a broader or more comprehensive coverage of employee within the stated categories would be difficult to frame.'' [40] The AFL–CIO asserts that as a result of the broad coverage under ''employ,'' it has long been settled that the traditional common law ''control'' tests and principles do not solely determine whether or not a worker is an independent contractor or employee, or whether or not he/she is employed by one or more employers.

The AFL–CIO further emphasizes that Congress intended to capture the broad scope of the FLSA coverage when it enacted MSPA. The AFL–CIO cites the legislative history which shows that joint employment was characterized as the ''central foundation'' of the Act and should not be decided by common law principles.

The AFL–CIO agrees with the courts and the Department that the proper analysis in determining employment status is economic dependency based on consideration of the totality of the circumstances, not a mechanically applied checklist of factors. Citing the language in the Committee Report as evidence of the approach which Congress intended (''* * * the absence of evidence on any one or more of the criteria listed does not preclude a finding that an agricultural association or agricultural employer was not a joint employer along with the crew leader.'' [41]), the AFL–CIO contends that the proposed rule ''reflects fairly the factors which Congress intended to aid in evaluating whether workers are individual contractors or employees'' and who among the parties are employers. The AFL–CIO also suggests that the Department consider including a brief statement explaining the significance of the factors delineated in the NPRM as a way of bringing greater clarity to the regulations.

The AFL–CIO suggests that the regulation make clear that sufficient control on the part of a putative employer is demonstrated if the putative employer retains the right to establish general parameters within which the work is to occur. They assert that a labor

[36] *Antenor, supra.*

[37] *Rutherford Food* at 730; *Lauritzen* at 1538; *Pilgrim Equipment at* 1311.

[38] ''U.S. Farmworkers in the Post-IRCA Period: Based on Data from the National Agricultural Workers Survey,'' Office of the Assistant Secretary for Policy, March, 1993, at 16; ''The Report of the Commission on Agricultural Workers'', Commission on Agricultural Workers, November, 1992, at xxvii.(''In recent years FLCs increasingly have filled the role of matching seasonal workers with jobs. * * * Workers employed by FLCs generally receive lower wages and are employed under working conditions inferior to those offered to farmworkers hired by * * * agricultural employers.'').

[39] *Ibid.*

[40] *U.S.* v. *Rosenwasser,* 323 U.S. 360, 362 (1945).

[41] House Comm. Rept. at 4553.

intermediary may make all the implementing decisions within those broad parameters but the person establishing those parameters retains sufficient control to be deemed a joint employer. In their view, sufficient control would be established if the putative employer retains the right to dictate the ''place, pace and timing'' of the harvest. A grower places his/her interests in the place, pace and timing of the harvest to maximize profit given market price and other factors in contrast with the FLC and piece-rate workers, whose economic interests are to pick as much and as fast as possible to maximize earnings. The grower thereby may make the worker (and the labor contractor) subservient to—and dependent on—the grower's economic goal of maximizing profit by delaying the harvest or by picking only the best quality of fruit.

Because the proposed regulation is intended to address a broad range of circumstances, the Department has concluded that any attempt to delineate precisely how each factor is to be applied as suggested by the AFL–CIO in this regard may well have the effect of unduly limiting the factor's application to an inappropriately narrow range of factual circumstances. As the proposed rule makes clear, the statement of the factors is intended to offer guidance and not to be exhaustive, either in the identification of relevant factors or in their application to specific factual circumstances. In appropriate factual circumstances, it may well be appropriate to conclude that the right to determine the place, pace and timing of the work is sufficient to establish control under the joint employer analysis.

6. Migrant Farmworker Justice Project

The Migrant Farmworker Justice Project (MFJP) submitted comments on behalf of itself and 33 others, generally supporting the proposed rule. Specifically, MFJP asserts that the proposed rule is necessary to clarify the current regulation to more fully and completely conform to case law cited in the MSPA legislative history and the judicial rulings construing the Act. Further, MFJP contends that the current regulation, particularly the listed factors, has excluded other relevant factors, thereby misleading Wage and Hour compliance investigators and the affected community about the obligations under the Act.

MFJP also contends that there is ample factual support for the necessity to further refine the joint employment definition to serve the legislative purpose in enacting MSPA in 1983. MFJP asserts that MSPA was intended to shift responsibility to growers from FLCs for many of the important protections under MSPA's predecessor statute, the Farm Labor Contractor Registration Act (FLCRA). FLCRA did not include the joint employer concept but rather placed responsibility on farm labor contractors. MFJP asserts that the Department's incomplete definition of joint employment in the current regulation has undermined that essential Congressional purpose underlying the enactment of MSPA.

In support of this assertion, MFJP cites the legislative history of MSPA in which Congress found that the FLCRA had ''failed to reverse the historical pattern of abuse and exploitation of migrant and seasonal farm workers'' and that ''a completely new approach must be advanced.''[42] As stated by an original co-sponsor of MSPA, this completely new approach involved placing responsibility for compliance with certain provisions on agricultural employers as well as FLCs:

The [Act] corrects the key weakness of the FLCRA, which held only the farm labor contractor responsible for such abuses and shielded the employer unless he fell within the narrow definition of ''farm labor contractor'' under that Act.

Remarks of Rep. Ford, 128 Cong. Rec. 10456 (daily ed. December 20, 1982).[43]

In addition, MFJP contends that FLCs have proven to be difficult both to regulate and, when found to be in violation, to effectively bring to account. According to MFJP, many FLCs are so devoid of resources that they are unable to satisfy civil money penalty assessments or court judgments awarding monetary damages to aggrieved farmworkers. Additionally, with such a transient population (approximately 20% of the FLC population leaves the industry every year and is replaced by new entrants),[44] it is difficult to effectively regulate labor standards if only FLCs are deemed responsible for compliance.

MFJP suggests that the proposed joint employment analysis needs further clarification in order to reiterate that joint employment is indicated when two or more employers share responsibility for all or some of the factors set out in the proposed rule. According to MFJP, such shared responsibility tends to indicate that the workers are economically dependent on two employers, such as when a FLC provides the clippers needed to harvest citrus and the agricultural employer/association provides the equipment for hauling the fruit and the field sanitation units (See proposed 500.20(h)(5)(iv)(C)). It also tends to demonstrate that the putative employers are not completely disassociated with respect to the employment of an employee. The Department agrees with this point and thus the regulatory language at 500.20(h)(5) will be changed to clarify that shared responsibility is an indication of joint employment.[45]

7. United Farm Workers, AFL–CIO, Texas Division

The United Farm Workers, AFL-CIO, Texas Division (UFW-Texas) submitted comments on behalf of itself and 15 other organizations. The UFW-Texas comments were generally supportive of the proposed rule and many of its statements were consistent with and reflected in the AFL-CIO and MFJP comments. However, UFW-Texas also suggests that the factors set out in the proposed rule should be further explained and reformulated to capture the full scope of the cases applying the factors. For example, the proposed factor at § 500.20(h)(4)(iii) states in relevant part: ''[t]he putative employee's investment in equipment or materials required for the task * * *''. UFW-Texas suggests restating the factor in the following language (modifications underlined): ''[t]he putative employee's investment in substantial equipment, materials, and large capital expenditures as compared to that of the putative employer.'' In the alternative, the UFW-Texas proposes that the factors be amended to include citations to cases in which the factors have been applied.

The Department believes the suggested changes are unnecessary. As stated in the proposed rule, the regulation is intended to summarize the factors applied by the courts and is not intended to be an exhaustive statement of the relevant factors and their applicability in every situation. Under this rule, it would still be necessary for enforcement personnel and courts examining joint employment to refer to the guidance offered by the courts that have applied the factors in joint employment cases. Nothing the

[42] House Comm. Rept. at 4549.

[43] MFJP also cites *Monville* at 45,252 (''Indeed, the elimination of this shielding effect of recruiter-contractors was one consideration leading to the reformulation and broadening of the definition of the term 'employ' when the [MSPA] was enacted to replace the Farm Labor Contractor Registration Act of 1963.'')

[44] This data is based on information from DOL registrations of FLCs.

[45] *See Antenor* at 938; *but see Aimable* at 443 (significant investment in equipment and facilities on the part of both the FLC and the grower does not indicate that the workers are jointly employed by both entities).

Department has done in the proposed rule negates this additional level of analysis.

8. United States Department of Agriculture

The United States Department of Agriculture (USDA) submitted a number of comments concerning the NPRM. Many of USDA's comments were similar to those submitted by agricultural interests and are fully addressed above.

USDA made a number of observations regarding FLCs and their relationships with agricultural employers/associations, and offered several comments concerning the regulation in general. USDA suggested that an amended MSPA joint employment regulation is unnecessary and should not be issued. Further, USDA suggested that should a revised joint employment regulation be deemed necessary or advisable, it should be issued as a regulation applicable to all industries under the Fair Labor Standards Act. After careful consideration, the Department concluded that these USDA suggestions could not be accommodated, since joint employment is already defined in the MSPA regulations and that definition is in need of revision.

USDA also offered specific comments on the NPRM, all of which have been fully considered by the Department. Some of the USDA suggestions have been adopted while others have been rejected, as discussed below.

USDA, like the comments submitted by NCAE and discussed in detail above, suggested that the NPRM test for economic dependence through an analysis of the listed factors would create a strict liability standard under MSPA and is therefore contrary to the case law and legislative intent. To support this position, USDA offered hypothetical factual patterns which it contended would illustrate strict liability in common agricultural settings. USDA further commented that the Department should focus its enforcement activities on the violating farm labor contractors rather than upon agricultural employers/associations who may or may not have any knowledge or control over contractors' activities. USDA also suggested that the Department should delete the NPRM factors concerning the unskilled nature of the work, work that is integral to the overall business operation of the agricultural employer/association, and work performed on the premises of the agricultural employer/association because these factors are indicative of an independent contractor relationship rather than joint employment. The Department has determined—based on a careful review of the legislative history and case law—that these concerns have been appropriately taken into account, as discussed earlier in this preamble with regard to other commenters. In addition, USDA contended that an economic analysis should be completed pursuant to Executive Order 12866. For the reasons stated in the Executive Order section of this preamble, the Department has concluded that such an analysis is not required.

