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# federal register

Monday
March 31, 1997

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 46

**[Docket Number FV96–351]**

**RIN 0581–AB41**

## Amendments to the Perishable Agricultural Commodities Act (PACA)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is revising the regulations (other than Rules of Practice) under the Perishable Agricultural Commodities Act (PACA) in order to implement legislative changes signed into law by President Clinton. Specifically, the legislative changes grant USDA the authority to adjust future license fees through ''notice and comment'' rulemaking; eliminate the requirement of filing notice of intent to preserve trust benefits with USDA in the PACA trust; require USDA to receive a written complaint before initiating an investigation; require additional USDA investigation notification procedures; increase administrative penalties; establish civil penalties as an alternative to revocation or suspension of license; continue current filing fees for formal and informal reparation complaints; explicitly address the status of collateral fees and expenses; clarify misbranding prohibitions; and amend the provisions of PACA regarding the determination of responsibly connected individuals.

**EFFECTIVE DATE:** April 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** James R. Frazier, Chief, PACA Branch, Room 2095—So. Bldg., Fruit and Vegetable Division, AMS, USDA, 1400 Independence Avenue, SW., Washington, DC 20250, Phone (202) 720–2272.

**SUPPLEMENTARY INFORMATION:**

### Background

The PACA establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

The PACA was amended by the Perishable Agricultural Commodities Act Amendments of 1995 (P.L. 104–48). The regulations implementing the PACA (other than the Rules of Practice) are published in the Code of Federal Regulations at Title 7, Part 46 (7 CFR Part 46). A proposed rule to amend the regulations to implement Public Law 104–48 was published in the **Federal Register** on September 10, 1996. Comments on the proposed rule were to be submitted by November 12, 1996. Twelve comments were received from four trade associations representing growers and shippers, three trade groups representing retailers and grocery wholesalers, three law firms, one association representing the frozen food industry, and one fruit and vegetable broker.

Of the twelve comments received, three addressed the collection of renewal fees paid by grocery wholesalers and retailers licensed by USDA after enactment of Public Law 104–48. The three commentors write that USDA is incorrectly proposing that first-time licensed retailers and grocery wholesalers pay renewal fees. They refer to section 499(c)(3) of the statute designated, ''ONE-TIME FEE FOR RETAILERS AND GROCERY WHOLESALERS THAT ARE DEALERS'', which specifies the fees to be paid by a retailer or a grocery wholesaler making an initial application during the phase-out period and after such period ends. The commentors emphasize the statutory language at the end of section 499(c)(3) which states: ''* * * a retailer or grocery wholesaler paying a fee under this paragraph shall not be required to pay any fee for renewal of the license for subsequent years.'' Since the commentors' interpretation of the legislative amendment is substantially different from USDA's view but appears to be plausible, USDA is separating section 46.6 *License Fees* from the rest of the proposed regulations, and is addressing the issue independently from this final rule to allow other interested parties to comment. In the meantime, USDA will continue to assess license renewal fees as provided in 7 CFR Part 46.6. Should USDA, after notice and comment, conclude that the law excludes certain categories of licensees from the requirement to pay regular renewal fees during the three-year phase-out period, all such fees paid by those firms or individuals shall be refunded with interest.

Aside from removing section 46.6 from the final rule, other changes have been made to the regulations. The definition of ''grocery wholesaler'' has been edited to make it more concise; however, the meaning of the term has not been substantively changed. In addition, the regulatory language in section 46.45 as proposed goes beyond the explicit language provided in section 2(5) of the PACA; section 46.45 has been corrected to comply with the statute. A change to the proposed definition of ''good faith,'' and a few other minor editorial changes have been incorporated into the final rule for clarity. The provisions of the proposed rule are otherwise adopted for the reasons given in the proposal and in this document.

### Comments

One commentor objects to the five percent limit on wholesale sales that a retailer may have in a year and still be considered a retailer under the proposed definition of a ''retailer'' in section 46.2(j). The commentor suggests that USDA increase the limit but offered no limit alternative.

We disagree with the commentor's assertion that the five percent limit be increased to allow for additional wholesale transactions. The statute defines a retailer as a person who is a dealer engaged in the business of selling any perishable agricultural commodity at retail. A retailer is not subject to a license under PACA until the invoice

cost of its produce purchases exceeds $230,000 in a calendar year. A question may obviously be raised regarding how much non-retail business a firm may do and still be considered a retailer under the PACA. USDA realizes that a retailer may occasionally engage in a wholesale transaction by making a sale to another business, and USDA believes that when such wholesale transactions comprise a very small portion of a retailer's business, that business should continue to be classified, for purposes of the PACA, as a retailer. When wholesale transactions exceed five percent, however, they constitute a substantial business activity, and it would no longer be appropriate to consider firms with such levels of wholesale business as being retailers. For this reason, we are not changing the final rule based on the above comment.

One comment received suggests that the definition of ''dealer'' in the regulations does not accurately reflect the term as defined in the statute. The commentor stated that the regulations, as proposed, would define a ''retailer'' as a ''dealer,'' and a ''dealer'' would be defined to include a ''retailer,'' resulting in total circularity. USDA believes that this analysis is not correct. Both the statute and the proposed regulations define ''retailer'' as a dealer engaged in the business of selling any perishable agricultural commodity at retail. That is to say, ''retailers'' are a subset of the broader category of ''dealers.'' This distinction is important because, unlike other types of dealers, retailers must meet the $230,000 threshold before they are subject to the PACA. This is the meaning of the term ''retailer'' as provided in the proposed rule. In addition, the definition of ''dealer'' in the regulations was not addressed in the proposed rule. For this reason, we are not changing the final rule based on the above comment.

Two commentors express concern that the regulations should define ''collateral fees'' and outline the responsibilities governing their use. One of the commentors, Food Distributors International (FDI), a trade association formerly known as National-American Wholesale Grocers' Association (NAWGA)—and its foodservice partner organization—International Foodservice Distributors Association (IFDA), includes a petition dated April 26, 1994, to USDA requesting that a notice and comment proceeding be undertaken in order to formulate a statement of general policy regarding the disclosure to customers of promotional allowances, rebates, and collateral fees. FDI expressed concern that USDA left its petition unanswered.

At the time FDI submitted its petition, a USDA investigation was underway involving an association member which allegedly failed to disclose promotional allowances and rebates, which it termed collateral fees in its cost-plus contracts. During this same period, efforts were also underway to amend or repeal the statute. USDA concluded at the time that any policy statement would be inappropriate.

Since then, a definition of the term ''collateral fees and expenses'' has been added to the statute. USDA therefore believes that no further definition of the term is warranted. Moreover, the amendment to section 2(4) of the PACA, which states that ''* * * the good faith offer, solicitation, payment, or receipt of collateral fees and expenses, in and of itself, shall not be considered unlawful'' under the PACA, codifies USDA's longstanding position on the lawfulness of such fees under the PACA. It is the failure to disclose collateral fees and expenses that constitutes a violation of section 2(4) of the PACA. The ''policy statement'' or additional clarification sought by FDI appears in this final rule at section 46.2(hh), the definition of ''good faith,'' that requires the disclosure of such fees when they affect a material term of the agreement. Since the issues raised by the two commentors have been addressed, both in the statutory amendment and in this notice and comment rulemaking process, we are making no change to the final rule.

Two other commentors expressed their concern that the proposed regulations do not specify the method of disclosing collateral fees and expenses between the parties to a transaction. We agree that the regulations should specify the method for disclosing collateral fees and expenses. Therefore, we are changing section 46.2(hh) to reflect that a party to a transaction disclose *in writing* the existence of any collateral fees and expenses to all other parties to the transaction where the collateral fees and expenses affect a material term of the agreement.

Five commentors raised objections to USDA's definition of ''good faith'' in the proposed regulations. One of the commentors stated that the definition goes far beyond the statutory language by including as an element of ''good faith,'' the requirement that a party to a transaction disclose the existence of collateral fees to all other parties where the collateral fees and expenses affect a material term of the agreement. The other four commentors stated that USDA not only was exceeding its authority under the PACA, but also was going beyond the definition of ''good faith'' as provided in Uniform Commercial Code (UCC) section 2–103(b), by adding that the principal of good faith requires affirmative disclosure.

USDA disagrees with the commentors' objections. The PACA amendments provide that the good faith offer, solicitation, payment, or receipt of collateral fees and expenses, is not, in itself, unlawful. The term ''good faith'' is new to the PACA and is not defined in the statute. It was left, then, to USDA to provide the interpretation of the term as it is used in the PACA. Although USDA is not bound by the use of the term ''good faith'' as it appears in other broad, general contexts, the definition of ''good faith'' found in the UCC provides the foundation for the definition in the proposed regulations. USDA, with its definition of ''good faith'' in the regulations, clarifies what that term means in the PACA as it relates to the offer, solicitation, payment, or receipt of collateral fees and expenses. The definition puts all regulated entities on notice of what action needs to be taken so that the receipt of payments or credits of collateral fees and expenses complies with the prohibition against false and misleading statements in section 2(4) of the PACA. The proposed definition does not impose any additional obligation on regulated entities that is not already imposed under section 2(4). For these reasons, no change to the final rule is being made based on the five comments.

One commentor suggested that a new term, ''purchaser's agent,'' and an associated definition be added to the regulations to draw distinctions among various types of broker operations. USDA believes that this term and definition would be redundant. The existing regulations distinguish between two types of broker operations. In the first type of operation, outlined in section 46.27(a), the broker acts as a neutral third party, conveying offers, counter offers, and acceptances between the parties. Once the contract is formed, and a confirmation is issued by the broker to the parties in the transaction, the broker's duties are usually fulfilled. The second type of broker operation, commonly referred to as a ''buying'' broker, is outlined in section 46.27(b) of the existing regulations. A buying broker negotiates purchases at shipping point, terminal markets, or intermediate points, on behalf of the buyer on the buyer's instructions and authorization. Generally, a purchase is made in the buyer's name and the seller directly invoices the buyer. Given authorization from the buyer, the broker may purchase the product in his or her own name, make the loading and shipping

arrangements, and directly bill the buyer for the cost of the product plus a brokerage fee and any other agreed upon service charges. Since the regulations already include ''buying brokers,'' we believe that adding an additional term and definition of a ''purchaser's agent'' as described by the commentor would be confusing since such a definition would also apply to a buying broker operation.

In addition, USDA believes that the commentor's concerns are addressed in the proposed revision to section 46.28 which requires that a broker identify on the confirmation or memorandum of sale the party who engaged the broker in the transaction. As we stated in the preamble to the proposed rule, this change is intended to recognize that a broker may not be a neutral party when he or she is engaged by, and thus, may have a closer relationship with, one of the parties to the contract. Under the above circumstances, we are making no change to the final rule based on this comment.

A commentor opposed as unfair the proposed revision to section 46.27 which states that the broker is not the proper party to whom notice of a breach or of a rejection should be directed. In response, we note that the proposed language does not specify that the broker to a transaction is not to be notified of a breach or of a rejection. We merely point out that the broker is *not* to be the primary party to whom such notice should be given. Under usual circumstances, a broker negotiates a contract as a third party and once a contract is formed has no authority to modify that contract. Since time is critical when dealing in perishable agricultural commodities, the parties to the contract, that is, the seller and the purchaser, should be in direct communication regarding any breach or rejection. If, however, a party does notify the broker of a breach or rejection, the broker must notify the other party to the contract. We are making no change to the final rule based on this comment.

The same commentor also opposed the proposed revision to section 46.28 which establishes the presumption that a broker is acting on behalf of the buyer if the confirmation or memorandum of sale fails to disclose the party who engaged the broker in the transaction. The commentor stated that the presumption is not logical, and furthermore, there is no basis for this change in the 1995 PACA amendments or in the PACA Industry Advisory Committee Reports. The commentor further argues that if any presumption is to be made, it should be presumed that the broker acts on behalf of the seller since any payment to the broker by necessity reduces the net return to the seller, thus, the seller pays the brokerage.

The House of Representatives Agriculture Committee suggested that USDA revise the regulations which cover the duties and responsibilities of fruit and vegetable brokers to accurately reflect the increased role of brokers as agents of purchasers. The proposed revision to the regulation reflects the reality that increasingly the broker is engaged by the buyer to locate product or products and facilitate their purchase. As we stated in the preamble to the proposed rule, this change is intended to recognize that a broker may not be a neutral party when he or she is engaged by, and thus, may have a closer relationship with, one of the parties to the contract. The presumption, of course, would no longer apply in those instances when the broker identifies in the confirmation or memorandum of sale or other document the party on whose behalf it is negotiating. Even when there is no such declaration, the presumption that the broker was acting on behalf of the buyer, may be rebutted by proof that the broker was engaged by the shipper or other entity. For this reason, we are making no change to the final rule based on this comment.

We received two comments addressing the proposed revision to the paragraph of section 46.45 regarding the misrepresentation and/or misbranding of produce. The commentors stated that in some instances the first licensed handler may not be in a position to determine that the produce at issue was misbranded or misrepresented. They requested that the rule be modified to allow the first licensed handler of misbranded or misrepresented produce the opportunity to provide evidence of lack of knowledge of a misbranding violation to prevent any instances where the first licensed handler could be put in a competitive disadvantage in the marketplace.

The statute states that it is unlawful for any person to misrepresent product that is received, shipped, sold, or offered to be sold in interstate or foreign commerce. The statute and the proposed regulation state that a person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of the PACA by reason of the conduct of another party if the person did not know of the violation or lacked the ability to correct the violation. The law assigns misbranding liability to the first licensed entity in the transaction to ensure that some licensed entity will be accountable. Hence, the first licensee handling the product is responsible for identifying any misbranding problem with the product in question, and for ensuring that the produce is brought into compliance before being shipped, sold, or offered for sale to another party.

A comment was received suggesting that the definition of ''reasonable time'' in the regulations be revised so that acceptance occurs when the seller transfers custody and control to the buyer. The commentor stated that receivers are currently at no risk and may have an incentive to delay calls for inspections on products that were within grade at arrival but deteriorate between arrival time and the time of inspection, outside of the custody and control of the seller. Although this issue was not addressed in the proposed rule or the amended statute, USDA disagrees with the commentor's reasoning that a receiver has an incentive to delay a call for an inspection given the current definition of ''reasonable time'' in the regulations. In order to reject product shipped by truck, the regulations at section 46.2(cc) now require the receiver to call for an inspection within eight hours after being notified of the product's arrival and availability for inspection. If the receiver delays calling for the inspection, and the inspection that is finally performed reflects deterioration of the produce that exceeds normal deterioration, the receiver may be held liable for the full contract price of the product as the receiver has no proof of the condition of the product when it was first delivered. Given that the shipper of product in an FOB sale is responsible for loading or shipping product in suitable shipping condition, USDA believes that the eight hour window a receiver has to apply for an inspection is reasonable. Furthermore, this comment raises an issue which was not addressed in the proposed rule, and, therefore goes beyond the scope of this rulemaking.