USDA offered a number of specific recommendations to amend or clarify the NPRM that have been adopted in the Final Rule. The Rule expressly states that the test for joint employment is not a strict liability or per se rule. In the Preamble, examples have been included of hypothetical factual situations involving agricultural employers/associations and farm labor contractors in which joint employment is unlikely to be found. The NPRM Factor (A)—concerning the power to control, direct, or supervise the workers or the work—has been amended to clearly state that a reasonable exercise of contract performance oversight by the putative employer would not be sufficient to constitute ''control'' for purposes of joint employment. The NPRM Factor (I)—concerning ''other relevant factors''—has been deleted as being unnecessary and redundant; the regulation's language preceding the list of factors makes it clear that the factors are not an exhaustive list of all relevant considerations in the joint employment analysis. The MSPA regulation on the assessment of civil money penalties (29 CFR 500.143(b)(4)) is being clarified through the addition of a parenthetical illustrating that agricultural employers/associations who take reasonable measures to gain farm labor contractor compliance or who offer employment-related benefits to agricultural worker will have these good faith activities considered as mitigating factors in any penalty assessment resulting from a finding of joint employment. The Preamble also explains that where agricultural employers/associations undertake responsibilities solely as a result of a legal obligation unrelated to an employment relationship, those undertakings will not be considered in the joint employment analysis.

IV. Summary and Discussion of Final Rule

A. Joint Employment Standard Under MSPA

The Department is amending the MSPA regulation defining the employment and joint employment relationship in agriculture. Having reviewed this regulation in accordance with Executive Order 12866, the Department recognized the need for a clearer and more complete regulation. The Department announced its intention to update and clarify this MSPA regulation in the regulatory agendas published in the Federal Register (60 FR 23546 (May 8, 1995); 60 FR 59614 (November 28, 1995)).

The current MSPA ''joint employment'' regulation identifies particular factors which should be considered in determining the existence of such relationships in the agricultural context. This Departmental guidance appears to be subject to some misunderstanding in the regulated community and the courts with regard to the legal standards under MSPA and the Fair Labor Standards Act, which contain the identical statutory standard.[46] It is the Department's view that the MSPA ''joint employment'' regulation will be strengthened by focusing more closely on the ultimate test for employment and joint employment as established by the federal courts, *i.e.*, ''economic dependence,'' and by further clarifying the multi factor analysis to be used to determine the existence of ''economic dependence'' in the agricultural context. Such a clarified regulation will ensure more consistent application of the FLSA principles of employment and ''joint employment'' under MSPA, and will also ensure the full implementation of the Congressional intent in adopting those principles in MSPA.

The FLSA defines the term *employ* as meaning ''to suffer or permit to work'' (29 U.S.C. 203(g)), and the courts have given an expansive interpretation to the statutory definition of *employ* under the FLSA in order to accomplish the remedial purposes of the Act.[47] In accordance with the FLSA's broad definitions and remedial purposes, the traditional common law ''right to control'' test has been rejected in interpreting the FLSA definition of *employ*. Instead, the test of an employment relationship under the FLSA is ''economic dependence,'' which requires an examination of the relationships among the employee(s) and the putative employer(s) to determine upon whom the employee is economically dependent.[48] The determination of economic dependence

[46] *Compare: Antenor, supra, with Aimable, supra.*

[47] *See Nationwide Mut. Ins. Co.* v. *Darden*, 503 U.S. 318, 326 (1992); *Rutherford Food* at 728–729 (1947); *Lauritzen* at 1534.

[48] *See Lauritzen* at 1534, 1538; *Beliz* at 1327; *Real* at 754.

is based upon the ''economic reality'' [49] of all the circumstances and not upon isolated factors or contractual labels.[50] Since the ''economic reality'' test was first delineated by the Supreme Court in *Rutherford Food*, the courts have consistently applied a multi-factor analysis as a means of gauging whether the worker is economically dependent on the putative employer; under this analysis, no single factor is determinative.

The joint employment doctrine, which has long been recognized under FLSA case law,[51] is defined by the FLSA regulation to mean a condition in which ''[a] single individual may stand in the relation of an employee to two or more employers at the same time'', such a determination depending upon ''all the facts in the particular case.'' (29 CFR 791.2(a)).

Under MSPA, the term *employ* has the same meaning as that term under the FLSA. 29 U.S.C. 1802(5). Congress enacted this express incorporation of the FLSA definition of *employ* with the deliberate intention of adopting the FLSA case law defining employment and joint employment. Congress specifically stated that the ''joint employer doctrine'' articulated under the FLSA was to serve as the ''central foundation'' of the MSPA and ''the best means by which to ensure that the purposes of this Act would be fulfilled.'' [52] Congress intended the joint employer doctrine to serve as a vehicle for protecting agricultural employees ''by fixing the responsibility on those who ultimately benefit from their labors—the agricultural employer.'' [53] In declaring this purpose, Congress cited with approval the joint employment analysis utilized by the court of appeals in *Griffin & Brand*; thus, that decision should be the benchmark for the analysis in the agricultural setting.[54] The multi-factor test, as stated in *Griffin & Brand*, is largely the same as the Supreme Court's seminal decision in *Rutherford Food*, although the court of appeals restated some factors to comport more fully and realistically with the unique characteristics of an agricultural operation.

The current MSPA regulation, promulgated in 1983, sets out a non-exclusive list of factors which are appropriately considered in the joint employment analysis. 29 CFR 500.20(h)(4)(ii). The regulation states that the ''* * * determination of whether the employment is to be considered joint employment depends upon all the facts in the particular case.'' 29 CFR 500.20(h)(4)(i). The factors identified in the regulation were not intended by the Department to be a checklist for determining a joint employment relationship; nor were the factors intended to be given greater weight than other relevant factors presented in a particular case or developed in the case law. To the extent that courts and the regulated community may have strayed from the ''economic reality''/''economic dependence'' analysis—by applying the regulation as a rigid checklist, or treating the regulation as an exclusive list which precludes consideration of additional factors (*e.g.*, whether workers' activities are an integral part of a putative employer's operation), or distorting or placing undue emphasis on particular factors (*e.g.*, ''control'' misconstrued as being direct supervision of workers' activities)—the regulation is not only being misinterpreted but is also being applied so as to frustrate the express intention of Congress in enacting MSPA.

B. The Final Rule

In order to resolve any confusion or misunderstanding of the current MSPA regulation and to provide clearer and more complete guidance to the regulated community, the regulation is amended to better delineate the appropriate analysis of the employment and joint employment relationships using ''economic dependence'' as the touchstone, as contemplated by Congress when MSPA was enacted. The regulation also addresses the crucial, initial issue of whether a farm labor contractor is a bona fide independent contractor or an employee of an agricultural association/employer. Where an FLC is actually an employee of the agricultural employer/association, any worker providing services through the FLC is necessarily also an employee of the FLC's employer.

The Final Rule more clearly enunciates the proper analysis for joint employment, as prescribed in the legislative history and set forth in the case law that has properly focused on economic reality and economic dependence. Further, the regulation provides needed guidance on ''control,'' clarifying that the appropriate inquiry is as to a putative employer's power or right to exercise authority in the workplace, either directly or indirectly; the actual exercise of such power or authority is not necessary. The regulation is further clarified in that the illustrative list of factors eliminates redundancy (*e.g.*, items in the current regulation dealing with aspects of control are consolidated) and provides more complete guidance as to appropriate consideration of factors.

C. Changes Made in the NPRM Regulatory Text

Section 500.20(h)(5) in the NPRM has been changed to clarify that shared responsibility on the parts of putative employers is an indication of joint employment.

Section 500.20(h)(5)(iv) in the NPRM has been changed to clarify that this regulation is not intended to create a strict liability or per se standard of joint employment liability.

Section 500.20(h)(5)(iv)(A) in the NPRM is changed to delete the phrase ''and may be either exercised or unexercised.'' The phrase ''and a reasonable degree of oversight of contract performance and coordination with third parties'' has been added to this factor.

Section 500.20(h)(5)(iv)(C) in the NPRM has been deleted and its contents have been incorporated into new factor (G).

Section 500.20(h)(5)(iv)(G) (factor (H) in the NPRM) has been amended to change ''normally'' to ''commonly'' and ''maintaining'' to ''preparing and/or making.'' Factor (C) in the NPRM has been incorporated in this factor along with the phrase ''taking into account the amount of the investment.''

Section 500.20(h)(5)(iv)(I) in the NPRM has been eliminated.

Section 500.143(b)(4) of the current regulation (29 CFR 500.143(b)(4)) has been amended to add examples of good faith efforts to comply with the Act by agricultural employers/associations.

V. Executive Order 12866/Section 202 of the Unfunded Mandates Reform Act of 1995/Small Business Regulatory Enforcement Fairness Act 1995

The Final Rule is not ''economically significant'' within the meaning of Executive Order 12866, is not a major rule within the meaning of Section 804(2) of the Small Business Regulatory Enforcement Fairness Act, and does not require a section 202 statement under the Unfunded Mandates Reform Act of 1995. This rule simply amends the MSPA regulations to clarify the concepts of *employ, employer, employee,* and *joint employment,* which are already contained in the current

[49] *See Rutherford Food* at 727, 729; *Griffin & Brand* at 237.

[50] *Rutherford Food* at 727, 729; *Griffin & Brand* at 237.