One commentor suggested that the regulations be expanded to include provisions to allow USDA to implement procedures to prevent the dissipation of assets. This comment raises an issue which was not addressed in the proposed rule, and, therefore goes beyond the scope of this rulemaking.

One commentor suggested that USDA use its rulemaking authority to eliminate license fees for food service distributors. Since USDA has no authority to exempt by regulation any segment of the industry from paying license fees, we are making no changes to the final rule based on this comment.

Another commentor recommended that USDA use its rulemaking authority and initiate multi-year licensing. The amended statute directs the Secretary to take into account savings to the program when determining an appropriate interval for the renewal of licenses. USDA is currently studying the administrative implications of such changes and is not yet prepared to initiate a multi-year licensing program. We are therefore making no changes to this final rule based on the above comment.

In preparing to finalize the proposed rule, USDA determined that changes to the regulatory language in section 46.2(ii) and section 46.45 are needed.

USDA determined that the definition of ''grocery wholesaler'' in section 46.2(ii) of the proposed rule could be more succinctly stated without altering the meaning. USDA concluded that numbered paragraphs and some of the wording were unnecessary to state the criteria that a dealer must meet in order to be considered a ''grocery wholesaler.'' USDA believes that the definition in the final rule is clearer and more straightforward, while it does not change the substance of the definition.

USDA noticed that the regulatory language in section 46.45 of the proposed rule goes beyond the explicit language of the amended statute. In part, the proposed rule states the following: ''* * * a person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of the Act by reason of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.'' However, the amendment to Section 2(5) of the PACA provides that ''* * * a person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of this paragraph by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.'' The proposed regulation inadvertently broadened the scope of the statutory language. Therefore, a change in the final rule was required to conform the regulatory language with the statutory language. Section 46.45 has been amended to read as follows: ''* * * a person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of section 2(5) of the Act by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.''

In the final rule, USDA has deleted the superfluous phrase ''the term'' which appeared at the beginning of each definition in section 46.2 in the proposed rule.

**Executive Orders 12866 and 12988**

This final rule is issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), as amended. USDA is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

**Regulatory Flexibility Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. The PACA requires that wholesalers, processors, food service companies, grocery wholesalers, and truckers be considered dealers and subject to a license when they buy or sell more than 2,000 pounds of fresh and/or frozen fruits and vegetables in any given day. A retailer is considered to be a dealer and subject to license when the invoice cost of its perishable agricultural commodities exceeds $230,000 in a calendar year. Brokers negotiating the sale of frozen fruits and vegetables on behalf of the seller are also exempt from licensing when the invoice value of the transactions is below $230,000 in any calendar year.

There are approximately 15,700 PACA licensees. Separating licensees by the nature of business, there are approximately 6,000 wholesalers, 4,750 retailers, 2,100 brokers, 1,200 processors, 550 commission merchants, 450 food service businesses, 150 grocery wholesalers, and 50 truckers licensed under PACA. The license is effective for 1 year unless suspended or revoked by USDA for valid reasons [46.9 (a)–(h)], and must be renewed annually by the licensee. Many of the licensees may be classified as small entities.

A compliance guide which highlights the 1995 PACA legislation, and a general compliance guide entitled ''PACA Fact Finder'' which explains the rights and responsibilities of firms operating subject to the provisions of the PACA, are available to all licensees, including small businesses. Beginning in April 1997, USDA will send information regarding the PACA to all licensees when processing annual license renewals.

Accordingly, based on the information and the above discussion, it is determined that the provisions of this rule would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements covered by this proposed rule were approved by OMB on October 31, 1996, and expire on October 31, 1999.

**List of Subjects in 7 CFR Part 46**

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

## PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

**Authority:** Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In § 46.2, paragraph (j) is revised and two new paragraphs (hh) and (ii) are added to read as follows:

**§ 46.2 Definitions.**

* * * * *

(j) *Retailer* is a dealer engaged in the business of selling any perishable agricultural commodity at retail; *Provided*, That occasional sales at wholesale shall not be deemed to remove a dealer from the category of retailer if less than 5 percent of annual gross sales is derived from wholesale transactions.

* * * * *

(hh) *Good faith* means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade. The principle of good faith requires that a party to a transaction disclose in writing the existence of any

collateral fees and expenses to all other parties to the transaction where the collateral fees and expenses affect a material term of the agreement.

(ii) *Grocery wholesaler* is a dealer primarily engaged in the full-line wholesale distribution and resale of grocery and related nonfood items (such as perishable agricultural commodities, dry groceries, general merchandise, meat, poultry, and seafood, and health and beauty care items) to retailers. This term does not include persons primarily engaged in the wholesale distribution and resale of perishable agricultural commodities rather than other grocery and related nonfood items. Specifically, for an entity to be considered a grocery wholesaler, 50 percent or more of its annual gross sales must be from the full-line distribution and resale of grocery and related nonfood items, and it cannot have more than 50 percent of its sales in perishable agricultural commodities. ''Full line'' means that an entity must be supplying the retailer with a wide range of products such as the grocery and related nonfood items specified.

3. In § 46.9, paragraph (i) is revised to read as follows:

**§ 46.9 Termination, suspension, revocation, cancellation of licenses; notices; renewal.**

* * * * *

(i) Under section 4(a) of the Act, at least 30 days prior to the anniversary date of a valid and effective license, the Director shall mail a notice to the licensee at the last known address advising that the license will automatically terminate on its anniversary date unless an application for renewal is filed supplying all information requested on a form to be supplied by the Division, and unless the renewal fee (if any is applicable) is paid on or before such date. If the renewal application is not filed and/or the renewal fee (if required) is not paid by the anniversary date, the licensee may obtain a renewal of that license at any time within 30 days by submitting the required renewal application and/or paying the renewal fee (if required), plus $50. Within 60 days after the termination date of a valid and effective license, the former licensee shall be notified of such termination, unless a new license has been obtained in the meantime.

4. Section 46.10 is revised to read as follows:

**§ 46.10 Nonlicensed person; liability; penalty.**

Any commission merchant, dealer, or broker who violates the Act by engaging in business subject to the Act without a license may settle its liability, if such violation is found by the Director not to have been willful but due to inadvertence, by submitting the required application and paying the amount of fees that it would have paid had it obtained and maintained a license during the period that it engaged in business subject to the Act, plus an additional sum not in excess of two hundred and fifty dollars ($250) as may be determined by the Director.

5. § 46.17 is revised to read as follows:

**§ 46.17 Inspection of records.**

(a) Each licensee shall, during ordinary business hours, promptly upon request, permit any duly authorized representative of USDA to enter its place of business and inspect such accounts, records, and memoranda as may be material:

(1) In the investigation of complaints under the Act, including any petition, written notification, or complaint under section 6 of the Act,

(2) To the determination of ownership, control, packer, or State, country, or region of origin in connection with commodity inspections,

(3) To ascertain whether there is compliance with section 9 of the Act,

(4) In administering the licensing and bonding provisions of the Act,

(5) If the licensee has been determined in a formal disciplinary proceeding to have violated the prompt payment provision of section 2(4) of the Act, to determine whether, at the time of the inspection, there is compliance with that section.

(b) Any necessary facilities for such inspection shall be extended to such representative by the licensee, its agents, and employees.

6. In § 46.27, paragraph (a) is revised to read as follows:

**§ 46.27 Types of broker operations.**

(a) Brokers carry on their business operations in several different ways and are generally classified by their method of operation. The following are some of the broad groupings by method of operation. The usual operation of brokers consists of the negotiation of the purchase and sale of produce either of one commodity or of several commodities. A broker is usually engaged by only one of the parties, but in negotiating a contract the broker acts as a special agent of first one and then the other party in conveying offers, counter offers, and acceptances between the parties. Once the contract is formed, and the confirmation issued, the broker's duties are usually ended, and the broker is not the proper party to whom notice of breach or of rejection should be directed. However, a broker receiving notice has a duty to promptly convey the notice to the proper party. Frequently, brokers never see the produce they are quoting for sale or negotiating for purchase by the buyer, and they carry out their duties by conveying information received from the parties between the buyer and seller until a contract is effected. Generally, the seller of the produce invoices the buyer, however, when there is a specific agreement between the broker and its principal, the seller invoices the broker who, in turn, invoices the buyer, collects, and remits to the seller. Under other types of agreements, the seller ships the produce to pool buyers, and the broker as an accommodation to the seller invoices the buyers, collects, and remits to the seller. Also, there are times when the broker is authorized by the seller to act much like a commission merchant, being given blanket authority to dispose of the produce for the seller's account either by negotiation of sales to buyers not known to the seller or by placing the produce for sale on consignment with receivers in the terminal markets.

* * * * *

7. In section 46.28, paragraph (a) is revised to read as follows:

**§ 46.28 Duties of brokers.**

(a) *General.* The function of a broker is to facilitate good faith negotiations between parties which lead to valid and binding contracts. A broker who fails to perform any specification or duty, express or implied, in connection with any transaction is in violation of the Act, is subject to the penalties specified in the Act, and may be held liable for damages which accrue as a result of the violation. It shall be the duty of the broker to fully inform the parties concerning all proposed terms and conditions of the proposed contract. After all parties agree on the terms and the contract is effected, the broker shall prepare in writing and deliver promptly to all parties a properly executed confirmation or memorandum of sale setting forth truly and correctly all of the essential details of the agreement between the parties, including any express agreement as to the time when payment is due. The confirmation or memorandum of sale shall also identify the party who engaged the broker to act in the negotiations. If the confirmation or memorandum of sale does not contain such information, the broker shall be presumed to have been engaged by the buyer. Brokers do not normally act as general agents of either party, and will not be presumed to have so acted.

Unless otherwise agreed and confirmed, the broker will be entitled to payment of brokerage fees from the party by whom it was engaged to act as broker. The broker shall retain a copy of such confirmations or memoranda as part of its accounts and records. The broker who does not prepare these documents and retain copies in its files is failing to prepare and maintain complete and correct records as required by the Act. The broker who does not deliver copies of these documents to all parties involved in the transaction is failing to perform its duties as a broker. A broker who issues a confirmation or memorandum of sale containing false or misleading statements shall be deemed to have committed a violation of section 2 of the Act. If the broker's records do not support its contentions that a binding contract was made with proper notice to the parties, the broker may be held liable for any loss or damage resulting from such negligence, or for other penalties provided by the Act for failing to perform its express or implied duties. The broker shall take into consideration the time of delivery of the shipment involved in the contract, and all other circumstances of the transaction, in selecting the proper method for transmitting the written confirmation or memorandum of sale to the parties. A buying broker is required to truly and correctly account to its principal in accordance with § 46.2(y)(3). The broker should advise the appropriate party promptly when any notice of rejection or breach is received, or of any other unforeseen development of which it is informed.

* * * * *

8. In § 46.45, the introductory text is revised to read as follows:

**§ 46.45 Procedures in administering section 2(5) of the Act.**

It is a violation of section 2(5) for a commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree, or maturity, or State, country, region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce. However, a person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of section 2(5) of the Act by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.

* * * * *

9. In § 46.46, paragraph (a) is removed, paragraphs (b) through (g) are redesignated as paragraphs (a) through (f), and newly designated paragraphs (c), (e)(2), and (f) are revised to read as follows:

**§ 46.46 Statutory trust.**

* * * * *

(c) *Trust benefits.* (1) When a seller, supplier or agent who has met the eligibility requirements of paragraphs (e) (1) and (2) of this section, transfers ownership, possession, or control of goods to a commission merchant, dealer, or broker, it automatically becomes eligible to participate in the trust. Participants who preserve their rights to benefits in accordance with paragraph (f) of this section remain beneficiaries until they are paid in full.

(2) Any licensee, or person subject to license, who has a fiduciary duty to collect funds resulting from the sale or consignment of produce, and remit such funds to its principal, also has the duty to preserve its principal's rights to trust benefits in accordance with paragraph (f) of this section. The responsibility for filing the notice to preserve the principal's rights is obligatory and cannot be avoided by the agent by means of a contract provision. Persons acting as agents also have the responsibility to negotiate contracts which entitle their principals to the protection of the trust provisions: *Provided,* That a principal may elect to waive its right to trust protection. To be effective, the waiver must be in writing and separate and distinct from any agency contract, must be signed by the principal prior to the time affected transactions occur, must clearly state the principal's intent to waive its right to become a trust beneficiary on a given transaction, or a series of transactions, and must include the date the agent's authority to act on the principal's behalf expires. In the event an agent having a fiduciary duty to collect funds resulting from the sale or consignment of produce and remit such funds to its principal fails to perform the duty of preserving its principal's rights to trust benefits, it may be held liable to the principal for damages. A principal employing a collect and remit agent must preserve its rights to trust benefits against such agent by filing appropriate notices with the agent.

(e) Prompt payment and eligibility for trust benefits.

* * * * *

(2) The maximum time for payment for a shipment to which a seller, supplier, or agent can agree and still qualify for coverage under the trust is 30 days after receipt and acceptance of the commodities as defined in § 46.2(dd) and paragraph (a)(1) of this section.

* * * * *

(f) *Filing notice of intent to preserve trust benefits.* (1) Notice of intent to preserve benefits under the trust must be in writing, must include the statement that it is a notice of intent to preserve trust benefits and must include information which establishes for each shipment:

(i) The names and addresses of the trust beneficiary, seller-supplier, commission merchant, or agent and the debtor, as applicable,

(ii) The date of the transaction, commodity, invoice price, and terms of payment (if appropriate),

(iii) The date of receipt of notice that a payment instrument has been dishonored (if appropriate), and

(iv) The amount past due and unpaid.

(2) Timely filing of a notice of intent to preserve benefits under the trust will be considered to have been made if written notice is given to the debtor within 30 calendar days:

(i) After expiration of the time prescribed by which payment must be made pursuant to regulation,

(ii) After expiration of such other time by which payment must be made as the parties have expressly agreed to in writing before entering into the transaction, but not longer than the time prescribed in paragraph (e)(2) of this section, or

(iii) After the time the supplier, seller or agent has received notice that a payment instrument promptly presented for payment has been dishonored. Failures to pay within the time periods set forth in paragraphs (f)(2)(i) and (ii) of this section constitute defaults.

(3) Licensees may chose an alternate method of preserving trust benefits from the requirements described in paragraphs (f) (1) and (2) of this section. Licensees may use their invoice or other billing statement to preserve trust benefits. The alternative method requires that the licensee's invoice or other billing statement, given to the debtor, contain:

(i) The statement: ''The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.''; and

(ii) The terms of payment if they differ from prompt payment set out in section 46.2(z) and (aa) of this part, and the parties have expressly agreed to such terms in writing before the affected transactions occur.

10. A new § 46.49 is added to read as follows:

**§ 46.49 Written notifications and complaints.**

(a) *Written notification,* as used in section 6(b) of the Act, means:

(1) Any written statement reporting or complaining of a PACA violation(s) filed by any officer or agency of any State or Territory having jurisdiction over licensees or persons subject to license, or any other interested person who has knowledge of or information regarding a possible violation, other than an employee of an agency of USDA administering this Act or a person filing a complaint under Section 6(c);

(2) Any written notice of intent to preserve the benefits of the trust established under section 5 of this Act; or

(3) Any official certificate(s) of the United States Government or States or Territories of the United States.