[51] *E.g., Falk* v. *Brennan*, 414 U.S. 190, 195 (1973); *Bonnette* v. *California Health and Welfare Agency*, 704 F.2d 1465, 1469 (9th cir. 1983); *Griffin & Brand* at 237–238.

[52] House Comm. Rept. at 6–7.

[53] 128 Cong. Rec. H26008 (Sept. 1982).

[54] House Comm. Rept. at 7

rule. The need for clarification of the current rule is clear, given that the factors listed in the rule are less complete than those applied by the courts and, therefore, require further explanation. Although the Final Rule is simply a clarification of existing concepts, the rule is designed to refocus the analysis of the employment and joint employment doctrines. Therefore, this rule is being treated as a ''significant regulatory action'' within the meaning of section 3(f)(4) of Executive Order 12866. However, no economic analysis is required because the rule will not 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. Furthermore, even if this rule were to result in liability which does not already exist for growers in every circumstance in which farm labor contractors are currently assessed back wages or civil money penalties by the Department of Labor, the Department estimates that the maximum resulting impact on growers would be less than $4 million.

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12866, this rule does not include any federal mandate that may result in increased expenditures by either state, local and tribal governments in the aggregate, or by the private sector.

VI. Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612 (1982), the Department, in its NPRM, certified that its proposed rule would not have a significant economic impact on a substantial number of small entities. NPRM at 14037. Similarly, this Final Rule will not have a significant economic impact on a substantial number of small entities.

The Final Rule contains language which is intended to clarify what is meant by the terms *employ, employer, employment,* and *joint employment* under MSPA. NCAE and other commenters contend that the Department must conduct a ''final regulatory flexibility analysis'' to be issued with the final rule because of their view that the rule results in strict liability and, thus, imposes new burdens. As addressed more fully above, the rule does not impose strict liability. The rule simply clarifies existing guidance to bring it into line with the legislative history of the MSPA, as well as the judicial rulings which have construed its statutory terms and definitions. This clarification will not, however, substantively change existing rights or obligations or impose any new requirements, burdens or obligations on entities that are covered by the regulation, including small entities.

In view of the fact that the proposed rule will simply serve to clarify a grower's obligation, not substantively expand or change that obligation, the rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 500

Administrative practice and procedure, Aliens, Housing, Insurance, Intergovernmental relations, Investigations, Migrant labor, Occupational safety and health, Reporting and recordkeeping requirements, Wages.

Signed at Washington, D.C., on this 6th day of March, 1997.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

For the reasons set forth above, 29 CFR part 500 is amended as set forth below:

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

1. The authority citation for Part 500 is revised to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 6–84, 49 FR 32473.

2. In § 500.20, paragraph (h)(4) is revised and paragraph (h)(5) is added to read as follows:

§ 500.20 Definitions.

* * * * *

(h) * * *

(4) The definition of the term *employ* may include consideration of whether or not an *independent contractor* or *employment* relationship exists under the Fair Labor Standards Act. Under MSPA, questions will arise whether or not a farm labor contractor engaged by an agricultural employer/association is a bona fide independent contractor or an employee. Questions also arise whether or not the worker is a bona fide independent contractor or an employee of the farm labor contractor and/or the agricultural employer/association. These questions should be resolved in accordance with the factors set out below and the principles articulated by the federal courts in *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722 (1947), *Real* v. *Driscoll Strawberry Associates, Inc.,* 603 F.2d 748 (9th Cir. 1979), *Sec'y of Labor, U.S. Dept. of Labor* v. *Lauritzen,* 835 F.2d 1529 (7th Cir. 1987), *cert.* denied, 488 U.S. 898 (1988); *Beliz* v. *McLeod,* 765 F.2d 1317 (5th Cir. 1985), and *Castillo* v. *Givens,* 704 F.2d 181 (5th Cir.), *cert. denied,* 464 U.S. 850 (1983). If it is determined that the farm labor contractor is an *employee* of the agricultural employer/association, the agricultural workers in the farm labor contractor's crew who perform work for the agricultural employer/association are deemed to be employees of the agricultural employer/association and an inquiry into joint employment is not necessary or appropriate. In determining if the farm labor contractor or worker is an employee or an independent contractor, the ultimate question is the economic reality of the relationship—whether there is economic dependence upon the agricultural employer/association or farm labor contractor, as appropriate. *Lauritzen* at 1538; *Beliz* at 1329; *Castillo* at 192; *Real* at 756. This determination is based upon an evaluation of all of the circumstances, including the following:

(i) The nature and degree of the putative employer's control as to the manner in which the work is performed;

(ii) The putative employee's opportunity for profit or loss depending upon his/her managerial skill;

(iii) The putative employee's investment in equipment or materials required for the task, or the putative employee's employment of other workers;

(iv) Whether the services rendered by the putative employee require special skill;

(v) The degree of permanency and duration of the working relationship;

(vi) The extent to which the services rendered by the putative employee are an integral part of the putative employer's business.

(5) The definition of the term *employ* includes the *joint employment* principles applicable under the Fair Labor Standards Act. The term *joint employment* means a condition in which a single individual stands in the relation of an employee to two or more persons at the same time. A determination of whether the employment is to be considered joint employment depends upon all the facts

in the particular case. If the facts establish that two or more persons are completely disassociated with respect to the employment of a particular employee, a joint employment situation does not exist. When the putative employers share responsibility for activities set out in the following factors or in other relevant facts, this is an indication that the putative employers are not completely disassociated with respect to the employment and that the agricultural worker may be economically dependent on both persons:

(i) If it is determined that a farm labor contractor is an independent contractor, it still must be determined whether or not the employees of the farm labor contractor are also jointly employed by the agricultural employer/association. *Joint employment* under the Fair Labor Standards Act is joint employment under the MSPA. *Such joint employment* relationships, which are common in agriculture, have been addressed both in the legislative history and by the courts.

(ii) The legislative history of the Act (H. Rep. No. 97–885, 97th Cong., 2d Sess., 1982) states that the legislative purpose in enacting MSPA was ''to reverse the historical pattern of abuse and exploitation of migrant and seasonal farm workers * * *,'' which would only be accomplished by ''advanc[ing] * * * a completely new approach'' (Rept. at 3). Congress's incorporation of the FLSA term *employ* was undertaken with the deliberate intent of adopting the FLSA *joint employer* doctrine as the ''central foundation'' of MSPA and ''the best means by which to insure that the purposes of this MSPA would be fulfilled'' (Rept. at 6). Further, Congress intended that the *joint employer* test under MSPA be the formulation as set forth in *Hodgson* v. *Griffin & Brand of McAllen, Inc.* 471 F.2d 235 (5th Cir.), *cert. denied*, 414 U.S. 819 (1973) (Rept. at 7). In endorsing *Griffin & Brand*, Congress stated that this formulation should be controlling in situations ''where an agricultural employer * * * asserts that the agricultural workers in question are the *sole* employees of an independent contractor/crewleader,'' and that the ''decision makes clear that even if a farm labor contractor is found to be a bona fide independent contractor, * * * this status does not as a matter of law negate the possibility that an agricultural employer may be a joint employer * * * of the harvest workers'' together with the farm labor contractor. Further, regarding the *joint employer* doctrine and the *Griffin & Brand* formulation, Congress stated that ''the absence of evidence on any of the criteria listed does not preclude a finding that an agricultural association or agricultural employer was a joint employer along with the crewleader'', and that ''it is expected that the special aspects of agricultural employment be kept in mind'' when applying the tests and criteria set forth in the case law and legislative history (Rept. at 8).

(iii) In determining whether or not an employment relationship exists between the agricultural employer/association and the agricultural worker, the ultimate question to be determined is the economic reality—whether the worker is so economically dependent upon the agricultural employer/association as to be considered its employee.

(iv) The factors set forth in paragraphs (h)(5)(iv)(A) through (G) of this section are analytical tools to be used in determining the ultimate question of economic dependency. The consideration of each factor, as well as the determination of the ultimate question of economic dependency, is a qualitative rather than quantitative analysis. The factors are not to be applied as a checklist. No one factor will be dispositive of the ultimate question; nor must a majority or particular combination of factors be found for an employment relationship to exist. The analysis as to the existence of an employment relationship is not a strict liability or *per se* determination under which any agricultural employer/association would be found to be an employer merely by retaining or benefiting from the services of a farm labor contractor. The factors set forth in paragraphs (h)(5)(iv)(A) through (G) of this section are illustrative only and are not intended to be exhaustive; other factors may be significant and, if so, should be considered, depending upon the specific circumstances of the relationship among the parties. How the factors are weighed depends upon all of the facts and circumstances. Among the factors to be considered in determining whether or not an employment relationship exists are:

(A) Whether the agricultural employer/association has the power, either alone or through control of the farm labor contractor to direct, control, or supervise the worker(s) or the work performed (such control may be either direct or indirect, taking into account the nature of the work performed and a reasonable degree of contract performance oversight and coordination with third parties);

(B) Whether the agricultural employer/association has the power, either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for the worker(s);

(C) The degree of permanency and duration of the relationship of the parties, in the context of the agricultural activity at issue;

(D) The extent to which the services rendered by the worker(s) are repetitive, rote tasks requiring skills which are acquired with relatively little training;

(E) Whether the activities performed by the worker(s) are an integral part of the overall business operation of the agricultural employer/association;

(F) Whether the work is performed on the agricultural employer/association's premises, rather than on premises owned or controlled by another business entity; and

(G) Whether the agricultural employer/association undertakes responsibilities in relation to the worker(s) which are commonly performed by employers, such as preparing and/or making payroll records, preparing and/or issuing pay checks, paying FICA taxes, providing workers' compensation insurance, providing field sanitation facilities, housing or transportation, or providing tools and equipment or materials required for the job (taking into account the amount of the investment).

* * * * *

3. In § 500.143, paragraph (b)(4) is revised to read as follows:

§ 500.143 Civil money penalty assessment.

* * * * *

(b) * * *

(4) Efforts made in good faith to comply with the Act (such as when a joint employer agricultural employer/association provides employment-related benefits which comply with applicable law to agricultural workers, or takes reasonable measures to ensure farm labor contractor compliance with legal obligations);

* * * * *

[FR Doc. 97–6036 Filed 3–11–97; 8:45 am]

BILLING CODE 4510–27–P

federal register

Wednesday
March 12, 1997

Part XI

Federal Trade Commission

16 CFR Part 308

Telecommunications Act of 1996; 900-Number Rule Review; Request for Comment Regarding Possible Modification of Definition of ''Pay-Per-Call Services''; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 308

900-Number Rule Review; Request For Comment Regarding Possible Modification of Definition of ''Pay-Per-Call Services'' Pursuant to the Telecommunications Act of 1996

AGENCY: Federal Trade Commission.

ACTION: Rule review and request for public comments.

SUMMARY: The Federal Trade Commission (''the Commission'' or ''FTC'') is requesting public comment on the Commission's Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (''the 900-Number Rule''). The 900-Number Rule governs the advertising and operation of pay-per-call services, and establishes billing dispute procedures for such services. The 900-Number Rule requires that the Commission initiate a rulemaking review proceeding to evaluate the Rule's operation no later than four years after its effective date of November 1, 1993. Pursuant to this mandatory rule review requirement, the Commission seeks comment about the overall costs and benefits of the 900-Number Rule and its overall regulatory and economic impact.

In addition, the Telecommunications Act of 1996 [1] granted the Commission authority to expand the scope of the 900-Number Rule by broadening the definition of pay-per-call services. Therefore, the Commission is also seeking public comment on whether it should expand the scope of its 900-Number Rule to ''audio information or audio entertainment'' services provided through dialing patterns other than 900 numbers. These questions are published in a Request for Comment which follows the rule review portion of this notice.

This document invites written comments and sets forth a list of specific questions and issues upon which the Commission particularly desires additional information. This document also contains an invitation to participate in a public workshop-conference, to be held following the close of the comment period, to afford Commission staff and interested parties an opportunity to explore and discuss issues raised during the comment period.

DATES: Written comments will be accepted until May 12, 1997. Notification of interest in participating in the public workshop-conference also must be submitted on or before May 12, 1997. The public workshop-conference will be held on June 19 and 20, 1997, from 9:00 a.m. until 5:00 p.m.

ADDRESSES: Five paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form. Comments should be identified as ''900-Number Rule Review—Comment. FTC File No. R611016.''

Notification of interest in participating in the public workshop-conference should be submitted in writing to Marianne Kastriner Schwanke, Division of Marketing Practices, Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. The public workshop-conference will be held at the Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Marianne Kastriner Schwanke, (202) 326-3165, Adam Cohn, (202) 326–3411, or Carole Danielson, (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically in order to obtain information about the costs and benefits of its rules and guides, as well as their regulatory and economic impact. The information the Commission obtains assists it in identifying rules and guides that warrant modification or rescission. In accord with the Commission's general policy to review periodically all of its rules and guides, when the Commission adopted the 900-Number Rule, it included Section 308.9, which imposes a requirement to undertake a review of the Rule no later than four years after its effective date of November 1, 1993. Therefore, at this time, pursuant to Section 308.9 of the Rule, the Commission is initiating this mandatory rule review, and hereby solicits written public comments concerning the operation of the 900-Number Rule.

Simultaneous with the Rule review, the Commission also is seeking public comment on whether it should expand the scope of its 900-Number Rule to information or entertainment services provided through dialing patterns other than 900 numbers, as authorized by the Telecommunications Act of 1996.

Section A. Background

Telephone Disclosure and Dispute Resolution Act of 1992

Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992 (''TDDRA''), 15 U.S.C. § 5701 *et seq.*, to curtail certain unfair and deceptive practices perpetrated by some pay-per-call businesses, and to encourage the growth of the legitimate pay-per-call industry.[2] Titles II and III of TDDRA required the FTC to prescribe regulations governing pay-per-call services.[3] TDDRA directed the Commission to enact regulations governing the advertising and operation of pay-per-call services. Among other things, TDDRA required that certain disclosures appear in all advertising for pay-per-call programs and in introductory messages (''preambles'') at the start of the pay-per-call programs, prohibited pay-per-call providers from engaging in certain practices (such as directing their services to children under 12 years of age), and required that the FTC's regulations establish procedures for correcting billing errors in connection with pay-per-call services. TDDRA granted the FTC limited jurisdiction over common carriers for purposes of the 900-Number Rule.

900-Number Rule

Pursuant to TDDRA, the FTC adopted its 900-Number Rule, 16 CFR Part 308, on July 26, 1993, and it became effective November 1, 1993.[4] The Rule requires

[1] Pub. L. 104, Sec. 701, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 228).

[2] This statement summarizes Congress' findings regarding the 900-number industry at the time it passed the legislation. For greater detail concerning the problems Congress found to be associated with 900-number services, see 15 U.S.C. § 5701(b).

[3] Title I of TDDRA directed the Federal Communications Commission (FCC) to adopt regulations defining the obligations of common carriers with respect to the provision of pay-per-call services. The FCC published its Notice of Proposed Rulemaking and Notice of Inquiry at 58 FR 14,371 (March 17, 1993). The FCC's Rules are at 47 CFR 64.228.

[4] The Statement of Basis and Purpose and Final Rule was published at 58 FR 42364 (August 9, 1993).

that advertisements for 900 numbers contain certain disclosures, including information about the cost of the call. This information must also be included in an introductory message (preamble) at the beginning of any 900-number program where the cost of the call could exceed two dollars. The Rule requires that anyone who calls a 900-number service must be given the opportunity to hang up, at the conclusion of the preamble, without incurring any charge for the call. In addition, the Rule requires that all preambles to 900-number services state that individuals under the age of 18 must have the permission of a parent or guardian to complete the call.

The 900-Number Rule also establishes procedures for resolving billing disputes for 900-number calls. 16 CFR 308.7. The Rule imposes certain obligations on entities that bill and collect for 900-number services, such as investigating reports by consumers of ''billing errors,'' a defined term in the Rule.[5]

Initiation of Rule Review

Section 308.9 of the 900-Number Rule, 16 CFR 308.9, requires that the Commission initiate a rulemaking review proceeding to evaluate the Rule's operation no later than four years after its effective date of November 1, 1993. Although the Rule review is not required until November 1997, the Commission has determined that it would be more efficient to conduct the evaluation at this time in conjunction with its issuance of a Request for Comment regarding the possible expanded definition of ''pay-per-call services'' as provided by the Telecommunications Act of 1996.

Telecommunications Act of 1996 Authority to Expand the Definition of Pay-Per-Call Services

On February 8, 1996, the President signed into law the Telecommunications Act of 1996 to provide a regulatory framework for telecommunications and information technologies and services. Section 701(b) of the Telecommunications Act provides that:

Section 204 of [TDDRA] (15 U.S.C. § 5714(1))[6] is amended to read as follows:

''(1) The term 'pay-per-call services' has the meaning provided in section 228(i) of the Communications Act of 1934,[7] except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of Section 228(i)(1) of such Act, extend such definition to other similar services providing audio information or audio entertainment if the [Federal Trade] Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a) [of TDDRA].'' (Emphasis supplied.)

Thus, Section 701(b) of the Telecommunications Act authorizes the FTC, for purposes of its 900-Number Rule, to extend the definition of the term ''pay-per-call services''—and, in effect, the scope of coverage of the Rule—without regard to whether a caller to the service in question ''pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call,'' and without regard to whether a call to such service is ''accessed through use of a 900 telephone number or other prefix or area code designated by the FCC'' under 47 U.S.C.§ 228(b)(5) if the FTC determines that such services ''are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a)'' of TDDRA.

Therefore, at this time the Commission is publishing a Request for Comment to determine whether audiotext services[8] that fall outside the definition of ''pay-per-call'' in the original rule are susceptible to the same unfair and deceptive practices that prompted passage of TDDRA. In other words, the Commission seeks to determine whether the definition of ''pay-per-call services'' should be extended to other services similar to those presently covered by the Rule and, if so, what such an expanded definition should be.

Section 701 of the Telecommunications Act also modified some additional provisions in Section 228 of title 47, mandating that the Federal Communications Commission amend its regulations regarding pay-per-call services. The FCC took action to implement this statutory mandate in July 1996.[9] In that proceeding, the FCC also proposed certain other modifications to its rules not expressly mandated by statute to help reduce fraudulent practices in the pay-per-call industry. The Federal Trade Commission thus seeks to determine whether its rules should be changed to take account of these recent changes and proposed changes in FCC rules regarding pay-per-call services. As noted above, the Request for Comment follows the rule review portion of this notice.

Section B. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments concerning the Commission's 900-Number Rule. The Commission invites written comments to assist it in ascertaining the facts necessary to reach a determination as to the costs and benefits of the Rule and its overall regulatory and economic impact, and on whether to engage in a rulemaking to amend the 900-Number Rule. Written comments must be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W. Washington, DC 20580, on or before May 12, 1997. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. § 552) and Commission Rules of Practice, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[5] Other protections were established by the Federal Communications Commission (FCC) in their rules set out at 47 CFR 64.228. Under those rules, a consumer's telephone service cannot be disconnected for failure to pay charges for a 900 number call, and 900 number blocking must be made available to consumers who do not wish to have access to 900 number service from their telephone lines.

[6] ''The term 'pay-per-call services' has the meaning provided in section 228 of Title 47.'' 15 U.S.C. § 5714(1).