(b) Any written notification may be filed by delivering it to any office of USDA or any official thereof responsible for administering the Act. A written notification which is so filed, or any expansion of an investigation resulting from any indication of additional further violations of the Act found as a consequence of an investigation based on written notification or complaint, shall also be deemed to constitute a complaint under section 13(a) of this Act.

(c) Upon becoming aware of a complaint under Section 6(a) or 6(b) of this Act, the Secretary will determine if reasonable grounds exist for an investigation of such complaint for disciplinary action. If the investigation substantiates the existence of violations, a formal disciplinary complaint may be filed by the Secretary as described under Section 6(c)(2) of the Act.

(d) Whenever an investigation, initiated as a result of a written notification or complaint under Section 6(b) of the Act, is commenced, or expanded to include new violations, notice shall be given by the Secretary to the subject of the investigation within thirty (30) days of the commencement or expansion of the investigation. Within one hundred and eighty (180) days after giving initial notice, the Secretary shall provide the subject of the investigation with notice of the status of the investigation, including whether the Secretary intends to issue a complaint under Section 6(c)(2) of this Act, terminate the investigation, or continue or expand the investigation. Thereafter, the subject of the investigation may request in writing, no more frequently than every ninety (90) days, a status report from the Chief of the PACA Branch who shall respond thereto within fourteen (14) days of receiving the request. When an investigation is terminated, the Secretary shall, within fourteen (14) days, notify the subject of the investigation of the termination. In every case in which notice or response is required under this subsection such notice or response shall be accomplished by personal service or by posting the notice or response by certified mail to the last known address of the subject of the investigation.

Dated: March 21, 1997.

**Eric M. Forman,**

*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 97–7807 Filed 3–28–97; 8:45 am]

BILLING CODE 3410–02–P

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## FARM CREDIT ADMINISTRATION

## 12 CFR Parts 620 and 630

**RIN 3052–AB62**

## Disclosure to Shareholders; Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System; Quarterly Report

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA or Agency) adopts final amendments to its regulations governing the preparation, filing, and distribution of Farm Credit System (FCS or System) bank and association reports to shareholders and investors. The rule implements a statutory amendment that supersedes the regulatory requirement that FCS institutions disseminate quarterly reports to shareholders.

The rule also imposes a new notice requirement designed to improve shareholder access to timely information and disclosure regarding adverse events affecting their institutions. Under the new regulations, FCS institutions must prepare and distribute a notice to shareholders when their permanent capital falls below the regulatory minimum standard.

To facilitate the presentation of financial statements by FCS institutions in a manner that conforms with generally accepted accounting principles (GAAP), the rule removes the requirement that banks must present their financial statements on a combined basis with their related associations.

The rule also makes other technical changes to FCA regulations governing disclosure to shareholders and investors.

**DATES:** The final rule shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Laurie A. Rea, Policy Analyst, Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;

or

William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 28, 1996, the FCA proposed amendments to its regulations governing disclosure to shareholders and investors.[1] The rulemaking implements section 211 of the Farm Credit System Reform Act of 1996 (1996 Act),[2] addresses two regulatory petitions received by the Agency, and takes other related actions. To conform with the 1996 Act, the FCA proposed amending subpart C of part 620 to eliminate existing regulatory requirements for distribution of quarterly reports to shareholders. To improve shareholder access to timely information and disclosure regarding adverse events affecting their institutions, the FCA proposed a new requirement that System institutions provide notice to shareholders in the event of noncompliance with regulatory permanent capital requirements, followed by subsequent notices in situations of continued deterioration in permanent capital. The FCA also responded to petitions of System institutions by proposing to remove the requirement that banks present their

[1] *See* 61 FR 53331, October 11, 1996.

[2] Pub. L. 104–105, 110 Stat. 162 (Feb. 10, 1996). Section 211 of the 1996 Act provides that ''the requirements of the Farm Credit Administration governing the dissemination to stockholders of quarterly reports of System institutions may not be more burdensome or costly than the requirements applicable to national banks.'' Section 211 applies only to dissemination requirements and does not affect the requirement that FCS institutions continue to prepare and file quarterly reports with the FCA in accordance with the quarterly report filing and content requirements of part 620.

financial statements on a combined basis with their related associations and to allow incorporation by reference of information contained in offering documents for Farm Credit debt securities into the Systemwide financial reports to investors.[3] The FCA also proposed technical changes to clarify the reporting requirements of related organizations in their disclosure to shareholders and investors.

The FCA received two comment letters on the proposed rule. The Farm Credit Council (FCC) submitted a letter based on input from individual members and the System's Accounting Standards Work Group. The Farm Credit Services of the Midlands, PCA/FLCA (Midlands), also commented. In general, the commenters supported the FCA's proposal to implement the 1996 Act, while also raising specific concerns and suggestions for change. As set forth below, the final regulations retain much of the content of the proposed regulations, but clarify and ease some proposed requirements in response to comments.

## II. Final Amendments

### *A. Quarterly Reports*

The commenters supported the FCA's proposal to implement section 211 of the 1996 Act regarding dissemination of quarterly reports to shareholders. The FCA adopts as final the amendments to subpart C of part 620 and related provisions[4] as proposed.

Under the final regulations, routine distribution of quarterly reports by System institutions to shareholders is voluntary rather than mandatory. The FCA emphasizes that FCS institutions are not prohibited by the 1996 Act or these regulations from continuing to publish or distribute quarterly reports to their shareholders. Moreover, each FCS bank and direct lender association is required to make quarterly reports available to shareholders on request and must continue to file quarterly reports with the FCA. Associations are no longer required to distribute quarterly reports along with their information statements, regardless of the date of their annual meetings.

Midlands commented on current § 615.5250(a)(2) of this chapter, which requires institutions to provide prospective borrowers with a copy of the institution's most recent quarterly report (if more recent than the annual report) prior to loan closing, at which time the borrower must purchase equities as a condition for obtaining a loan. Midlands agreed that prospective borrowers have the right to current association financial information, but, citing logistical problems in supplying an accurate number of quarterly reports to its branches, suggested that the requirement be changed to require only notice of availability of quarterly reports to prospective borrowers. The FCA continues to believe that it is important to provide the most current financial information at the time a borrower is required to purchase the institution's equities. Thus, the current requirement is unchanged. Any logistical problems that may be associated with providing a copy of the quarterly report to prospective borrowers will have to be addressed through available facilities such as fax, copier, and electronic or overnight mail.

### *B. Notice to Shareholders*

The FCA proposed that notice be provided to shareholders when an institution's capital falls below the regulatory minimum permanent capital standard. Proposed § 620.15(a) would have required each FCS bank and direct lender association to prepare, file with the FCA, and distribute to shareholders, a notice within 20 days following the monthend that the institution initially determines that it is not in compliance with the minimum permanent capital standards established in part 615 of FCA regulations. Under certain circumstances, reporting institutions also would have been required to prepare and distribute a subsequent notice to shareholders. If the reporting institution's permanent capital ratio decreased by one-half of 1 percent or more from the level reported in a notice, the reporting institution would be required to distribute another notice to shareholders within 20 days of the end of the current month. In addition, the FCA proposed minimum content requirements for notices under new § 620.17.

The FCC raised objections to the proposed requirement that notice be provided to shareholders in instances of noncompliance with the permanent capital standard. The FCC asserted that the proposed notice requirement in § 620.15(a) is unnecessary and could be confusing or even misleading taken out of the context of an institution's financial statements and Management's Discussion and Analysis of Financial Condition and Results of Operations. The FCC also found it difficult to reconcile the notice requirement with the elimination of quarterly report dissemination by the 1996 Act.

After consideration of these comments, the FCA continues to believe that the notice requirement will benefit shareholders and impose no undue burdens on System institutions. For the reasons set forth below and as noted in the preamble to the proposed rule, the FCA issues a new subpart D relating to the preparation and distribution of a notice to shareholders substantially as proposed.

As discussed above, the FCA has deleted the quarterly report dissemination requirement in accordance with the 1996 Act. The FCA believes that the limited notice to shareholders is necessary to provide shareholders with timely notice of important information that affects the ability of the institution to distribute earnings and retire stock.[5] The Farm Credit Act of 1971, as amended (Act), encourages borrower/shareholder participation in management, control, and ownership of FCS institutions.[6] In the Farm Credit Amendments Act of 1985,[7] Congress expressly authorized the FCA to regulate disclosure to shareholders. Unlike shareholders of companies subject to Securities and Exchange Commission (SEC) disclosure requirements who have access to an established marketplace for financial information based on SEC filings,[8] System shareholders rely primarily on FCS institutions to provide them with current information regarding their institutions. The FCA believes it is critical that shareholders receive timely notice of material changes in the capital position of the institutions they own so that they are equipped to exercise their ownership role.

In proposing these regulations, the FCA sought to balance the competing considerations of providing adequate

[3] *See* 12 CFR Part 630.

[4] Sections 620.1(o) and 620.2(a), (b)(3)(i), (f) through (i).

[5] *See* 12 U.S.C. 2154a(d)(1), which states that: ''* * * the board of directors of a System institution may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends or retirement of stock, if after or due to such action, the permanent capital of the institution would thereafter fail to meet the minimum capital adequacy standards established under section 2154a of this title.'' *See also* 12 CFR 615.5215.

[6] *See* 12 U.S.C. 2001(b).

[7] Pub. L. 99–205, 99 Stat. 1678 (Dec. 23, 1985). *See* section 5.19(b)(1) of the Act.

[8] In addition to annual and quarterly filings, under sections 13 or 15(d) of the Securities Exchange Act of 1934, registrants are required to file a current report with the SEC within 5–15 days (depending on the event) upon determination of the occurrence of any of the following events: (1) changes in control of registrant, (2) significant acquisition or disposition of assets, (3) bankruptcy or receivership, (4) changes in registrant's certifying accountant, (5) other events that the registrant deems of significant importance to security holders, and (6) resignations of registrant's directors because of a disagreement with the registrant on any matter relating to the registrant's operation, policies, or practices. The SEC does not require current reports to be distributed to shareholders.

notice to shareholders concerning their investments and minimizing regulatory burden on FCS institutions. FCS institutions required to file and distribute a notice will incur costs associated with preparing and distributing the materials. However, since notice is required only in those extraordinary circumstances where an institution is not in compliance with the FCA's minimum permanent capital standard,[9] the FCA does not expect the regulations will significantly increase regulatory burden on System institutions. In the limited instances when notice is required, the rule will help ensure timely and adequate disclosure to shareholders/members who have investments at risk and rely on the dependable credit services of the FCS institutions. In addition, such notices will inform shareholders of the effect that failure to meet the minimum capital standard has on their institution's ability to retire stock and distribute earnings.

The FCC also expressed concern that both the time period for calculating noncompliance with permanent capital requirements and the timeframe allowed by the proposed rule for distributing the notice are inadequate. Under proposed § 620.15(a), each Farm Credit bank and direct lender association required to prepare a notice would have been required to distribute the notice to shareholders within *20* days following the monthend that the institution initially determines that it is not in compliance with the minimum permanent capital standard prescribed under § 615.5205 of this chapter. The FCC noted that existing regulations only require that an institution's permanent capital ratio (PCR) be reported on a quarterly basis. The FCC suggested that the FCA substitute the phrase ''end of the fiscal quarter'' for ''monthend'' in § 620.15(a) and ''any subsequent quarterend'' for ''any subsequent monthend'' in proposed § 620.15(b).

The FCA declines to adopt a quarterly timeframe for the initial notice of noncompliance with the PCR because it would undermine the goal of disseminating this information to shareholders quickly. Moreover, there is no added burden on FCS institutions in connection with calculation of the PCR. Although FCS institutions are only required by current regulations to report their PCR on a quarterly basis, § 615.5205(a) of this chapter requires that each FCS institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted assets. The FCA further expects FCS institutions to have procedures in place that permit calculation of their PCR on any given date.[10]

In response to the argument that monthly notices of subsequent deterioration would be burdensome, the FCA accepts the suggestion of the FCC to modify final § 620.15(b) to require subsequent notices following the end of any subsequent fiscal quarter instead of the end of any subsequent month as proposed. The FCA does not believe that this change seriously disadvantages shareholders. Once alerted by the initial notice, concerned shareholders may elect to follow up on their institution's condition more often than quarterly if they wish.

The FCC also commented that it is likely that an institution required to distribute a notice of noncompliance with regulatory minimum capital standards would need to provide additional supplemental information to make the information more meaningful. The FCC suggested that the required timeframe for distributing the notice and any subsequent notices in proposed § 620.15 (a) and (b) be changed from 20 days to 45 days. The FCA agrees that additional information may make the disclosures more meaningful to shareholders and, to facilitate such additional disclosure, has decided to increase the timeframe for preparation and distribution of the initial notice by 10 days. Final § 620.15(a) thus requires distribution of the notice within *30* days following the monthend that the institution initially determines that it is not in compliance with the minimum permanent capital standards.

The FCA adopts the suggestion of the FCC to permit distribution of a subsequent notice to shareholders within 45 days following the end of any subsequent quarter at which the institution's PCR decreases by one-half of 1 percent or more from the level reported in the most recent notice distributed to shareholders. This timeframe for preparation and distribution of subsequent notices to shareholders under § 620.15(b) will coincide with the time allowed institutions to prepare and file their quarterly reports with the FCA under § 620.2. Final § 620.15(c) and the content requirements for the notice in § 620.17 are adopted as proposed.

The FCA also invited comments on the use of the total surplus to risk-adjusted assets standard[11] to determine the point at which shareholders would be informed that their institution is experiencing financial difficulties. Both commenters opposed the use of the total surplus ratio as the trigger for the notice requirement. The FCC commented that the total surplus to risk-adjusted assets ratio is not always an indicator of impaired financial condition and thus, such notices could unnecessarily alarm shareholders when the institution continues to have a reasonable margin to protect its investment. The FCC also argued that the FCA should provide additional notice and opportunity for comment before adopting a notice requirement triggered by failure to meet the total surplus standard, which was not in effect at the time the notice requirement was proposed.

The FCA believes that persuasive arguments exist for adopting a total surplus trigger for the notice to shareholders, as explained in the proposed and final capital regulations.[12] However, the FCA has decided not to adopt a total surplus standard as the triggering point for the notice at this time. Rather, the FCA will carefully monitor implementation of the new capital standards and will consider changing the notice trigger from the PCR to the total surplus ratio as FCS institutions gain experience with the new standards.

### III. Combined Financial Statement Presentation Requirements

The FCA proposed removing the requirement that banks must present the financial statements of the bank and its related associations on a combined basis. The intent of the proposal was to facilitate the presentation of financial statements by FCS institutions in a manner that conforms with GAAP. Under the proposed regulations, banks that present their financial statements on a stand-alone basis would be required to present, in the footnotes to their financial statements, a condensed statement of condition and statement of income for their related associations on a combined basis. The FCA adopts the regulations substantially as proposed.