[7] Section 228(i)(1) of the Communications Act of 1934, 47 U.S.C. § 228(i)(1) provides that:

The term 'pay-per-call services' means any service—

(A) in which any person provides or purports to provide—

(i) audio information or audio entertainment produced or packaged by such person;

(ii) access to simultaneous voice conversation service; or

(iii) any service, including the provision of a product, the charges for which are assessed on the basis of completion of the call;

(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) which is accessed through use of a 900 telephone number or other prefix or area code designated by the [Federal Communications] Commission in accordance with subsection (b)(5) [47 U.S.C.§ 228(b)(5)].''

[8] The term ''audiotext services'' describes audio information and entertainment services offered through any dialing pattern, including services accessed via 900-number, as well as international and other non-900-number, dialing patterns. In this notice, where the Commission seeks comment on the effect of the 900-Number Rule on the industry, we use the phrase ''900-number services'' to describe those services currently covered by the Rule. Where we ask questions regarding the larger universe of information and entertainment services offered through the telephone, we use the term ''audiotext services.''

[9] Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking, CC Docket No. 96–146, 11 FCC Rcd 14,738 (1996) (''FCC Pay-Per-Call Order and Notice'').

Section C. Public Workshop-Conference

The FTC staff will conduct a public workshop-conference to discuss the written comments received in response to the Federal Register notice. The purpose of the workshop-conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised in the notice and in the comments, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus among participants or between participants and Commission staff with respect to any issue raised in the comments. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning what action, if any, to take in regard to amending the 900-Number Rule.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the issues raised in the notice. These parties will participate in an open discussion of the issues, including asking and answering questions based on their respective comments. In addition, the workshop will be open to the general public. The discussion will be transcribed and the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following interests: advertisers, third-party billing and collection services, pay-per-call information providers, service bureaus, local exchange carriers, long distance carriers, consumer groups, federal and state law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties who represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment during the 60-day comment period.

2. During the 60-day comment period the party notifies Commission staff of its interest in participating in the workshop.

3. The party's participation would promote a balance of interests being represented at the workshop-conference.

4. The party's participation would promote the consideration and discussion of a variety of issues raised in this notice.

5. The party has expertise in activities affected by the issues raised in this notice.

6. The number of parties selected will not be so large as to inhibit effective discussion among them.

The workshop-conference will be held on June 19 and 20, 1997. Prior to the workshop-conference, parties selected will be provided with copies of the comments from all participants received in response to this notice.

Section D. Regulatory Flexibility Act

The Regulatory Flexibility Act provides for an initial and final regulatory analysis of the potential impact on small businesses of Rules proposed by federal agencies. (5 U.S.C. §§ 603, 604) The Commission conducted such an analysis when the 900-Number Rule was promulgated in 1993. In publishing the proposed regulations, the Commission certified, subject to public comment, that the proposed regulations would not have a significant economic impact on a substantial number of small entities and, therefore, that the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), requiring the initial regulatory analysis, did not apply.[10] The Commission noted that any economic costs imposed on small entities were, in many instances, specifically imposed by statute. Where they were not, efforts had been made to minimize any unforeseen burdens on small entities by making the proposed rule's requirements flexible. The public comments and information received by the Commission did not alter that conclusion.[11]

No analysis is required in connection with this document because no new rule or amendments are being proposed. Nonetheless, the Commission wishes to ensure that no substantial economic impact is being overlooked that would warrant an initial and final regulatory flexibility analysis. Therefore, this review of the 900-Number Rule also requests public comment regarding the effect of the Rule on the costs to, profitability and competitiveness of, and employment in small entities. The Commission will revisit this issue in connection with any Notice of Proposed Rulemaking that may result from this request for comments.

Section E. Paperwork Reduction Act

In the 1993 Notice of Proposed Rulemaking on the 900-Number Rule, the Commission solicited comments on the need for and scope of possible record keeping requirements in provisions governing Commission access to information and billing and collection for pay-per-call services.[12] Those requirements, had they been adopted, would have constituted ''collections of information'' as defined under the Paperwork Reduction Act, 44 U.S.C. 3501–3520. See 44 U.S.C. 3502 and 5 CFR 1320.7. However, the Commission determined not to include such requirements in its final Rule.[13] Accordingly, the requirements of the Paperwork Reduction Act were not applicable to the final Rule. Similarly, the requirements are not applicable to this document because no collections of information are required. The Commission will revisit this issue in connection with the publication of any subsequent Notice of Proposed Rulemaking that might result from this request for comments.

Section F. Questions and Issues for Comment Pursuant to Regulatory Review of the Rule

The Commission is seeking comment on various aspects of the 900-Number Rule, in conjunction with its Rule review. Without limiting the scope of issues it is seeking comment on, the Commission is particularly interested in receiving comments on the questions that follow. Where commenters advocate changes to the Rule, please be specific in describing suggested changes. With respect to suggested changes to the Rule, please describe any potential costs and benefits such changes might have on industry and consumers. The Commission would also be interested in commenters providing any data that exist on issues raised in the questions.

I. General Issues for Comment

1. Is there a continuing need for the 900-Number Rule?

(a) Since the Rule was issued, have changes in technology, industry structure, or economic conditions affected the need for or effectiveness of the Rule?

(b) Does the Rule include provisions that are unnecessary?

(c) What are the aggregate costs and benefits of the Rule?

(d) Have the costs or benefits of the Rule dissipated over time?

(e) Does the Rule contain provisions that have imposed costs not outweighed by benefits?

2. What effect, if any, has the Rule had on consumers?

[10] 58 FR 13379.

[11] 58 FR 42399.

[12] 58 FR 13384.

[13] 58 FR 42399.

(a) What economic or other costs has the Rule imposed on consumers?

(b) What benefits has the Rule provided to consumers?

(c) What changes, if any, should be made to the Rule to increase the benefits to consumers?

(d) How would these changes affect the compliance costs the Rule imposes on industry?

3. What impact, if any, has the Rule had on firms that must comply with it?

(a) What economic or other costs has the Rule imposed on industry or individual firms?

(b) What benefits has the Rule provided to the industry or to individual firms?

(c) What changes, if any, should be made to the Rule to minimize any burden or cost imposed on industry or individual firms?

(d) How would the changes affect the benefits provided by the Rule to consumers or industry?

4. How has the Rule affected small business entities with respect to costs, profitability, competitiveness, and employment? What would be the economic impact on small businesses if the Rule is left unchanged?

5. Are there regulatory alternatives that might reduce any adverse economic effect of the 900-Number Rule, yet comply with the mandate of TDDRA to curtail certain unfair and deceptive practices by some 900-number providers, yet encourage the growth of the legitimate 900-number industry?

6. Are there additional advertising, operating, or other standards for the audiotext industry not included in the Rule that might now be desirable or necessary to prevent deception or other abuses, or to prevent evasion of the Rule's requirements and prohibitions?

7. The FCC and FTC share regulatory authority over the audiotext industry.

(a) Are there any unnecessary regulatory burdens created by overlapping jurisdiction? What can be done to ease these burdens?

(b) Are there gaps where neither agency has addressed a particular abuse? For example, does such a regulatory gap exist where a entity claims status as a ''common carrier'' for purposes of FTC regulation, but claims that its actions are not those of a common carrier for purposes of FCC regulation?

(c) Does the Rule overlap or conflict with other federal, state, or local government laws or regulations?

8. How does Section 701 of the Telecommunications Act of 1996 concerning the FCC's regulation of the pay-per-call industry, or the FCC's recently adopted and proposed regulatory changes [14] under that section, affect the FTC's Rule, if at all? How should the FTC's Rule be amended to harmonize with these changes and proposed changes in the FCC regulatory approach?

9. What categories of audiotext services (*e.g.*, sports, psychic, chat, adult) are provided through 900 numbers?

(a) What percentage does each type constitute of all audiotext services accessed through 900 numbers?

(b) How much gross sales revenue has each category generated in each year since 1993?

(c) Have the gross sales revenues and/or profits of information providers using 900 numbers changed since the Rule was promulgated? What impact, if any, has the 900-Number Rule had on the level of gross sales revenues and/or profits?

II. Definitions

10. Are the definitions set forth in section 308.2 of the Rule effective for the purpose of curbing unfair and deceptive practices targeted by the Rule?

(a) If not, how have the definitions been inadequate?

(b) Are there additional definitions that should be added to the Rule? Explain.

11. The current definition of ''service bureau'' states that the term includes any person other than a common carrier.

(a) Is it appropriate to exclude common carriers, regardless of activities, from the definition?

(b) Should entities engaging in service bureau functions be covered by the Rule, even if they also engage in ''common carrier'' functions at other times?

12. Has the Rule's definition of ''presubscription agreement'' affected the market for 900-number services? If so, in what way?

(a) Who uses presubscription agreements, and for what purpose?

(b) What opportunities for unfair and deceptive practices exist under the current definition of ''presubscription agreement''?

(c) How might the definition be changed to diminish or eliminate these opportunities?

(d) Should the definition of ''presubscription agreement'' be modified to harmonize with changes in FCC rules made pursuant to the Telecommunications Act of 1996, or to harmonize with proposed changes made by the FCC to the definition of ''presubscription agreement''? [15]

(e) Would any changes in the definition of ''presubscription agreement'' be appropriate in light of Section 701 of the Telecommunications Act of 1996? For example, should the Rule require that a presubscription agreement be in writing?

III. Advertising

13. Are the advertising disclosure provisions in the Rule adequate for regulating advertising on the Internet or on commercial online services?

(a) Should the Rule be more precise regarding the definition of ''clear and conspicuous'' in the context of advertising on the Internet or on commercial online services?

(b) Are there other forms of advertising in other media for which the Rule should provide specific advertising disclosure requirements? Explain.

14. Does the Rule provide adequately for disclosing the cost to consumers prior to making a call to a 900-number service?

(a) Do the current size requirements ensure that the cost disclosure is ''clear and conspicuous''?

(b) Are there other more effective means for ensuring that the advertisements provide adequate cost disclosures to consumers?

15. Are the required disclosures for 900-number services that advertise sweepstakes sufficient to ensure that consumers are informed of all material information necessary to dispel deception? Have there been abuses associated with sweepstakes advertised and offered through the use of a 900 number that make it necessary to require additional protections for consumers who respond to such sweepstakes offers?

16. Is the requirement governing ''telephone solicitations'' in section 308.3(h) clear, meaningful, and effective?

(a) Is there additional information that such a solicitation should include to ensure that consumers have sufficient information prior to calling a 900-number service advertised in this manner?

(b) Is the Rule clear that it applies to messages left on telephone answering machines or telephone numbers left on pagers?

(c) What about audio and non-audio messages received on computers? Should these or other message delivery systems be explicitly included within this provision?

[14] FCC Pay-Per-Call Order and Notice, see supra note 9.

[15] FCC Pay-Per-Call Order and Notice, see supra note 9.

(d) Should ''telephone message'' as used within section 308.3(h) be defined and if so, how?

IV. Operation & Standards

17. In the Statement of Basis and Purpose describing the Rule,[16] the Commission recognized that at the time the Rule was promulgated, time-sensitive billing involved in 900-number services was ''accomplished in one-minute increments, and that any portion of a minute will be billed as full time.''

(a) Has the technology for calculating usage time for billing purposes changed since the implementation of the Rule? If so, how?

(b) Is it possible using current technology to stop the assessment of time-based charges immediately upon disconnection by the caller, and therefore, bill consumers for fractions of minutes?

18. How have technological changes affected the way information providers can and do set their rates?

(a) Is it now technologically possible to suspend charges during a program, to provide a period (or periods) of programming free to the caller? Explain.

(b) Is it now technologically possible to alter the rate at which a caller is charged during a program, to provide a period (or periods) of programming charged to the caller at reduced rates or at higher rates than other portions of the call? Explain.

(c) Is it now technologically possible to have a free introductory message longer than 18 seconds, which was the standard at the time the Rule was adopted? Explain.

19. How has the requirement of a preamble affected the 900 number industry?

(a) Have preambles conferred benefits on consumers who make 900-number calls?

(b) How might the preamble requirements be changed to make the preambles more useful or informative to the consumer? What costs would likely arise from such changes?

(c) How might the preamble requirements be changed to make compliance easier for information providers? Would such changes diminish benefits to consumers and if so, how?

20. Are preambles effective in reducing unauthorized use of 900-number services by minors or others? How is this properly measured?

(a) How might preamble requirements be changed to be made more effective in addressing the problem of unauthorized calls?

(b) What further actions might be taken by industry or by the FTC to reduce unauthorized calls to 900 number and other audiotext services?

21. Section 308.5(a)(3) requires that the preamble state ''that charges for the call begin, and that to avoid charges the call must be terminated, three seconds after a clearly discernible signal or tone.'' If an information provider were to provide, for example, the first two minutes of an audiotext call free, what should the preamble disclose to inform callers when charges for the call begin?

(a) In the example above, should the information provider be required to inform the caller, through a tone or other signal, when the free time has expired?

(b) In the example above, at what point(s), if any, during the call should the disclosures be made? At what point(s), if any, during the call should a signal or tone occur?

(c) In the example above, would a single signal following the preamble but immediately preceding the free time provide sufficient information to enable consumers to avoid all or most charges from remaining on the line after close of the free time?

22. Section 308.5(a)(2)(iii) requires that ''if the call is billed on a variable rate basis, the preamble shall state * * * the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller.'' Should this provision be construed to cover situations where pay-per-call services charge different rates for different time periods within a single call (e.g., no charge for the first two minutes after the end of the preamble, $3.00 per minute for the third through the eighth minutes, and $1 per minute for every minute thereafter)?

(a) Assume for purposes of questions 22(a) and (b) that calls to such services described above are ''calls billed on a variable rate basis'' covered by Section 308.5(a)(2)(iii). Should that Section be modified to require something other than preamble disclosures of ''the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller?'

(b) For example, in the scenario described above, should Section 308.5(a)(2)(iii) explicitly require a clearly discernible signal or tone to mark the end of the free two-minute period? Should it explicitly require a clearly discernible signal or tone to mark the end of the six-minute period during which charges are $3.00 per minute?

23. What percentage of 900-number services fall into the category of ''nominal cost calls'' as described in section 308.5(c) of the Rule?

(a) Do the data suggest that $2.00 is an appropriate threshold for designation of ''nominal cost calls'' for which no preamble is necessary? If not, what ''nominal cost'' threshold do the data support?

(b) Should the ''nominal cost'' figure be adjusted for inflation? Explain.

24. What percentage of callers to 900-number services hang up the telephone before the charges begin and how is this ascertained?

(a) Of these, what percentage are first time callers?

(b) Does this percentage correlate to the cost of the call? To the nature of the service?

25. What impact, if any, has the 900-Number Rule had on the number of complaints about, or requests for credits or refunds for, calls to 900-number services that allegedly were not authorized by the subscriber of the telephone line from which the calls were placed?

(a) Has the percentage of such complaints or requests increased, decreased, or remained the same since the Rule went into effect?

(b) What percentage of all requests for credits or refunds of charges for 900-number services involve calls allegedly unauthorized by the telephone subscriber?

(c) What percentage of these requests are due to allegedly unauthorized calls placed by minors?

26. What, if any, procedures are used by industry to ensure that calls to audiotext services are authorized by the subscriber of the telephone line from which the calls are placed?

(a) What, if any, procedures are used by industry to minimize or eliminate unauthorized calls placed by minors to audiotext services?

(b) How effective have these procedures been in reducing the number of complaints or the number of requests for credits or refunds regarding allegedly unauthorized calls to audiotext services?

27. What percentage of telephone subscribers have chosen to block access to 900 numbers from their telephone lines?

(a) Of those choosing to block access to 900 numbers, what percentage choose to do so when initiating phone service?

(b) What percentage do so after phone service has been initiated?

(c) Of the latter, what percentage have done so after complaining about charges to audiotext services?

(d) What percentage of consumers who complain about charges for

[16] 58 FR 42387 (August 1993).

audiotext services choose to block 900 numbers?

(e) To what extent, if any, has blocking been effective in reducing complaints involving 900-number services?

(f) What, if any, are the costs to consumers or industry of receiving or providing 900 number blocking services?

V. Billing and Collection

28. What services are provided to the audiotext industry by billing entities other than the telephone companies (or ''alternative billing entities'')?

(a) Do the types of services vary for different types of audiotext services? Explain.

(b) What percentage of audiotext services are billed through billing entities other than the telephone companies? Explain.

(c) Have the types or number of these alternative billing entities changed since the Rule went into effect in 1993? What impact, if any, has the Rule had on the nature of these billing entities?

(d) What are the terms and conditions of the arrangements between the alternative billing entities and other players in the audiotext industry?

(e) What is the role of a ''billing aggregator''? What services does a billing aggregator provide to members of the audiotext industry?

29. Does the definition of ''billing error'' in section 308.7 of the Rule adequately reflect the range of billing errors occurring in the 900-number marketplace? If not, how might the definition be changed?

30. Is there any evidence suggesting that some (adult) consumers are refusing to pay for audiotext calls or 900-number calls which they purchased after hearing a preamble containing the disclosure of material information currently required by the Rule?

(a) If such a problem exists, to what extent is it affected by the dispute resolution provisions of the 900-Number Rule?

(b) If such a problem exists, to what extent is it affected by the billing notice requirements set forth in section 308.7(n)?

(c) What steps, if any, could the Commission take to reduce the incidence of this practice without weakening protections afforded consumers by TDDRA and the 900-Number Rule?

31. Distinguished from billing for unauthorized calls, the problem of ''phantom billing'' occurs when a telephone subscriber is billed for an audiotext call that the subscriber asserts was never placed from the subscriber's telephone.

(a) How does phantom billing occur?

(b) What procedures and safeguards currently exist or should exist to ensure that telephone subscribers are billed only for calls which were actually placed from that subscriber's phone?

(c) How does a billing entity determine that billing tapes or other records of calls are genuine?

(d) What percentage of consumers who complain about ''phantom billing'' of audiotext services choose to block access to 900 numbers?

32. Section 308.7(i) places restrictions on the extent to which adverse credit information can be reported to any person.

(a) How, if at all, has this restriction affected the creation of a shared database of ''problem callers'' for the purposes of blocking such persons from 900 or other audiotext transactions?

(b) Would such a database be useful to industry?

(c) Does allowing such a shared database adversely affect consumers? If so, how?

33. How is ''chargeback'' defined by the industry?

(a) Does the term include the situation where a consumer has refused to pay for an audiotext service? Does it include the situation where a consumer pays and then requests a refund?

(b) Are there data on chargeback rates for the 900-number industry? For the audiotext industry as a whole? Do the data represent chargeback rates for all types of ''pay-per-call services'' or only for services provided through 900 numbers?

(c) How do the chargeback rates for the pay-per-call industry compare with other collection and payment systems, such as the credit card collection and payment system?

(d) What are the current and projected future trends regarding chargeback rates for the pay-per-call industry?

34. Do chargeback rates vary according to the category of audiotext service?

(a) Do the providers of some types of services experience a greater chargeback rate than other types of services? Are there data demonstrating these differences?

(b) If certain kinds of audiotext services correlate with higher chargeback rates, what is the explanation for the correlation?

(c) Are there data to show whether services that attract callers of certain age groups (e.g., minors) are more likely than others to result in chargebacks?

(d) How do chargeback rates for non-900 audiotext services compare to rates for 900 number services?

(e) How do chargeback rates for nominally priced calls (i.e., those exempted from the preamble requirement) compare to the chargeback rates for other calls?