In its comment concurring with this proposal, the FCC requested that the FCA clarify the language of § 620.2(g)(2) to indicate that banks presenting their financial statements on a stand-alone

[9] All FCS institutions were in compliance with the regulatory minimum permanent capital standard as of December 31, 1996.

[10] FCA Bookletter No. 256–OFA, Permanent Capital Ratio-Average Daily Balance, May 24, 1990.

[11] The total surplus to risk-adjusted assets standard is part of the new capital requirements recently adopted by the FCA. *See* 62 FR 4429, January 30, 1997.

[12] *See* 60 FR 38521, July 27, 1995. *See also* ''Basis for Conclusions and Positions Taken in the Final Capital Adequacy Regulations'' at 62 FR 4429, 4434, January 30, 1997.

basis are only required to present the supplemental combined statements in the footnotes accompanying their annual reports. The final regulations include this suggested clarification. Further, the FCC requested that the FCA confirm that once a reporting entity is determined under GAAP to be the preferred reporting entity, it would require a significant change in facts and circumstances to change the reporting basis of such entity. The FCA agrees that, under GAAP, it would require a significant change in facts and circumstances to support a change in a reporting entity's method of financial statement presentation (e.g., from reporting on a combined basis to reporting on a stand-alone basis).

In general, the FCA believes the relationship between a bank and its related associations is an important one that warrants discussion in the financial statements to achieve full and complete disclosure regardless of how the bank presents its financial statements. In adopting the regulations substantially as proposed, the FCA reiterates its position that presentation of combined financial statements conforms with GAAP and is the most appropriate method of disclosure to shareholders of FCBs and their related associations. Similarly, based on the financial and operational interdependence of the banks and their associations, and the banks' joint and several liability for Systemwide debt securities, the FCA believes combined financial statements continue to provide the most meaningful disclosure under GAAP for purposes of the System's reports to investors.

Under final § 620.4, any bank that presents its financial statements on a combined basis must distribute its annual report to the shareholders of related associations. Where bank preparation of bank-only financial statements is supported by GAAP, the regulation does not require that the bank distribute its annual report to the shareholders of related associations in ordinary circumstances. However, § 620.4(b)(2) provides that for periods where the bank has experienced a significant event that has a material effect on the associations, the bank's annual report must be distributed to the related associations' shareholders.

## IV. Technical Changes to Part 620

The FCA proposed several technical changes to part 620 to clarify the reporting requirements of related organizations. The FCA received no comments on the proposed changes. The amendments are adopted as proposed.

## V. Report to Investors

Lastly, the FCA proposed to add new § 630.3(f), which would permit the Federal Farm Credit Banks Funding Corporation to incorporate by reference information contained in offering documents for Farm Credit debt securities into the Systemwide financial reports to investors. The FCA received one comment in support of the new section and adopts § 630.3(f) as proposed.

## VI. Regulatory Impact

The FCA has determined that the final regulations will not have a significant effect on the general economy and are not a significant regulatory action under Executive Order 12866. In addition, the final regulations pertain only to FCS institutions and, therefore, will not conflict with the rules and regulations of other financial regulatory agencies. Due to the nature of the regulations, it is unlikely that the regulations will have any material impact on governmental entitlements, grants, user fees, or loan programs.

## List of Subjects

*12 CFR Part 620*

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

*12 CFR Part 630*

Accounting, Agriculture, Banks, banking, Credit, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 620 and 630 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

## PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for part 620 continues to read as follows:

**Authority:** Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

## Subpart A—General

2. Section 620.1 is amended by redesignating paragraphs (o), (p), and (q) as new paragraphs (p), (q), and (r), respectively, and adding new paragraph (o) to read as follows:

### § 620.1 Definitions.

* * * * *

(o) *Report* refers to the annual report, quarterly report, notice, or information statement required by this part unless otherwise specified.

* * * * *

3. Section 620.2 is amended by revising paragraphs (a), (b)(3)(i), and (f) through (i) to read as follows:

### § 620.2 Preparing and filing the reports.

* * * * *

(a) Three copies of each report required by this section, including financial statements and related schedules, exhibits, and all other papers and documents that are part of the report shall be filed with the Chief Examiner, Farm Credit Administration, McLean, Virginia 22102–5090, or with such other Farm Credit Administration offices as the Chief Examiner designates. The Farm Credit Administration must receive the report within the period prescribed under applicable subpart sections. The reports shall be available for public inspection at the issuing institution and the Farm Credit Administration office with which the reports are filed. Bank reports shall also be available for public inspection at each related association office.

(b) * * *

(3)(i) For each quarterly report or notice filed under this section, each member of the board or one of the following board members formally designated by action of the board to certify reports of condition and performance on behalf of the individual board members: The chairperson of the board; the chairperson of the audit committee; or a board member designated by the chairperson of the board.

* * * * *

(f) No disclosure required by subparts B and E of this part shall be deemed to violate any regulation of the Farm Credit Administration.

(g) Each Farm Credit institution shall present its reports in accordance with generally accepted accounting principles and in a manner that provides the most meaningful disclosure to shareholders.

(1) Any Farm Credit institution that presents its annual and quarterly financial statements on a combined or consolidated basis shall also include in the report the statement of condition and statement of income of the institution on a stand-alone basis. The stand-alone statements may be in summary form and shall disclose the basis of presentation if different from accounting policies of the combined or consolidated statements.

(2) Any bank that prepares its financial statements on a stand-alone basis shall provide in the footnotes

accompanying its annual report supplemental information containing a condensed statement of condition and statement of income for the bank's related associations on a combined basis. The condensed statements may be unaudited and shall disclose the basis of presentation if different from accounting policies of the bank-only statements.

(h)(1) Each annual report or notice shall include a statement in a prominent location within the report or notice that the institution's quarterly reports are available free of charge on request. The statement shall include approximate dates of availability of the quarterly reports and the telephone numbers and addresses where shareholders may obtain a copy of the reports.

(2) Each association shall include a statement in a prominent location within each report that the shareholders' investment in the association may be materially affected by the financial condition and results of operations of the related bank and (if not otherwise provided) that a copy of the bank's financial reports to shareholders will be made available free of charge on request. The statement shall also include the telephone numbers and addresses where shareholders may obtain copies of the related bank's financial reports.

(3) Each institution shall, after receiving a request for a report, mail or otherwise furnish the report to the requestor. The first copy of the requested report shall be provided to the requestor free of charge.

(i) Any events that have affected one or more related organizations of the reporting institution that are likely to have a material effect on the financial condition, results of operations, cost of funds, or reliability of sources of funds of the reporting institution shall be considered significant events for the reporting institution and shall be disclosed in the reports. Any significant event affecting the reporting institution that occurred during the preceding fiscal quarters that continues to have a material effect on the reporting institution shall be considered significant events of the current fiscal quarter and shall be disclosed in the reports.

## Subpart B—Annual Report to Shareholders

4. Section 620.4 is amended by revising paragraph (b) to read as follows:

### § 620.4 Preparing and distributing the annual report.

* * * * *

(b)(1) Any bank that presents its financial statements on a combined basis shall distribute its annual report to the shareholders of related associations within the period required by paragraph (a) of this section. Each bank shall coordinate such distribution with its related associations.

(2) Any bank that presents its financial statements on a bank-only basis shall distribute its annual report to the shareholders of related associations within the period required by paragraph (a) of this section in all instances where the bank experiences a significant event that has a material effect on the associations. Each bank shall coordinate such distribution with its related associations.

* * * * *

5. Section 620.5 is amended by revising paragraph (g)(2)(vi) to read as follows:

### § 620.5 Contents of the annual report to shareholders.

(g) * * *

(2) * * *

(vi) Discuss any events affecting a related organization that are likely to have a material effect on the reporting institution's financial condition, results of operations, cost of funds, or reliability of sources of funds.

* * * * *

## Subpart C—Quarterly Report

6. The heading for subpart C is revised as set forth above.

7. Section 620.10 is revised to read as follows:

### § 620.10 Preparing the quarterly report.

(a) Each Farm Credit bank and direct lender association shall prepare a quarterly report within 45 days after the end of each fiscal quarter, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution.

(b) The report shall contain, at a minimum, the information specified in § 620.11 and, in addition, such other material information (including significant events) as is necessary to make the required disclosures, in light of the circumstances under which they are made, not misleading.

8. Part 620 is amended by redesignating subparts D, E, and F as new subparts E, F, and G, respectively, and adding a new subpart D to read as follows:

## Subpart D—Notice to Shareholders

### § 620.15 Notice.

(a) Each Farm Credit bank and direct lender association shall prepare, file with the Farm Credit Administration, and distribute a notice to shareholders, within 30 days following the monthend that the institution initially determines that it is not in compliance with the minimum permanent capital standard prescribed under § 615.5205 of this chapter.

(b) An institution that has given notice to shareholders pursuant to paragraph (a) of this section or subsequent notice pursuant to this paragraph shall also prepare, file with the Farm Credit Administration, and distribute to shareholders a notice within 45 days following the end of any subsequent quarter at which the institution's permanent capital ratio decreases by one-half of 1 percent or more from the level reported in the most recent notice distributed to shareholders.

(c) Each institution required to prepare a notice under § 620.15 (a) or (b) shall distribute the notice to shareholders by mail or otherwise furnish the information required in the notice by publishing it in any publication with circulation wide enough to be reasonably assured that all of the institution's shareholders have access to the information in a timely manner.

### § 620.17 Contents of the notice.

(a) The information required to be included in a notice must be conspicuous, easily understandable, and not misleading.

(b) A notice, at a minimum, shall include:

(1) A statement that:

(i) Briefly describes the regulatory minimum permanent capital standard established by the Farm Credit Administration and the notice requirement of § 620.15(a);

(ii) Indicates the institution's current level of permanent capital; and

(iii) Notifies shareholders that the institution's permanent capital is below the Farm Credit Administration regulatory minimum standard.

(2) A statement of the effect that noncompliance has had on the institution and its shareholders, including whether the institution is currently prohibited by statute or regulation from retiring stock or distributing earnings or whether the Farm Credit Administration has issued a capital directive or other enforcement action to the institution.

(3) A complete description of any event(s) that may have significantly contributed to the institution's noncompliance with the minimum permanent capital standard.

(4) A statement that the institution is required by regulation to distribute another notice to shareholders within 45

days following the end of any subsequent quarter at which the institution's permanent capital ratio decreases by one half of 1 percent or more from the level reported in the notice.

## Subpart E—Association Annual Meeting Information Statement

9. Section 620.20 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

**§ 620.20 Preparing and distributing the information statement.**

* * * * *

(b) The statement shall incorporate by reference the annual report to shareholders required by subpart B of this part and contain the information specified in § 620.21 and such other material information as is necessary to make the required statement, in light of the circumstances under which it is made, not misleading.

## PART 630—DISCLOSURE TO INVESTORS IN SYSTEMWIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

10. The authority citation for part 630 is revised to read as follows:

**Authority:** Secs. 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2252, 2254).

## Subpart A—General

11. Section 630.3 is amended by redesignating existing paragraphs (f) and (g) as new paragraphs (g) and (h), respectively, and adding new paragraph (f) to read as follows:

**§ 630.3 Publishing and filing the report to investors.**

* * * * *

(f) Information in documents prepared for investors in connection with the offering of debt securities issued through the Federal Farm Credit Banks Funding Corporation may be incorporated by reference in the annual and quarterly reports in answer or partial answer to any item required in the reports under this part. A complete description of any offering documents incorporated by reference must be clearly identified in the report (e.g., *Federal Farm Credit Banks Consolidated Systemwide Bonds and Discount Notes*—Offering Circular issued on [insert date]). Offering documents incorporated by reference in either an annual or quarterly report prepared under this part must be filed with the Chief Examiner, Farm Credit Administration, McLean, Virginia 22102–5090, either prior to or at the time of submission of the report under paragraph (h) of this section. Any offering document incorporated by reference is subject to the delivery and availability requirements set forth in § 630.4(a) (5) and (6).

* * * * *

Dated: March 20, 1997.

**Jeanette Brinkley,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 97–8000 Filed 3–28–97; 8:45 am]

BILLING CODE 6705–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–ANE–34; Amendment 39–9956; AD 97–05–12]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Aircraft Engines (GE) CT7 series turboprop engines. This action requires eddy current inspection of disk holes of stage 1 and 2 gas generator turbine (GGT) disks for cracks, and, if necessary, replacement with serviceable parts. This amendment is prompted by a report of a stage 2 GGT disk failure. The actions specified in this AD are intended to prevent a stage 1 or 2 GGT disk failure, which could result in an uncontained engine failure and damage to the aircraft.

**DATES:** Effective April 15, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 15, 1997.

Comments for inclusion in the Rules Docket must be received on or before May 30, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE–34, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from GE Aircraft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (617) 594–3140, fax (617) 594–4805. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dave Keenan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7139, fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) has received a report of a General Electric Aircraft Engines (GE) CT7 series turboprop engine, installed on a SAAB-SCANIA SF340 aircraft, that experienced an uncontained stage 2 gas generator turbine (GGT) failure during takeoff. The investigation revealed that the failure was caused by a crack in a disk cooling hole. The most likely cause of the cracking was machining damage to the disk cooling hole during manufacturing. This condition, if not corrected, could result in a stage 1 or 2 GGT disk failure, which could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE (CT7-TP Series) Alert Service Bulletin (SB) A72–393, dated November 26, 1996, that lists by serial number (S/N) affected stage 1 and 2 GGT disks, and (CT7-TP Series) SB 72–390, Revision 1, dated December 11, 1996, that describes the procedures for eddy current inspection (ECI) of disk holes for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent stage 1 or 2 GGT disk failure, which could result in an uncontained engine failure and damage to the aircraft. This AD requires a one-time ECI for cracks of disk holes of stage 1 and 2 GGT disks, and, if necessary, replacement with serviceable parts. The inspection compliance time is at the next GGT module removal, or 9 months after the effective date of this AD, whichever occurs first. The actions are required to be accomplished in accordance with the SBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good

cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96-ANE–34.'' The postcard will be date stamped and returned to the commenter.

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**97–05–12 General Electric Aircraft Engines:** Amendment 39–9956. Docket 96–ANE–34.

*Applicability:* General Electric Aircraft Engines (GE) Models CT7–5A2, –7A, –9B, –9C turboprop engines, installed on but not limited to Construcciones Aeronauticas, SA (CASA) CN–235 series and SAAB-SCANIA SF340 series aircraft.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (l) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a stage 1 or 2 gas generator turbine (GGT) disk failure, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For all stage 1 GGT disks, Part Number (P/N) 6064T06P01, identified in Table 1 of GE (CT7–TP Series) SB A72–393, dated November 26, 1996, that have accumulated 7,000 or more cycles since new (CSN) on the effective date of this AD, perform a one time eddy current inspection (ECI) for cracks in accordance with the Accomplishment Instructions of GE (CT7–TP Series) SB 72–390, Revision 1, dated December 11, 1996, at the next GGT module removal, or not to exceed 9 months after the effective date of this AD, whichever occurs first.

(b) For all stage 1 GGT disks, P/N 6064T06P01, identified in Table 1 of GE (CT7–TP Series) SB A72–393, dated November 26, 1996, that have accumulated less than 7,000 CSN on the effective date of this AD, perform a one time ECI for cracks in accordance with the Accomplishment Instructions of GE (CT7-TP Series) SB 72–390, Revision 1, dated December 11, 1996, at the next GGT module removal, but not to exceed 9,000 CSN.

(c) For all stage 1 GGT disks, P/N 6064T06P01, identified in Table 2 of GE (CT7–TP Series) SB A72–393, dated November 26, 1996, that have accumulated 10,000 or more CSN on the effective date of this AD, perform a one time ECI for cracks in accordance with the Accomplishment Instructions of GE (CT7–TP Series) SB 72–390, Revision 1, dated December 11, 1996, at the next GGT module removal, or not to exceed 9 months after the effective date of this AD, whichever occurs first.

(d) For all stage 1 GGT disks, P/N 6064T06P01, identified in Table 2 of GE (CT7–TP Series) SB A72–393, dated November 26, 1996, that have accumulated less than 10,000 CSN on the effective date of this AD, perform a one time ECI for cracks in accordance with the Accomplishment Instructions of GE (CT7–TP Series) SB 72–390, Revision 1, dated December 11, 1996, at the next GGT module removal, but not to exceed 12,000 CSN.

(e) For all stage 2 GGT disks, P/N 6064T12P01, identified in Table 3 of GE (CT7–TP Series) SB A72–393, dated November 26, 1996, that have accumulated 7,000 or more CSN on the effective date of this AD, perform a one time ECI for cracks in accordance with the Accomplishment Instructions of GE (CT7–TP Series) SB 72–390, Revision 1, dated December 11, 1996, at the next GGT module removal, or not to exceed 9 months after the effective date of this AD, whichever occurs first.

(f) For all stage 2 GGT disks, P/N 6064T12P01, identified in Table 3 of GE (CT7–TP Series) SB A72–393, dated November 26, 1996, that have accumulated less than 7,000 CSN on the effective date of this AD, perform a one time ECI for cracks in accordance with the Accomplishment Instructions of GE (CT7–TP Series) SB 72–390, Revision 1, dated December 11, 1996, at the next GGT module removal, but not to exceed 9,000 CSN.

(g) For all stage 2 GGT disks, P/N 6064T12P01, identified in Table 4 of GE (CT7–TP Series) SB A72–393, dated November 26, 1996, that have accumulated 10,000 or more CSN on the effective date of this AD, perform a one time ECI for cracks in accordance with the Accomplishment Instructions of GE (CT7–TP Series) SB 72–

390, Revision 1, dated December 11, 1996, at the next GGT module removal, or not to exceed 9 months after the effective date of this AD, whichever occurs first.

(h) For all stage 2 GGT disks, P/N 6064T12P01, identified in Table 4 of GE (CT7–TP Series) SB A72–393, dated November 26, 1996, that have accumulated less than 10,000 CSN on the effective date of this AD, perform a one time ECI for cracks in accordance with the Accomplishment Instructions of GE (CT7–TP Series) SB 72–390, Revision 1, dated December 11, 1996, at the next GGT module removal, but not to exceed 12,000 CSN.

(i) For all stage 1 GGT disks, P/N 6064T06P01, and all stage 2 GGT disks, P/N 6064T12P01, not identified in Tables 1 through 4 of GE (CT7–TP Series) SB A72–393, dated November 26, 1996, that have accumulated 7,000 or more CSN on the effective date of this AD, perform a one time ECI for cracks in accordance with the Accomplishment Instructions of GE (CT7–TP Series) SB 72–390, Revision 1, dated December 11, 1996, at the next GGT module removal, or not to exceed 9 months after the effective date of this AD, whichever occurs first.

(j) For all stage 1 GGT disks, P/N 6064T06P01, and all stage 2 GGT disks, P/N 6064T12P01, not identified in Tables 1 through 4 of GE (CT7–TP Series) SB A72–393, dated November 26, 1996, that have accumulated less than 7,000 CSN on the effective date of this AD, perform a one time ECI for cracks in accordance with the Accomplishment Instructions of GE (CT7–TP Series) SB 72–390, Revision 1, dated December 11, 1996, at the next GGT module removal, but not to exceed 9,000 CSN.

(k) Prior to further flight, remove from service cracked disks, and replace with serviceable parts.

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(n) The actions required by this AD shall be done in accordance with the following GE (CT7–TP Series) SBs:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| A72–393 | 1–16 | Original | November 26, 1996. |
| Total | 16 | | |
| 72–390 | 1–6 | 1 | December 11, 1996. |
| Total | 6 | | |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from GE Aircraft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (617) 594–3140, fax (617) 594–4805. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(o) This amendment becomes effective on April 15, 1997.

Issued in Burlington, Massachusetts, on February 24, 1997.

**James C. Jones,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 97–7595 Filed 3–28–97; 8:45 am]

**BILLING CODE 4910–13–U**

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## 14 CFR Part 39

**[Docket No. 97–NM–22–AD; Amendment 39–9974; AD 97–07–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires the deactivation of the avionics ground refrigeration unit (GRU) of the air conditioning system until a modification of avionics ventilation circuit and the GRU is accomplished. This amendment is prompted by reports of water accumulation found in the Air Data/Inertial Reference Unit (ADIRU) trays of the avionics rack; the accumulation is the result of operation of the GRU in high ambient humidity. The actions specified in this AD are intended to prevent water accumulating in this area, which could result in the failure of the ADIRU and consequent loss of air data and navigational information to the flightcrew.

**DATES:** Effective April 15, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 15, 1997.

Comments for inclusion in the Rules Docket must be received on or before May 30, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

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

**SUPPLEMENTARY INFORMATION:** The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that there have been reports of water accumulation found in the Air Data/Inertial Reference Unit (ADIRU) trays of the avionics racks on in-service airplanes. All of the airplanes on which this phenomenon occurred were equipped with a ground cooling system, identified as Airbus Modification No. 40063S10052. (This is an optional modification available to Model A330 and A340 series airplanes.)

Investigation revealed that water droplets can accumulate on the evaporator cores of the ground refrigeration unit (GRU) as a result of

high ambient humidity. The water droplets are then carried within the airflow and accumulate in the low points of the avionics ventilation ducting.

In at least two cases, this accumulation of water resulted in the failure of one or two ADIRU's during flight. In one of these incidents, both inertial reference systems on one airplane were lost, and the flight crew was compelled to execute an in-flight turn-back. Upon the subsequent approach, all instrument landing system data disappeared from the airplane's primary flight displays.

Failure of the ADIRU(s) during flight, which can occur as a result of the consequences associated with water accumulation in the relevant avionics rack, could result in loss of air data and navigational information to the flightcrew. This could compromise the ability of the flight crew to maintain the safe flight and landing of the airplane.

**Explanation of Relevant Service Information**

Airbus has issued All Operators Telex (AOT) 21–01, dated March 28, 1995, which describes procedures for deactivating the avionics GRU, if one is installed on the airplane. The DGAC classified this AOT as mandatory and issued French airworthiness directives (CN) 95–089–010(B) (for Model A330 series airplanes) and 95–093–020(B) (for Model A340 series airplanes), both dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France.

Airbus also has issued Service Bulletin A330–21–3028, Revision 2, dated May 5, 1995 (for Model A330 series airplanes), and Service Bulletin A340–21–4046, Revision 2, dated May 5, 1995 (for Model A340 series airplanes). These service bulletins describe procedures for modifying the avionics equipment ventilation system and the GRU on airplanes equipped with one. The modification procedures include:

1. Air tappings for relocation of ADIRU ventilation from the lower to the upper side of the ventilation ducting;
2. Installing water drains at the lower side of the ventilation ducting;
3. Drilling a hole in each ADIRU tray; and
4. On airplanes equipped with a GRU, increasing the inner diameter of the existing GRU drain line.

Accomplishment of this modification will prevent water from accumulating in the ventilation ducting low points and subsequently damaging the ADIRU's. [This modification was installed during production on Model A330 series airplanes beginning at manufacturer's serial number (MSN) 107, and on Model A340 series airplanes beginning at MSN 114.]

The DGAC has classified Revision 2 of Airbus Service Bulletins A330–21–3028 and A340–21–4046 as ''recommended.''

**FAA's Conclusions**

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

**Explanation of Requirements of the 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, this AD is being issued to prevent water from accumulating in the ADIRU trays of the avionics racks, which could result in the damage to or failure of the ADIRU(s) and consequent loss of air data and navigational information to the flightcrew. This AD requires the deactivation of the GRU on those airplanes equipped with a GRU. The deactivation must be accomplished in accordance with the Airbus AOT described previously.

Should an operator want to reactivate the GRU, it must first modify the avionics equipment ventilation system in accordance with the procedures contained in the Airbus service bulletin, described previously.

**Cost Impact**

None of the Model A330 and A340 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

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

If an operator elected to the modify avionics equipment ventilation system so that the GRU could be reactivated, it would take 4 work hours to accomplish the modification, at an average labor charge of $60 per work hour. Required parts would be provided to operators free of charge by the manufacturer. Based on these figures, the cost impact of this optional action would be $240 per airplane.

**Determination of Rule's Effective Date**

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

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to

Docket Number 97–NM–22–AD.'' The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**97–07–01 Airbus:** Amendment 39–9974. Docket 97–NM–22–AD.

*Applicability:* Model A330–301 series airplanes having manufacturer's serial number (MSN) 1 through 106, inclusive; and Model A340–211, –212, –311, and –312 series airplanes having MSN 1 through 113, inclusive; on which Airbus Modification No. 40063S10052 (ground cooling system) has been installed; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent water from accumulating in the Air Data/Inertial Reference Unit (ADIRU) trays of the avionics racks, which could result in the damage to or failure of the ADIRU(s) and consequent loss of air data and navigational information to the flightcrew, accomplish the following:

(a) Within 500 hours time-in-service after the effective date of this AD, deactivate the avionics ground refrigeration unit (GRU) in accordance with Airbus All Operators Telex 21–01, dated March 28, 1995.

(b) Modification of the avionics equipment ventilation system in accordance with Airbus Service Bulletin A330–21–3028, Revision 2, dated May 5, 1995 (for Model A330 series airplanes); or Airbus Service Bulletin A340–21–4046, Revision 2, dated May 5, 1995 (for Model A340 series airplanes); as applicable; constitutes terminating action for the requirements of paragraph (a) of this AD. Once the modification is completed, the avionics GRU may be reactivated.

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

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

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

(e) The modification, if accomplished, shall be done in accordance with the following Airbus service bulletins, which contain the specified list of effective pages:

| Service bulletin revision and date | Page No. | Revision level shown on page | Date shown on page |
|---|---|---|---|
| A330–21–3028, Revision 2, May 5, 1995 | 1, 3–6 | 2 | May 5, 1995. |
| | 2, 11, 23, 24, 29–30 | 1 | March 3, 1995. |
| | 7–10, 12–22, 25–28 | Original | January 19, 1995. |
| A340–21–4046, Revision 2, May 5, 1995 | 1–4, | 2 | May 5, 1995. |
| | 5–12, 14–24, 27–30 | Original | January 19, 1995. |
| | 13, 25, 26, 31, 32 | 1 | March 3, 1995. |

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

(f) This amendment becomes effective on April 15, 1997.

Issued in Renton, Washington, on March 19, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–7519 Filed 3–28–97; 8:45 am]

BILLING CODE 4910–13–U

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 270 and 274

**[Release No. IC–22579; IA–1623; S7–24–95]**

**RIN 3235–AG07**

## Status of Investment Advisory Programs Under the Investment Company Act of 1940

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting rule 3a–4 under the Investment Company Act of 1940 to provide a nonexclusive safe harbor from the definition of investment company for certain programs under which investment advisory services are provided on a discretionary basis to a large number of advisory clients having relatively small amounts to invest. An investment advisory program that is organized and operated in accordance with the rule's provisions is not required to register as an investment company under the Investment Company Act of 1940, or to comply with the Act's requirements. In addition, such a program is not subject to the registration requirement under section 5 of the Securities Act of 1933.

**EFFECTIVE DATE:** March 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Rochelle Kauffman Plesset, Senior Counsel, (202) 942–0660, Office of Chief Counsel, Division of Investment Management, 450 Fifth Street, N.W., Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (''Commission'') is adopting rule 3a–4 under the Investment Company Act of 1940 [15 U.S.C. 80a–1, *et seq.*] (''Investment Company Act''). Rule 3a–4 provides a nonexclusive safe harbor from the definition of investment company for certain programs under which investment advisory services are provided to advisory clients (''investment advisory programs'').

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## Executive Summary

The Commission is adopting rule 3a–4 under the Investment Company Act to provide a nonexclusive safe harbor from the definition of investment company for certain investment advisory programs. These programs typically are designed by investment advisers or other money managers seeking to provide the same or similar professional portfolio management services on a discretionary basis to a large number of advisory clients having relatively small amounts to invest. Under rule 3a–4, any investment advisory program organized and operated in accordance with the rule's provisions is deemed not to be an investment company within the meaning of the Investment Company Act. In addition, a preliminary note to rule 3a–4 states that there is no registration requirement under section 5 of the Securities Act of 1933 (''Securities Act'')[1] with respect to investment advisory programs that are organized and operated in compliance with the provisions of the rule.

The rule provides that: (i) each client's account must be managed on the basis of the client's financial situation and investment objectives, and in accordance with any reasonable restrictions imposed by the client on the management of the account; (ii) the sponsor of the program must obtain sufficient information from each client to be able to provide individualized investment advice to the client; (iii) the sponsor and portfolio manager must be reasonably available to consult with each client; (iv) each client must have the ability to impose reasonable restrictions on the management of the client's account; (v) each client must be provided with a quarterly account statement containing a description of all activity in the client's account; and (vi) each client must retain certain indicia of ownership of all securities and funds in the account. The rule is intended to be a nonexclusive safe harbor; a program that is not organized and operated in a manner consistent with the rule does not necessarily meet the Investment Company Act's definition of investment company. The rule, as adopted, does not include provisions regarding written policies and procedures, the maintenance of records, or the filing of a form with the Commission that were proposed for comment in 1995.

[1] 15 U.S.C. 77a, *et seq.*

## I. Background

In recent years, the number of investment advisory programs that are designed to provide professional portfolio management services on a discretionary basis to a large number of clients has increased greatly. These programs historically have been offered typically to clients who are investing amounts of money less than the minimum investments for individual accounts otherwise required by participating investment advisers, but significantly more than the minimum account sizes of most mutual funds.