35. Do chargeback rates vary according to the payment method?

(a) Do services that utilize a credit card billing system rather than an Automatic Number Identification (''ANI'') billing system experience fewer chargebacks?

(b) What about services provided according to oral presubscription agreements?

(c) What about those services provided according to written presubscription agreements?

36. Has the advent of third party billers affected the chargeback rates in the audiotext industry? If so, how?

(a) Is there any correlation between the type of billing entity (e.g., a local exchange carrier or a third party biller) and the rate of chargebacks? If so, why?

(b) Are chargeback rates affected by the amount of time a billing entity gives to a consumer to complain about a bill? To what extent to different billing entities follow the Rule's time limits on initiation of billing review?

Section G. Request for Comment

As discussed above, the Telecommunications Act of 1996 gives the Commission the authority to conduct a rulemaking on the issue of whether to ''extend'' the definition of ''pay-per-call services'' to cover other services not currently covered by the 900-Number Rule. Thus, the Commission currently seeks comment on whether any expansion should be made, and if so, how such an expansion should be implemented. Commenters should pay particular attention to the fact that the Commission's authority is to extend the 900-Number Rule to cover services which are ''susceptible to the unfair and deceptive trade practices that are prohibited by [TDDRA].'' Thus, commenters should not limit themselves to discussing services which are currently associated with unfair and deceptive practices; rather commenters should discuss the broader topic of services which are susceptible to becoming havens for unfair and deceptive practices addressed by TDDRA. Commenters should attempt to address the questions listed below:

1. Are there ''audio information or audio entertainment'' (''audiotext'') services which are not currently covered by the definition of ''pay-per-call service,'' but which are susceptible to the same unfair and deceptive trade practices prohibited by the current Rule?

(a) If so, should the Rule be amended to cover these services?

(b) If so, how should the Rule be changed?

(c) How would these changes affect consumers and businesses?

(d) What characteristics of an audiotext service make it susceptible to the unfair and deceptive trade practices prohibited by the current Rule?

2. How can a definition of ''pay-per-call service'' be crafted so that audiotext services which are susceptible to unfair and deceptive trade practices are covered by the Rule, but any services that are not susceptible to these practices are not swept into the Rule?

3. Should the Rule be extended to cover any audiotext transaction where an information provider or service bureau receives a portion of the fees paid by a caller? Explain.

4. Should the definition of ''pay-per-call service'' be extended to encompass international audiotext transactions where the information provider or service bureau receives a portion of the fees paid by the caller? Explain. If so, are there other modifications to the Rule that would be necessitated by such a change?

5. Are there technological differences between 900-number and non-900-number audiotext services that would make it difficult to implement the Rule in its current form with respect to non-900-number audiotext services? Explain.

(a) For example, could free preambles (as required by section 308.5) be provided at the beginning of non-900-number audiotext messages billed through arrangements with international long distance carriers? How could accurate cost disclosures as required by the Rule be made for these services?

(b) Must any changes be made to the Rule to accommodate these differences?

(c) How would these suggested changes affect audiotext services utilizing 900 numbers?

6. In a Notice and Order [17], the Federal Communications Commission (FCC) stated that ''regardless of whether the FTC extends the scope of its pay-per-call regulations [pursuant to § 701(b)(2) of the Telecommunications Act of 1996], our pay-per-call rules continue to be delineated by the statutory definition of pay-per-call services contained in Section 228(i) of the Communications Act.'' Thus, if the FTC extends the definition of ''pay-per-call services'' pursuant to its authority under the Telecommunications Act of 1996, then the two agencies would be regulating the audiotext services industry using two different definitions of ''pay-per-call services.''

(a) What impact, if any, would this result have on the audiotext industry?

(b) What could be done to reduce any potential complications or conflicts? Explain.

7. In light of the FCC's implementation of the Telecommunications Act of 1996 as it relates to the audiotext industry, are there additional changes the FTC should consider making to its own 900-Number Rule?

8. Are there any audiotext services currently being provided over the Internet or commercial online services? If not, is it likely that these services will be available over the Internet or commercial online services in the near future? If yes, how do these services work?

(a) Are there audiotext services provided over the Internet that are susceptible to the same unfair and deceptive practices prohibited by the current Rule? If so, should these services be encompassed within an expanded definition of ''pay-per-call services''?

(b) What elements would a definition have to include to encompass such services?

(c) What are the costs and benefits to including online services within the scope of the 900-Number Rule?

(d) If such audiotext services provided over the Internet or commercial online services were included within an expanded definition of this term, what, if any, changes to the Rule's provisions would be necessary in order for the Rule appropriately and effectively to prevent unfair or deceptive practices in the advertising, sale, and operation of such services?

(e) How would preamble and other Rule requirements be met for audiotext numbers which are used to connect a caller's computer to the Internet or to commercial online services?

9. What steps can a consumer take to prevent his or her telephone line from being used for unauthorized non-900-number transactions such as international audiotext transactions?

(a) Is call blocking of international audiotext calls possible without requiring the consumer to block access to all international numbers?

(b) If not, what, if any, technology is under development that would permit selective blocking of particular numbers, area codes or international country codes?

10. What steps can a consumer take to obtain a credit or refund if he or she believes that there has been a billing error or an unauthorized use of his or her telephone for a non-900-number audiotext transaction? What happens if, for whatever reason, a consumer refuses to pay for a non-900-number audiotext call?

11. What was the gross sales revenue generated in the non-900-number audiotext industry for each year since the promulgation of the Rule in 1993?

(a) What explains the emergence and growth of non-900-number audiotext services?

(b) What, if any, benefits do audiotext services accessed through dialing patterns other than ''900'' confer on consumers or industry?

(c) How has the 900-number industry been affected by audiotext services that are not currently covered by FTC or FCC regulations? Explain.

12. What categories of audiotext services (e.g., sports, psychic, chat, adult) are provided through non-900 audiotext numbers?

(a) What percentage does each type constitute of all pay-per-call information services accessed through dialing patterns other than ''900''?

(b) What was the gross sales revenue for each category in each year since 1993?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–6299 Filed 3–11–97; 8:45 am]

BILLING CODE 6750–01–P

[17] FCC Pay-Per-Call Order and Notice, see supra note 9.

Reader Aids

Federal Register

Vol. 62, No. 48

Wednesday, March 12, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, MARCH

9349–9678 3
9679–9904 4
9905–10184 5
10185–10410 6
10411–10680 7
10681–11068 10
11069–11306 11
11307–11756 12

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6974 9677
6975 9905
6976 9907
6977 11067
6978 11069

Executive Orders:
12958 (See Order of February 26, 1997) 9349
12957 (Continued by Notice of March 5, 1997) 10185
12959 (See Notice of March 5, 1997).....10185
13037 10185

Administrative Orders:

Notices:
Notice of March 5, 1997. 10409

Presidential Determinations:
No. 97–17 of February 21, 1997 9903
Order of February 26, 1997 9349
No. 97–18 of February 28, 1997 11588

5 CFR

351 10681
630 10681
2638 11307

Proposed Rules:
551 9995

7 CFR

20 10411
210 10187
220 10187
225 10187
226 10187
301 10412
925 10419
932 11314
959 10420
1910 9351
1951 10118
1956 10118
1962 10118
1965 10118

Proposed Rules:
1131 9381
1240 10481
1610 10483
1717 9382
1735 10483
1737 10483
1739 10483
1746 10483
3403 11256

8 CFR

1 10312
3 10312
103 10312
204 10312
207 10312
208 10312
209 10312
211 10312
212 10312
213 10312
214 .....10312, 10422
216 10312
217 10312
221 10312
223 10312
232 10312
233 10312
234 10312
235 10312
236 10312
237 10312
238 10312
239 10312
240 10312
241 10312
242 10312
243 10312
244 10312
245 10312
246 10312
248 10312
249 10312
251 10312
252 10312
253 10312
274a 10312
286 10312
287 10312
299 10312
316 10312
318 10312
329 10312

9 CFR

78 10192

Proposed Rules:
92 9387
130 9387
145 11111
147 11111

10 CFR

170 10626
171 10626

11 CFR

111 11317

12 CFR

208 9909
226 10193

344....9915
350....10199
613....11071
614....11071
615....11071
618....11071
619....11071
620....11071
626....11071
1806....10668
Proposed Rules:
204....11117
209....11117

13 CFR

121....11317

14 CFR

21....9923
25....11072
39 ....9359, 9361, 9679, 9925, 10201, 11318, 11320
71 ....9363, 9681, 9928, 10425, 10427, 10684, 11073, 11074, 11075, 11076, 11077, 11078
95....10202
97 ....9681, 9683, 11078
Proposed Rules:
39 ...9388, 9390, 10224, 10226, 10228, 10231, 10233, 10236, 10237, 10240, 10488, 10490, 10492, 10754, 10756, 11384, 11386, 11388, 11390, 11392
71 ....9392, 9393, 9394, 9395, 9396, 9397, 9398, 9399, 9400, 9720, 9995, 11120, 11121, 11122, 11123, 11124, 11125, 11126, 11127, 11128
221....10758
250....10758
293....10758

15 CFR

746....9364

16 CFR

Proposed Rules:
308....11750

17 CFR

1 ....10427, 10434, 10441
5....10434
30 ....10445, 10447, 10449
31....10441
228....11321
229....11321
239....11321
240....11321
242....11321
300....10450
Proposed Rules:
230....10898
239....10898
270....10898
274....10898

18 CFR

284....10204, 10684

19 CFR

Proposed Rules:
7....9401
10....9401
145....9401
173....9401
174....9401
181....9401
191....9401

20 CFR

216....11323
801....10666
802....10666

21 CFR

176....10452
178....9365
341....9684
522....10219
524....10220
558....9929
Proposed Rules:
Chapter I....9721
2....10242
101....9826, 11129
161....9826
163....10781
501....9826

22 CFR

505....10630

23 CFR

657....10178
658....10178

24 CFR

203....9930
Proposed Rules:
Ch. I....10247
570....11284
982....10786

25 CFR

45....11324
Proposed Rules:
290....10494

26 CFR

1....11324
Proposed Rules:
1....11394

28 CFR

Proposed Rules:
16....10495
511....10164
524....10164

29 CFR

102....9685, 9930
500....11734
Proposed Rules:
1910....9402
1625....10787

30 CFR

901....9932
902....9932
904....9932
906....9932
913....9932
914....9932
915....9932
916....9932
917....9932
918....9932
920....9932
925....9932
926....9932
931....9932
934....9932
935....9932
936....9932
938....9932
943....9932
944....9932
946....9932
948....9932
950....9932
Proposed Rules:
56....9404
57....9404
62....9404
70....9404
71....9404
202....10247
206....10247

31 CFR

536....9959

32 CFR

706....11325, 11326

33 CFR

100....9367
110....9368
117 ....9369, 9370, 10453
334....9968
Proposed Rules:
100....9405
117....9406
165....10496
207....9996

34 CFR

75....10398
206....10398
231....10398
235....10398
369....10398
371....10398
373....10398
375....10398
376....10398
378....10398
380....10398
381....10398
385....10398
386....10398
387....10398
388....10398
389....10398
390....10398
396....10398
610....10398
612....10398
630....10398

35 CFR

Proposed Rules:
103....9997

36 CFR

Proposed Rules:
1190....11130
1191....11130

38 CFR

1....9969
21....10454

40 CFR

52 ....9970, 10455, 10457, 10690, 11079, 11327, 11332, 11334, 11337
80....9872, 11346
81 ....10457, 10463, 10690, 11337
82....10700
86....11082
132....11724
141....10168
180 ...9974, 9979, 9984, 10703, 11360
271....10464
300....9370, 9371
Proposed Rules:
Chapter I....11130
52 ....10000, 10001, 10002, 10497, 10498, 10500, 10501, 11131, 11394, 11395, 11405
70....10002
80....11405
81 ....10500, 10501, 11405
86....11138
92....11141
123....11270
141....10168
268....10004
372....10006
501....11270

41 CFR

302–1....10708
302–2....10708
302–3....10708
302–7....10708
302–8....10708
302–9....10708
302–11....10708

42 CFR

100....10626
Proposed Rules:
484 ....11004, 11005, 11035

44 CFR

64....9372
65....9685, 9687
67....9690
Proposed Rules:
67....9722

45 CFR

Proposed Rules:
16....10009
74....10009
75....10009
95....10009

46 CFR

10....11298
586....9696

47 CFR

1....9636
2....9636, 10466
22....11616
25....11083
27....9636
32....10220
53....10220, 10221
59....9704
68....9989
73 ....9374, 9375, 9989, 9990, 10222
76....11364
87....11083

90.....11616
97.....9636
Proposed Rules:
1.....10793
22.....11407, 11638,
36.....9408
51.....9408
61.....9408
69.....9408
73 .....9408, 9409, 9410, 10010, 10011
76.....10011
90.....11638
101.....11407

48 CFR

3.....10709
5.....10709
6.....10709
9.....10709
11.....10709
12.....10709
13.....10709
15.....10709
19.....10709
33.....10709
36.....10709
37.....10709
42.....10709
52.....10709
234.....9990
239.....9375
242.....9990
252.....9990
1833.....11107
1852.....11107
Proposed Rules:
225.....11142
242.....11142
252.....11142

49 CFR

1.....11382
1002.....9714
1180.....9714
571.....10710
Proposed Rules:
223.....10248
239.....10248
571.....10514
572.....10516

50 CFR

17.....10730
285.....9376
622.....9718
648 .....9377, 10473, 10478, 10747, 11108
649.....9993, 10747
679 ...9379, 9718, 9994, 10222, 10479, 10752, 11109
Proposed Rules:
17.....9724, 10016
300.....11410
600.....10249
630 .....9726, 10821, 11410
648.....10821, 1l411
678.....10822
679.....10016
697.....10020

REMINDERS

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.

RULES GOING INTO EFFECT MARCH 12, 1997

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Cranberries; published 2-10-97

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Fuels and fuel additives—

Reformulated gasoline standards; nitrogen oxides; petition denied; published 3-12-97

Water pollution control:

Great Lakes System; water quality guidance—

Polychlorinated biphenyls (PCBs) criteria for human health and wildlife; published 3-12-97

FEDERAL ELECTION COMMISSION

Civil monetary penalties; inflation adjustments; published 3-12-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Indemnification of HUD employees; published 2-10-97

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:

Occupational disability and survivor annuities; eligibility; published 3-12-97

SMALL BUSINESS ADMINISTRATION

Small business size standards:

Affiliation with investment companies; published 3-12-97

TRANSPORTATION DEPARTMENT

Organization, functions, and authority delegations:

Commandant, U.S. Coast Guard, et al.; published 3-12-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Vegetables; import regulations:

Banana/fingerling potatoes, etc.; removal and exemption; comments due by 3-13-97; published 2-11-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Brucellosis in cattle and bison--

State and area classifications; comments due by 3-11-97; published 1-10-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries--

New England and Mid-Atlantic Fishery Management Councils; public hearings; comments due by 3-14-97; published 2-21-97

DEFENSE DEPARTMENT

Acquisition regulations:

Information Technology Management Reform Act of 1996; implementation; comments due by 3-10-97; published 1-8-97

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy efficiency program for certain commercial and industrial equipment:

Electric motors; test procedures, labeling, and certification requirements; comments due by 3-10-97; published 2-14-97

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Ambient air quality standards, national--

Ozone and particulate matter, etc.; comments due by 3-12-97; published 2-20-97

Air quality implementation plans; approval and promulgation; various States:

Alaska; comments due by 3-13-97; published 2-11-97

Illinois; comments due by 3-13-97; published 2-11-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Louisiana; comments due by 3-10-97; published 2-6-97

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 3-12-97; published 2-10-97

National priorities list update; comments due by 3-12-97; published 2-10-97

Toxic substances:

Significant new uses--

Alkenoic acid, trisubstituted-benzyl-disubstituted-phenyl ester, etc.; comments due by 3-13-97; published 2-11-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Arizona; comments due by 3-10-97; published 1-27-97

Arkansas; comments due by 3-10-97; published 1-21-97

California; comments due by 3-10-97; published 1-27-97

Colorado; comments due by 3-10-97; published 1-21-97

Idaho; comments due by 3-10-97; published 1-24-97

Louisiana; comments due by 3-10-97; published 1-27-97

Nevada; comments due by 3-10-97; published 1-27-97

Oregon; comments due by 3-10-97; published 1-27-97

Texas; comments due by 3-10-97; published 1-27-97

Utah; comments due by 3-10-97; published 1-27-97

Washington; comments due by 3-10-97; published 1-24-97

Wisconsin; comments due by 3-10-97; published 1-24-97

FEDERAL RESERVE SYSTEM

Bank holding companies and change in bank control (Regulation Y):

Nonbank subsidiaries; limitations on underwriting and dealing in securities; review; comments due by 3-10-97; published 1-17-97

Consumer leasing (Regulation M):

Official staff commentary; revision; comments due by 3-13-97; published 2-19-97

FEDERAL TRADE COMMISSION

Trade regulation rules:

Textile wearing apparel and piece goods; care labeling; comments due by 3-10-97; published 2-6-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling--

Free glutamate content of foods; label information requirements; comments due by 3-12-97; published 11-13-96

Nutrient content claims; general principles; comments due by 3-10-97; published 1-24-97

Medical devices:

Investigational devices; export requirements streamlining; comments due by 3-10-97; published 1-7-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Redetermination due to welfare reform; comments due by 3-14-97; published 1-13-97

INTERIOR DEPARTMENT

Land Management Bureau

Minerals management:

Oil and gas leasing--

Stripper oil properties; royalty rate reduction; comments due by 3-14-97; published 1-13-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Bruneau hot springsnail; comments due by 3-10-97; published 1-23-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Montana; comments due by 3-11-97; published 1-10-97

NUCLEAR REGULATORY COMMISSION

Uranium enrichment facilities; certification and licensing; comments due by 3-14-97; published 2-12-97

SMALL BUSINESS ADMINISTRATION

Small business investment companies:

Examination fees; comments due by 3-13-97; published 2-11-97

SOCIAL SECURITY ADMINISTRATION

Supplemental security income:

Aged, blind, and disabled--

Institutionalized children; comments due by 3-10-97; published 1-8-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 3-10-97; published 1-29-97

Boeing; comments due by 3-10-97; published 2-12-97

Bombardier; comments due by 3-14-97; published 2-3-97

Fokker; comments due by 3-14-97; published 2-28-97

Hiller Aircraft Corp.; comments due by 3-10-97; published 1-7-97

Pratt & Whitney; comments due by 3-10-97; published 1-9-97

Airworthiness standards:

Special conditions--

Ballistic Recovery Systems, Inc.; Cirrus SR-20 model; comments due by 3-10-97; published 2-6-97

Class E airspace; comments due by 3-10-97; published 1-24-97

Class E airspace; correction; comments due by 3-11-97; published 2-12-97

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Lamps, reflective devices, and associated equipment--

Auxiliary signal lamps and safety lighting inventions; comment request; comments due by 3-13-97; published 12-13-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Rate procedures:

Simplified rail rate reasonableness proceedings; expedited procedures; comments due by 3-14-97; published 2-12-97

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:

Veterans education--

State approving agencies; school catalog submission; comments due by 3-10-97; published 1-8-97

Survivors and dependents education; eligibility period extension; comments due by 3-10-97; published 1-9-97