These investment advisory programs typically are organized and administered by a sponsor, which provides, or arranges for the provision of, asset allocation advice and administrative services.[2] In some programs, the sponsor or its employees also provide portfolio management services, including the selection of particular securities, to the program's clients. In other programs, the sponsor selects, or provides advice to clients regarding the selection of, another investment adviser (which may or may not be affiliated with the sponsor) to act as the client's portfolio manager.[3] In these programs, the sponsor generally is responsible for the ongoing monitoring of the management of the account by the manager or managers selected. The sponsor, rather than the portfolio manager, often serves as the primary contact for the client in connection with the program.[4] Sponsors and portfolio managers usually meet the definition of ''investment adviser'' under the Investment Advisers Act of 1940

[2] The sponsor often is a money management firm, a broker-dealer, a mutual fund adviser or, in some instances, a bank. *See, e.g.,* Wall Street Preferred Money Managers, Inc. (pub. avail. Apr. 10, 1992) (broker-dealer); United Missouri Bank of Kansas City, n.a. (pub. avail. May 11, 1990, as modified Jan. 23, 1995) (bank); Strategic Advisers Inc. (pub. avail. Dec. 13, 1988) (mutual fund adviser). The sponsor or one of its affiliates also may execute some or all of the transactions for client accounts.

[3] More than one portfolio manager may manage the client's assets, depending on the program, the client's investment objectives, and the size of the client's account. *See, e.g.,* Rauscher Pierce Refsnes, Inc. (pub. avail. Apr. 10, 1992); Wall Street Preferred Money Managers, Inc., *supra* note 2; Westfield Consultants Group (pub. avail. Dec. 13, 1991).

[4] Some investment advisory programs, however, are marketed by the sponsor through unaffiliated investment advisers, such as financial planners. In some of these programs, the unaffiliated investment adviser, rather than the sponsor, may serve as the primary contact for its clients that participate in the program. *See, e.g.,* Westfield Consultants Group, supra note 3.

(''Advisers Act''),[5] and may be required to register under that Act.[6] Included among investment advisory programs developed in the recent past are those commonly referred to as ''wrap fee programs.'' In a wrap fee program, the client typically is provided with portfolio management, execution of transactions, asset allocation, and administrative services for a single fee based on the size of the account.[7] At year-end 1995, assets in wrap fee programs totaled approximately $101.6 billion, an increase of over 30 percent in one year.[8]

Under wrap fee and other investment advisory programs, a client's account typically is managed on a discretionary basis in accordance with pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially the same securities in their accounts. In light of this similarity of management, some of these investment advisory programs may meet the definition of investment company under the Investment Company Act, and may be issuing securities for purposes of the Securities Act.[9]

In 1980, the Commission sought to address certain issues presented by investment advisory programs by proposing rule 3a–4 under the Investment Company Act, which would have provided a safe harbor from the definition of investment company for investment advisory programs operating in the manner described in the rule.[10] Commenters generally opposed the proposed rule, and it was never adopted.[11] After this proposal, however, the Commission's Division of Investment Management (''Division'') received numerous requests for assurance that it would not recommend enforcement action with respect to investment advisory programs if they operated without registering under the Investment Company Act. In response to these requests, the staff issued a series of no-action letters describing investment advisory programs that would not be deemed investment companies for purposes of the Investment Company Act.[12] Many, if not most, of the programs described in the no-action letters met the terms specified in the proposed rule.

On July 27, 1995, the Commission proposed for comment a revised version of rule 3a–4 (''revised proposed rule 3a–4'' or ''revised proposed rule,'' proposed for comment in the ''July Release'').[13] The objective of the revised proposed rule was to clarify the Commission's views regarding the status of investment advisory programs under the federal securities laws by describing certain basic attributes of an investment advisory program that differ from those of an investment company that is required to register under the Investment Company Act.[14] The revised proposed rule was based largely on the provisions of the rule as originally proposed, as modified and explained in the subsequent no-action letters, but also required the creation and maintenance of certain documents and records. Like the original proposal, revised proposed rule 3a–4 would have provided a nonexclusive safe harbor from the definition of investment company for investment advisory programs that are organized and operated in the manner described in the rule.[15]

The Commission received comments on the revised proposed rule from 28 commenters, including three law firms, eight professional and trade associations, and 17 financial firms (*i.e.*, brokers, banks, investment advisers and others).[16] Commenters generally expressed support for the Commission's goal of providing a nonexclusive safe harbor from the definition of investment company for certain investment advisory programs. A number of commenters, however, raised concerns about particular aspects of the rule. Many of these comments are discussed in more detail below.[17]

## II. Discussion

The Commission is adopting rule 3a–4 under the Investment Company Act. Like the proposed and revised proposed rules, rule 3a–4 provides a nonexclusive safe harbor from the definition of investment company for investment advisory programs that are organized

[5] 15 U.S.C. 80b–1, *et seq.* Section 202(a)(11) of the Advisers Act (15 U.S.C. 80b–2(a)(11)) defines ''investment adviser'' as ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities * * *.'' A bank generally is excepted from the definition of investment adviser under Section 202(a)(11)(A) of the Advisers Act. A broker-dealer that sponsors an investment advisory program generally cannot rely on the broker-dealer exception from the definition of investment adviser in Section 202(a)(11)(C) of the Advisers Act. *See, e.g.,* Status of Investment Advisory Programs under the Investment Company Act, Investment Company Act Release No. 21260 (July 27, 1995), 60 FR 39574 (Aug. 2, 1995) (''July Release''); National Regulatory Services, Inc. (pub. avail. Dec. 2, 1992).

[6] The National Securities Markets Improvement Act of 1996 (Pub. L. No. 104–290) amended the Advisers Act to provide that certain investment advisers will be subject primarily to the supervision of the Commission, while other advisers will be subject primarily to state regulation. Effective April 9, 1997, if an investment adviser is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business, it may not register with the Commission unless (1) it has assets under management of $25 million or more, or (2) it advises a registered investment company. Proposed rules published for comment by the Commission would reallocate regulatory responsibilities for investment advisers between the Commission and the states. Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1601 (Dec. 18, 1996), 61 FR 68480 (Dec. 27, 1996).

[7] *See* paragraph (g)(4) of rule 204–3 under the Advisers Act (17 CFR 275.204–3(g)(4)) (defining wrap fee program for purposes of wrap fee brochure requirement).

[8] Cerulli Associates, Inc. and Lipper Analytical Services, Inc., The Cerulli-Lipper Analytical Report: State of the Wrap Account Industry 5 (1996). These figures include assets in mutual fund wrap programs, also called mutual fund asset allocation programs. Unlike traditional wrap fee programs, mutual fund wrap programs contemplate that a client's assets are allocated only among specified mutual funds. Assets in mutual fund wrap programs represented 19% of total assets in wrap fee programs at year-end 1995. *Id.* at 7.

[9] For a detailed discussion of why an investment advisory program may meet the definition of investment company and may be deemed to be issuing securities, see July Release, *supra* note 5, at Section I. *See also* In the Matter of Clarke Lanzen Skalla Investment Firm, Inc., Investment Company Act Release No. 21140 (June 16, 1995); SEC v. First National City Bank, Litigation Release No. 4534 [1969–1970 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92,592 (Feb. 6, 1970).

[10] Individualized Investment Management Services, Investment Company Act Release No. 11391 (Oct. 10, 1980), 45 FR 69479 (Oct. 21, 1980) (''1980 Release''). The 1980 Release also stated that the Commission's Division of Corporation Finance had indicated that if rule 3a–4 were adopted, that Division would not recommend that the Commission take enforcement action if interests in an investment advisory program operated in accordance with the proposed rule's requirements were not registered under the Securities Act. *Id.* at n.15.

[11] *See* July Release, *supra* note 5, at n.20 and accompanying text.

[12] *See, e.g.,* Benson White & Company (pub. avail. June 14, 1995); Wall Street Preferred Money Managers, Inc., *supra* note 2; Rauscher Pierce Refsnes, Inc., *supra* note 3; Westfield Consultants Group, *supra* note 3; WestAmerican Investment Company (pub. avail. Nov. 26, 1991); Rushmore Investment Advisers, Ltd. (pub. avail. Feb. 1, 1991); Qualivest Capital Management, Inc. (pub. avail. July 30, 1990); United Missouri Bank of Kansas City, n.a., *supra* note 2; Manning & Napier Advisors, Inc. (pub. avail. Apr. 24, 1990); Jeffries & Company (pub. avail. June 16, 1989); Strategic Advisers, Inc., *supra* note 2; Scudder Fund Management Service (pub. avail. Aug. 17, 1988); Shearson/American Express, Inc. (pub. avail. July 13, 1983); Paley & Ganz, Inc. (pub. avail. Dec. 6, 1982).

[13] July Release, *supra* note 5.

[14] July Release, *supra* note 5, at Section I.

[15] The Note to the revised proposed rule stated that interests in investment advisory programs organized and operated in compliance with the rule would not be required to be registered under the Securities Act. *See* July Release, *supra* note 5, at n.26 and accompanying text; Note to revised proposed rule 3a–4.

[16] The comment letters and a summary of the comments prepared by the Commission staff are included in File No. S7–24–95.

[17] *See infra* Section II.E.

and operated in the manner described in the rule. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive individualized treatment, including the opportunity to place investment restrictions on the management of their accounts and the right to receive disclosure documents in connection with securities held in their accounts. Moreover, if an advisory program were operated by an investment adviser registered under the Advisers Act, clients of the program would receive the protections of that Act. The safe harbor thus is designed to provide an exemption for certain investment advisory programs without undermining the protection of investors who participate in those programs.

*A. Preliminary Matters*

Several commenters supporting the goals underlying rule 3a–4 asked the Commission to clarify the scope of the rule. Two commenters, for example, asked the Commission to clarify that investment advisory programs that contemplate advisers not having investment discretion over their clients' assets generally do not need the safe harbor to avoid investment company status. The Commission notes that rule 3a–4 is intended to provide a safe harbor for discretionary investment advisory programs. A nondiscretionary program (*i.e.*, one in which the investor has the authority to accept or reject each recommendation to purchase or sell a security made by the portfolio manager, and exercises judgment with respect to such recommendations), generally will not meet the definition of investment company under the Investment Company Act or issue securities that are required to be registered under Section 5 of the Securities Act, regardless of whether the program is operated in accordance with the provisions of rule 3a–4.[18]

One commenter asked the Commission to clarify that a program's failure to operate in a manner consistent with every provision of the rule would not preclude the program from relying on the safe harbor. The rule sets forth circumstances under which an investment advisory program will not be considered an investment company, and a program that is not organized and operated in accordance with the rule's provisions cannot rely on the safe harbor. The safe harbor provided by the rule, however, is designed to be nonexclusive. Failure to operate in the manner described in rule 3a–4 does not necessarily indicate that a program is an investment company. Whether a program that operates outside of rule 3a–4 is an investment company is a factual determination and depends on whether the program is an issuer of securities under the Investment Company Act and the Securities Act.[19]

Commenters suggested that, rather than addressing the status of investment advisory programs under the Securities Act in a note to rule 3a–4, the rule itself should provide that interests in the programs do not constitute ''securities'' within the meaning of the Securities Act.[20] While the Commission has not revised the rule in this regard, it has revised the Note so that it does not imply that investment advisory programs organized and operated in accordance with the rule may result in the issuance of securities under the Securities Act.[21]

The Commission noted in the July Release that the adoption of rule 3a–4 would not affect the status of no-action letters previously issued by the Division with respect to investment advisory programs. Therefore, investment advisory programs operated in a manner consistent with those letters would continue not to be required to register under the Investment Company Act, and interests in the programs would not be required to be registered as securities under the Securities Act. The Commission also stated in the July Release that the Division, as a general matter, would not consider requests for no-action or exemptive relief with respect to programs that do not rely on the rule.[22] In making this statement, the Commission sought to indicate that in the future, the staff ordinarily will not respond to no-action requests or support applications for exemptive relief regarding investment advisory programs that are similar to those programs that have been the subject of the no-action letters issued by the Division, but that are not operated in accordance with all the provisions of rule 3a–4. The staff, however, will in the future consider requests raising interpretive issues under rule 3a–4, and will continue to entertain no-action requests with respect to programs that raise unique or novel issues.[23]

*B. Definitions*

1. The Sponsor

A number of the terms of the revised proposed rule provided that the ''sponsor'' of a program or another person designated by the sponsor must perform the duties and responsibilities set forth in the rule. Under paragraph (b) of revised proposed rule 3a–4, ''sponsor'' would have been defined as any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program. Revised proposed rule 3a–4 would have provided that, if a program had more than one sponsor, one person would need to be designated as the principal sponsor, and that person would be responsible for carrying out the sponsor's duties and responsibilities under the rule.[24] The July Release noted that this definition and approach was the same as that used in paragraph (f) of rule 204–3 under the Advisers Act, which sets forth a separate brochure requirement for sponsors of wrap fee programs.[25]

[18] Whether a program is nondiscretionary is inherently a factual determination. A program designated as ''nondiscretionary'' in which the client follows each and every recommendation of the adviser may raise a question whether the program in fact is nondiscretionary.

[19] In the July Release, the Commission noted that an investment advisory program could be considered to be an issuer because the client accounts in the program, taken together, could be considered to be an organized group of persons. *See* July Release, supra note 5, at nn.11–15 and accompanying text; *see also* Advisory Committee on Investment Management Services for Individual Investors: Small Account Investment Management Services at 23 (Jan. 1973). (''An investment service which is operated on a discretionary basis and does not afford investors individual attention would appear to be offering an investment contract or security, if substantially the same investment advice is given to all clients or to discernible groups of clients. * * *'')

[20] In letters issued by the Division of Investment Management granting no-action assurances to investment advisory programs, the Division of Corporation Finance also gave assurances that it would not recommend enforcement action to the Commission if the requestor relied on an opinion of counsel stating that interests in the investment advisory program were not ''securities'' within the meaning of the Securities Act. *See, e.g.*, Morgan Keegan & Company, Inc., *supra* note 12; Westfield Consultants Group, *supra* note 3; Rauscher Pierce Refsnes, Inc., *supra* note 3.

[21] The Note to rule 3a–4 states, in part, that there is no registration requirement under section 5 of the Securities Act with respect to programs that are organized and operated in the manner described in the rule.

[22] July Release, *supra* note 5, at n.27.

[23] The staff previously has indicated that it will no longer entertain requests for no-action relief regarding investment advisory programs unless they present novel or unusual issues. *See, e.g.*, Wall Street Preferred Money Managers, Inc., *supra* note 2.

[24] July Release, *supra* note 5, at Section II.A.1.

[25] The sponsor of an investment advisory program usually is an investment adviser under Section 202(a)(11) of the Advisers Act, and may be required to register under the Act. *See* July Release, *supra* note 5, at nn.5–8 and accompanying text and note 6 of this Release. Nonetheless, the rule is available to any investment advisory program, regardless of whether the sponsor is excepted from the definition of investment adviser (*e.g.*, a bank), or is required to be registered under the Act.

Some commenters were critical of the broad scope of the proposed definition of sponsor, noting that a program could have multiple sponsors under the definition, and asserting that the existence of multiple sponsors would serve no purpose in assuring that clients in a program receive individualized management services or that the program operates in the manner specified in the rule. One commenter suggested that the definition should be modified to reach only the manager that sponsors the program and participates in the management of the client's investment portfolio (or selects another person designated to perform such management services). The Commission notes that the structure of programs may vary widely, and that the broad definition of the term sponsor is intended to anticipate such variations and to provide persons involved in a program with the flexibility to designate the person in the best position to fulfill the rule's provisions. The Commission thus has determined to adopt the definition as proposed in order to preserve this flexibility.[26]

2. Investment Advisory Program

The safe harbor described in revised proposed rule 3a–4 would have been available to a ''program under which investment advisory services are provided to clients.'' The revised proposed rule, however, did not specifically define the term ''program.'' Certain commenters requested that the Commission provide further guidance as to what constitutes a program. The Commission notes that the use of the term ''program'' in the rule is intended to describe the types of advisory services that potentially could be subject to the Investment Company Act and the Securities Act. The Commission does not believe that it is necessary or advisable to include a definition of program in the rule, because such a definition could result inadvertently in the exclusion from the scope of the rule of an entity that otherwise would be entitled to rely on it.

*C. Provisions Designed To Ensure That Each Client Receives Individualized Treatment*

Revised proposed rule 3a–4 contained four provisions relating to the individualized treatment received by clients in investment advisory programs covered by the rule. The July Release stated that these provisions were based on the terms of rule 3a–4 as originally proposed, as those provisions were applied in the no-action letters.[27] The rule as adopted includes these four provisions, with certain modifications discussed below.

1. Individualized Management of Client Accounts

Paragraph (a)(1) of the revised proposed rule provided that a client's account must be managed on the basis of the client's financial situation, investment objectives and instructions. The July Release noted that this provision was designed to delineate a key difference between clients of investment advisers and investors in investment companies. A client of an investment adviser typically is provided with individualized advice that is based on the client's financial situation and investment objectives. In contrast, the investment adviser of an investment company need not consider the individual needs of the company's shareholders when making investment decisions, and thus has no obligation to ensure that each security purchased for the company's portfolio is an appropriate investment for each shareholder.[28] The Commission is adopting paragraph (a)(1) without substantive modification.[29]

In the July Release, the Commission noted that clients of an investment advisory program with similar investment objectives may hold substantially the same securities in their accounts in accordance with a portfolio manager's model, and that this does not necessarily indicate that clients in the program have not received individualized treatment for purposes of the rule.[30] The Commission is reaffirming this position in connection with the adopted rule.[31]

The Commission also stated in the July Release that it would not be necessary under the rule for a portfolio manager to make separate determinations regarding the appropriateness of each transaction for each client prior to effecting the transaction. One commenter supporting the Commission's position with respect to model portfolios nonetheless urged the Commission to require the sponsor or program manager specifically to evaluate the suitability of each transaction for each client. This commenter maintained that, without such individualized determinations, clients of an investment advisory program would not receive individualized advice.

Investment advisers under the Advisers Act owe their clients the duty to provide only suitable investment advice, whether or not the advice is provided to clients through an investment advisory program.[32] To fulfill this suitability obligation, an investment adviser must make a reasonable determination that the investment advice provided is suitable for the client based on the client's financial situation and investment objectives. The adviser's use of a model to manage client accounts would not alter this obligation in any way.

2. Initial and Ongoing Client Contact

Paragraph (a)(2) of revised proposed rule 3a–4 reflects the view that providing individualized investment advice contemplates an adviser having sufficient contact with a client to elicit the information necessary to provide the advice. In particular, under paragraph (a)(2), a program relying on the rule must provide that the sponsor or a person designated by the sponsor (''designated person'') contact and solicit information from the client. Such a program also must provide for the sponsor and the portfolio manager to be reasonably available to consult with the client concerning the management of the client's account.

Under paragraph (a)(2) of the revised proposed rule, an advisory program intended to qualify for the safe harbor

[26] Paragraph (b) of rule 3a–4, as adopted.

[27] July Release, *supra* note 5, at Section II.A.2.

[28] July Release, *supra* note 5, at Section II.A.2.i.

[29] As noted above, paragraph (a)(1) of the revised proposed rule provided that a client's account must be managed on the basis of the client's financial situation, investment objectives and *instructions* (emphasis added). The Commission has determined that individualized treatment does not require that the client be entitled to give instructions to the adviser with respect to the management of the account other than those reasonable restrictions referenced in paragraph (a)(3). Therefore, the Commission has clarified the rule text by replacing the word ''instructions'' with the word ''restrictions.'' Nonetheless, the rule contemplates that a client's investment objective will be formulated with appropriate input from the client regarding the client's financial goals and risk tolerance.

[30] July Release, *supra* note 5, at n.34 and accompanying text.

[31] As indicated in the July Release, this position is consistent with no-action letters issued concerning programs that allocate client assets in accordance with computerized investment models. July Release, *supra* note 5, at n.34 and accompanying text; *see*, e.g., Qualivest Capital Management Inc., *supra* note 12 (sponsor proposed to use computerized investment allocation model to allocate client assets among money managers).

[32] *See* Suitability of Investment Advice Provided by Investment Advisers: Custodial Account Statements for Certain Advisory Clients, Investment Advisers Act Release No. 1406 (Mar. 16, 1994), 59 FR 13464 (Mar. 22, 1994) at nn.2–5 and accompanying text (''Investment advisers are fiduciaries who owe their clients a series of duties, one of which is the duty to provide only suitable investment advice. This duty is enforceable under the antifraud provisions of the Advisers Act, section 206, and the Commission has sanctioned advisers for violating this duty.'').

set out in the rule would have needed to require that the sponsor or a designated person: (1) obtain information from the client concerning the client's financial situation and investment objectives (including any restrictions that the client may wish to impose regarding the management of the account) at the time the client opens the account; [33] (2) contact the client at least annually to determine whether there have been any changes in the client's financial situation or investment objectives, or whether the client wishes to impose any reasonable restrictions on the management of the account or modify an existing restriction in a reasonable manner; and (3) notify the client in writing at least quarterly that the sponsor or designated person should be contacted if there have been any changes in the client's financial situation or investment objectives, or if the client wishes to impose or modify any restrictions on the management of the account. The Commission is adopting these three provisions as proposed, with minor modifications to clarify their meaning.[34]

In the July Release, the Commission noted that the provision regarding annual client contact was designed to ensure that sponsors have current information about clients in the program, which, in the Commission's view, is critical to the provision of individually tailored advice.[35] Like the revised proposed rule, the rule as adopted does not dictate the manner in which a sponsor contacts its clients annually.[36] Contact can be made, for example, in person, by telephone, or by letter or electronic mail that includes a questionnaire requesting the client to provide or update relevant information.[37]

The rule, as adopted, provides that the sponsor or a designated person seeking to rely on the rule must notify the client in writing at least quarterly that the sponsor or designated person should be contacted if there have been any changes in the client's financial situation or investment objectives, or if the client wishes to impose or modify restrictions concerning the management of the account.[38] This provision contemplates only that notice will be given to an investor, while the annual contact provision described above contemplates that the sponsor (or the designated person) will actively attempt to contact the client to obtain information in order to be covered by the rule.[39]

In the July Release, the Commission noted that, if the sponsor did not provide the portfolio manager with information obtained from the client, the manager might be unable to manage the client's account on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions imposed by the client. The Commission requested comment whether the rule should state explicitly that the sponsor or designated person must convey to the portfolio manager the information obtained from the client.[40] Some commenters stated that the rule should contain an explicit provision to that effect, while others suggested that such a provision was unnecessary. It would appear unlikely that the provision of paragraph (a)(1) providing that the account be managed based on the client's financial situation and investment objectives and in accordance with reasonable restrictions imposed by the client could be satisfied if the sponsor failed to transmit the client's financial information to the portfolio manager. The Commission therefore has determined not to include in rule 3a–4 an explicit requirement that the information must be provided to the portfolio manager.

Paragraph (a)(2) of the revised proposed rule would have provided that the sponsor and persons authorized to make investment decisions for the client's account be reasonably available to consult with the client concerning the management of the account. In the July Release, the Commission indicated that this provision contemplated a client's having reasonable access to the sponsor and the portfolio manager to ask questions or to seek additional information about the investment advisory program or the client's account.[41] The Commission recognizes that a program's sponsor may serve as the primary contact for clients in the program, and that direct client contact with the portfolio manager may not occur until after the sponsor and others have attempted to address the client's questions or concerns. Nonetheless, in the Commission's view, a program seeking to rely on the rule must provide a procedure by which each client has reasonable access to personnel of the manager who are knowledgeable about the management of the client's account, as necessary to respond to the client's inquiry.[42] Therefore, the Commission is adopting this provision of the revised proposed rule with the modification discussed below.

Several commenters suggested that the rule should permit delegation of the client consultation responsibilities to an employee of the advisory firm managing the client's account who is

[33] A sponsor or designated person seeking to rely on the rule as adopted could obtain this information through interviews (either in person or by telephone) and/or through questionnaires that clients must complete and return prior to the opening of the account. This position is consistent with no-action letters previously issued by the staff. *See, e.g.*, Rauscher Pierce Refsnes, Inc., *supra* note 3 (prospective client will be interviewed over the telephone); Manning & Napier Advisors, Inc., *supra* note 12 (prospective client initially submits written questionnaire and later is interviewed by telephone).

[34] Paragraphs (a)(2)(i), (a)(2)(ii) and (a)(2)(iii) of rule 3a–4, as adopted.

[35] July Release, *supra* note 5, at Section II.A.2.ii.

[36] Paragraph (a)(2)(ii) of rule 3a–4, as adopted. One commenter asked whether the rule permits a sponsor or designated person to contact a client by electronic mail. Under appropriate circumstances, an electronic mail message requesting information from clients in the program would constitute annual client contact within the meaning of rule 3a–4. *See* Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Securities Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (interpretive release in which the Commission, among other things, provided general guidance to investment advisers that contemplate using electronic media to fulfill their disclosure obligations under the Advisers Act).

[37] This provision of the rule contemplates a reasonable attempt by the sponsor or designated person to reach and obtain information from the client. A sponsor or designated person that is unable to obtain information from a client after pursuing all reasonable means to contact the client would not be precluded from relying on the safe harbor.

[38] Paragraph (a)(2)(iii) of rule 3a–4, as adopted. This notice could be included as part of or with another mailing sent to the client. For example, the notification could be included as part of the quarterly account statement described in paragraph (a)(4) of the rule. For a discussion of the provisions of rule 3a–4 stating that quarterly account statements must be sent to investment advisory clients, *see infra* Section II.C.4.

[39] For this reason, the Commission disagrees with those commenters who asserted that the annual contact and quarterly notification provisions are duplicative.

[40] July Release, *supra* note 5, at Section II.A.2.ii.

[41] *Id.*

[42] This view is reflected in staff no-action letters. *See, e.g.*, Rauscher Pierce Refsnes, Inc., *supra* note 3 (the portfolio manager, when necessary, will be available to discuss more complex questions regarding the client's account); Westfield Consultants Group, *supra* note 3 (client will be furnished the name and direct telephone number of manager, who will be reasonably available during business hours). In one no-action request, a representation was made that the client would be able to contact his or her financial planner or the portfolio manager to obtain information or assistance during normal business hours, but the client might be charged hourly fees whenever the client requested that certain investment officers of the portfolio manager answer specific questions regarding investment strategies with respect to the client's account. Manning & Napier Advisors, Inc., *supra* note 12. Rule 3a–4 does not preclude a sponsor from charging reasonable fees for this or other services. However, such fees must be adequately disclosed to the client. *See* Item 7(f) of Schedule H of Form ADV (requiring disclosure of any fees in addition to the wrap fee that a client in a wrap fee program may pay).

knowledgeable about investment and other matters relevant to the account. The rule has been revised to state that ''the sponsor and personnel of the manager of the client's account who are knowledgeable about the account and its management'' must be reasonably available to the client for consultation.[43] In accordance with this provision, the contact person need not be the individual primarily responsible for managing the account, but must be sufficiently knowledgeable to discuss and explain investment decisions that were made.

3. Reasonable Management Restrictions

The Commission stated in the July Release that the ability of a client in an investment advisory program to place reasonable restrictions on the management of his or her account is a critical factor in determining whether individualized treatment is provided under the program.[44] Paragraph (a)(3) of the revised proposed rule, therefore, would have provided that a program relying on the rule must include a requirement that each client have the ability to impose reasonable restrictions on the management of his or her account. Such restrictions were described to include, for example, prohibitions with respect to the purchase of particular securities or types of securities. This provision of the rule is being adopted as reproposed, except that language has been added to the provision to clarify that a program relying on rule 3a–4 need not provide clients with the right to direct the manager to purchase specific securities or types of securities.[45]

Some of the commenters addressing this aspect of the proposal asked the Commission to provide additional guidance as to what constitutes a reasonable management restriction. As noted in the July Release, whether a particular restriction would be reasonable depends on an analysis of the relevant facts and circumstances.[46] In general, a restriction would be unreasonable if it is clearly inconsistent with the portfolio manager's stated investment strategy or philosophy or the client's stated investment objective,[47] or is fundamentally inconsistent with the nature or operation of the program.[48] Other factors that bear on whether a particular restriction is reasonable are the difficulty in complying with the restriction,[49] the specificity of the restriction and the number of other restrictions imposed by the client.[50] A restriction would not be unreasonable, however, simply because it placed administrative burdens on the manager, or could affect the performance of the account.

The Commission stated in the July Release that if the sponsor or portfolio manager of a program concluded that a particular restriction sought to be imposed by a client was unreasonable, the client should be notified and given an opportunity to restate the restriction more reasonably. The Commission also noted that if a client was unable or unwilling to modify an unreasonable restriction, then the client could be removed from the program without jeopardizing reliance on the safe harbor.[51] The Commission is also of the view that if a sponsor or portfolio manager is informed in advance that a client wants to impose a restriction the sponsor or portfolio manager deems unreasonable, and the client refuses to modify the restriction, then the sponsor or portfolio manager may refuse to accept the client. The Commission, however, does not agree with the suggestion of some commenters that a sponsor or portfolio manager should be permitted to refuse to accept a client without giving the client an opportunity to modify or withdraw the restriction.

4. Quarterly Account Statements

Paragraph (a)(4) of the revised proposed rule stated that each client in a program covered by the rule must be provided quarterly with a statement describing all activity in the client's account during the preceding quarter, including all transactions made on behalf of the account, all contributions and withdrawals made by the client, and all fees and expenses charged to the account. The statement also would have included the value of the account at both the beginning and end of the quarter. Some commenters asserted that the rule should not specify the contents of quarterly statements. The Commission is not persuaded by this argument. This provision, which is consistent with several no-action letters that had specified the contents of the quarterly reports,[52] reflects the view that a key element of individualized advisory services is an individualized report about a client's account. The Commission therefore is adopting this provision substantially as proposed, with one modification clarifying that statements may be sent more often than quarterly.[53]

5. Minimum Account Size

The revised proposed rule would not have specified a minimum size for client accounts in a program.[54] While the Commission acknowledged in the July Release that providing individualized advice to a large number of relatively small accounts may be so costly and time-consuming as to render individualized treatment impracticable, it noted that the provisions of the revised proposed rule should be sufficient to ensure individualized treatment, and that innovations in computer technology may allow portfolio managers to render individualized treatment to relatively small accounts on a cost-effective

[43] Paragraph (a)(2)(iv) of rule 3a–4, as adopted.

[44] July Release, *supra* note 5, at Section II.A.2.iii.

[45] Paragraph (a)(3) of rule 3a–4, as adopted.

[46] July Release, *supra* note 5, at Section II.A.2.iii.

[47] July Release, *supra* note 5, at Section II.A.2.iii. The exclusion of individual stocks or stocks from a particular country, for example, would appear to be a reasonable restriction under ordinary facts and circumstances. A general restriction on the purchase of the securities of foreign issuers may be unreasonable, however, if the manager's investment strategy is to invest exclusively or primarily in foreign securities. Under those circumstances, it may be necessary for the client and the sponsor to reassess the choice of manager or the client's investment objective or strategy.

[48] July Release, *supra* note 5, at Section II.A.2.iii. While rule 3a–4 generally contemplates that clients in mutual fund asset allocation programs should have the ability to exclude specific funds from their accounts, under some circumstances a restriction on the purchase of a fund included in the program may be inconsistent with the operation of the program. This could be the case, for example, when there is only a single fund with a specified investment objective available in the program, and that fund plays a necessary role in the overall investment strategy determined to be appropriate for the client. *See* Benson White & Company, *supra* note 12 (program under which client assets are allocated among four mutual funds based upon the client's age need not give clients the opportunity to place restrictions on the purchase of any of the funds).

[49] In the context of a mutual fund asset allocation program, for example, compliance with restrictions based on the securities held by a fund in which program assets are invested (*i.e.*, a restriction that would require a manager to monitor the fund's portfolio securities) may be so burdensome as to be unreasonable.

[50] The restrictions that a client seeks to impose on his or her account could be unreasonable when considered in the aggregate, even though each restriction may be reasonable when considered separately, or if the client alters them or imposes new restrictions with excessive frequency. Paragraph (a)(2)(iii) of the rule, which contemplates that a sponsor notify each client at least quarterly to contact the sponsor if the client wishes to modify restrictions concerning the management of the account, is not intended to imply that it necessarily would be reasonable for a client to change his or her investment restrictions on a quarterly basis.

[51] July Release, *supra* note 5, at Section II.A.2.iii.

[52] *See* Westfield Consultants Group, *supra* note 3 (quarterly statements will contain a review and analysis of client account); Strategic Advisers, Inc., *supra* note 2 (quarterly statements will contain a description of investments).

[53] Paragraph (a)(4) of rule 3a–4, as adopted.

[54] The Division has granted no-action relief to investment advisory programs with varying minimum account sizes. *See, e.g.*, Qualivest Capital Management, Inc., *supra* note 12 ($5 million); Wall Street Preferred Money Managers, Inc., *supra* note 2 ($100,000); Strategic Advisers, Inc., *supra* note 2 ($50,000).

basis.[55] Nonetheless, the Commission requested comment whether the rule should include a provision specifying a minimum account size.

All but one of the commenters responding to the request for comment opposed the inclusion of a minimum account size provision in rule 3a–4. These commenters asserted that the sponsor and the portfolio manager are in the best position to determine the appropriate minimum account size for a program based upon the nature of the program. The Commission has concluded that a particular account size is not a necessary element to ensure that clients are provided with individualized investment management services. The Commission recognizes, however, that the smaller the minimum account size of an investment advisory program, the more likely that clients would not have the ability to demand and receive individualized treatment in the program. In assessing the status under the Investment Company Act of a program that does not qualify for the safe harbor under rule 3a–4, therefore, the Commission will consider a relatively large minimum account size as evidence that individualized treatment is being provided to clients of the program.

*D. Client Retention of Ownership of Securities*

Under paragraph (a)(5) of the revised proposed rule, a program covered by the rule would have been characterized by each client retaining certain specified indicia of ownership of all securities and funds in that client's account.[56] The Commission stated in the July Release that the indicia of ownership specified in revised proposed rule 3a–4 are those that provide clients with the ability to act as owners of the securities in their accounts.[57]

A number of commenters addressing this aspect of the revised proposed rule noted circumstances in which the client's ability to exercise ownership rights over securities in his or her account could be restricted for reasons external to the program. One commenter pointed out, for example, that the assets in the account of a self-directed retirement plan may be subject to restrictions imposed by the terms of the plan or by federal tax law.[58] These commenters were concerned that such restrictions may preclude the program from relying on the safe harbor.

Paragraph (a)(5) of rule 3a–4 contemplates only that the *program* does not impose additional restrictions or limitations on client ownership of securities held in program accounts, and that a client's participation in the program will not alter his or her ability to exercise the ownership rights enumerated in the rule.[59] The language of the rule has been modified to clarify this standard.[60]

1. Ability to Withdraw and Pledge Securities

The revised proposed rule would have provided that clients be able to withdraw securities or cash from their accounts. In addition, revised proposed rule 3a–4 also would have specified that clients be able to pledge the securities in their accounts. The July Release stated that investment advisory programs relying on the safe harbor could require a client to withdraw securities from his or her account before using them as collateral.[61]

A number of commenters maintained that the retention by clients of the right to pledge securities should be eliminated from the final rule. One of these commenters asserted that, because clients may be forced to withdraw their securities before pledging them, the provision of the revised proposed rule regarding the right to pledge securities is unnecessary if the client has the right to withdraw them. The Commission agrees, and has modified the rule text to remove this provision.[62]

2. Right to Vote Securities and Receive Certain Documents as Securityholders

The revised proposed rule would have provided that the client have the right to vote the securities in his or her account. This provision would have permitted clients to delegate the authority to vote securities to another person, such as the portfolio manager or other fiduciary, so long as the client retained the right to revoke the delegation at any time. The Commission indicated that the right to vote proxies implied that the client would receive proxy materials in sufficient time to permit the client to consider how to vote and to submit the proxies.[63] The Commission is clarifying that, if a client delegates voting rights to another person, the proxies, proxy materials, and, if applicable, annual reports, need be furnished only to the party exercising the delegated voting authority.[64]

[55] July Release, *supra* note 5, at Section II.A.2.v.

[56] Rule 3a–4, as originally proposed, would have provided that clients maintain to the extent reasonably practicable *all* indicia of ownership of the funds in their accounts, and specified certain requisite attributes of ownership. 1980 Release, *supra* note 10; paragraph (c) of rule 3a–4 as originally proposed.

[57] Like the revised proposed rule, rule 3a–4 as adopted does not provide that the client be the record owner of the securities held in its account. The Division has taken the position that an investment advisory program would not be deemed to be an investment company solely because securities of clients participating in the program are held in nominee or street name. United Missouri Bank of Kansas City, n.a., *supra* note 2 (investment company securities held in nominee name). *See, e.g.*, Manning & Napier Advisors, Inc., *supra* note 12 (non-investment company securities held in nominee name).

[58] This commenter suggested that providing the right to pledge securities in the account of a retirement plan could cause the plan to lose its status as a qualified plan under the Internal Revenue Code. In general, a qualified plan must provide that benefits under the plan may not be anticipated, assigned, alienated, or subject to attachment, garnishment, levy, execution, or other legal process. *See* Internal Revenue Code (''IRC'') Section 401(a)(13) [26 U.S.C. 401(a)(13)]; Treas. Reg. § 1.401(a)–13 (as amended by T.D. 8219, 53 FR 31837 (Aug. 22, 1988)). In addition, the IRC imposes an additional tax of 10% on early distributions from a qualified retirement plan. *See* IRC Section 72(t)(1) [26 U.S.C. 72(t)(1)].

[59] Similarly, paragraph (a)(5) would not prohibit a client from being charged reasonable fees for services in connection with the ownership of securities held in the program, provided such fees could be charged if the client held the securities outside the program. Of course, all fees must be permissible under applicable state and federal law and must be adequately disclosed. *See* Item 7 of Schedule H of Form ADV.

[60] Paragraph (a)(5) of rule 3a–4, as adopted. The rule's text also has been changed to clarify that the rule provides for the retention of only the rights of ownership specified in the rule. Of course, nothing in the rule is intended to prevent clients from retaining other rights of ownership, if permitted by the program.

[61] July Release, *supra* note 5, at Section II.A.3.i.

[62] The Commission regards a client's ability to pledge securities in his or her account directly without first withdrawing them as an additional attribute of the client's ownership of the securities. While the absence of a right to pledge would not cause a program to fall outside of rule 3a–4, a client's right to pledge securities may be relevant to determining whether a program that is not relying on the safe harbor would be considered to be an investment company.

[63] July Release, *supra* note 5, at Section II.A.3.ii.

[64] *See infra* Section II.D.3. Rule 3a–4, as adopted, is in no way intended to indicate the instances under which a client's right to vote proxies may be delegated to another person. Whether the right can be delegated depends on applicable state and federal law. An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (''ERISA''), for example, may provide that the plan's named fiduciary may delegate asset management, including the authority to vote proxies, to an ''investment manager'' for the plan, as that term is defined in Section 3(38) of ERISA. *See, e.g.*, Sections 402–405 of ERISA [29 U.S.C. §§ 1102–1105]; Letter from Alan D. Lebowitz, Deputy Assistant Secretary for Program Operations, U.S. Department of Labor, to Robert A.G. Monks, Institutional Shareholder Services, Inc. (Jan. 23, 1990), 1990 ERISA LEXIS 66. Certain provisions of the federal securities laws also contemplate that clients can delegate their right to vote proxies. Under the Commission's proxy rules, the term ''beneficial owner,'' the person who must receive proxy materials, includes an investment adviser that has the power to vote, or to direct the voting of, a security pursuant to an agreement with the client. *See* Securities Exchange Act Rule 14b–2(a)(2) [17 CFR § 240.14b–2]. Rules adopted by the New York Stock Exchange (''NYSE''), the National Association of Securities Dealers, Inc. (''NASD'') and the American Stock Exchange, Inc. (''AMEX'') permit a securityholder to designate a registered

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Revised proposed rule 3a–4 contemplated that the client (or the client's agent) would be provided with documents that the client (or agent) would have received had the same securities been owned by the client outside the program. These documents may include prospectuses, periodic shareholder reports, proxy materials, and any other information and disclosure required by applicable laws or regulations.

Some commenters suggested that clients be permitted to waive receipt of the documents generally required to be provided to securityholders, as they could have waived receipt of immediate confirmations under the revised proposed rule.[65] Rule 3a–4 does not limit a client's right to waive receipt of these documents. Nor does rule 3a–4 prohibit a client from making an informed designation of another person, including a financial planner or registered broker-dealer, to receive such documents on the client's behalf.[66] Whether a client in an investment advisory program may waive receipt of documents or designate another person to receive documents depends upon whether the client would have been able to do so under applicable federal or state law if the securities were owned directly.

3. Right to Receive Trade Confirmations

The revised proposed rule contained a provision under which a client would have the right to receive in a timely manner confirmations of securities transactions of the type required by rule 10b–10 under the Securities Exchange Act of 1934.[67] Two commenters objected to the provision of the rule that the confirmations be ''of the type required by rule 10b–10.'' These commenters asserted that this provision was burdensome, particularly with respect to banks and trust companies that are not subject to rule 10b–10. The Commission has decided that the confirmation provision, like the other indicia of ownership specified in the rule, should apply only to the extent that the client would have a right to receive confirmations from the person executing the transaction if he or she traded the securities through that person outside the program. Therefore, the Commission has revised the provision of the rule addressing confirmations to delete the reference to rule 10b–10. As revised, this provision would state that a client in an investment advisory program must receive confirmations that the person executing the transaction is required to send under the laws regulating that person's activities. This provision of the rule also provides that the confirmations must include the information specified by the applicable law governing such content.[68]

As discussed in the July Release, rule 10b–10 permits customers of registered broker-dealers to waive receipt of individual confirmations in certain circumstances.[69] A client in an investment advisory program whose transactions are executed by a registered broker-dealer effectively has the option to receive either individual confirmations for each transaction or periodic statements, delivered no less frequently than quarterly, that include the information required by rule 10b–10 with respect to all transactions that occurred within the period covered by the statement.[70] Two commenters suggested that the Commission clarify that an entity that is not required to be registered with the Commission as a broker-dealer could rely on the safe harbor if it sent quarterly statements to clients who waived their rights to receive individual confirmations. As discussed above, the confirmation provision in rule 3a–4 applies only to the extent that the client would have a right to receive confirmations if he or she traded the securities outside the program. A client's ability to waive receipt of confirmations will not be altered because securities are held in a program account. Whether a client whose transactions are not executed by a registered broker-dealer may waive receipt of confirmations or other transaction notifications must be determined by reference to the laws that govern the relationship.[71]

4. Legal Rights as Securityholders

Revised proposed rule 3a–4 would have provided that the client retain the right to proceed directly against an issuer of securities in a client's account without joining any other person involved in the program. The July Release indicated that underlying this provision (which was based on representations made in several no-action letters)[72] was the view that a key element of providing individualized advisory services is that a client have the same rights as a person holding the securities outside an investment advisory program.

Certain commenters suggested that this provision of the revised proposed rule may be problematic with respect to client securities that are held in nominee or street name, or by a trustee. These commenters stated that the nominee or trustee might be considered an indispensable party in any action against the issuer, and that nominal joinder of the nominee or trustee might be required. These comments have been addressed by the revision discussed above regarding restrictions on the exercise of ownership rights that are

investment adviser who has discretion over the management of the client's account to receive and vote proxies on his or her behalf. *See* NYSE Guide, Rules of Board, Rules 450, 451, 452 and 465; NASD Conduct Rules, Rule 2260; AMEX Rules 575, 576, 577 and 585.

[65] *See infra* Section II.D.3.

[66] In the revised proposed rule, the paragraph regarding receipt of documents specifically referred to receipt by the client's agent. Paragraph (a)(5)(iv) of revised proposed rule 3a–4; July Release, *supra* note 5, at Section II.A.3.iii. In connection with modifying the rule text to effect the changes discussed above, *supra* Section II.D, the reference to the client's agent has been deleted as a conforming change. These changes in the rule text are not intended to indicate that a client in an investment advisory program may not designate another person to receive documents that must be provided to securityholders by law.

[67] 17 CFR 240.10b–10.

[68] Paragraph (a)(6) of rule 3a–4, as adopted. Banks that execute securities transactions for customers generally are subject to confirmation requirements under the banking laws. *See, e.g.*, 12 CFR 12.4–12.5 (Office of the Comptroller of the Currency (''OCC'') confirmation requirements for national banks). The OCC recently proposed amendments to these rules that would make their confirmation requirements more closely reflect the requirements of rule 10b–10. OCC, Recordkeeping and Confirmation Requirements for Securities Transactions (Dec. 7, 1995), 60 FR 66517 (Dec. 22, 1995). In addition, the Federal Deposit Insurance Corporation (''FDIC'') recently considered when and how to amend its regulations governing recordkeeping and confirmation requirements for securities transactions by state nonmember banks (12 CFR part 344). FDIC, Recordkeeping and Confirmation Requirements for Securities Transactions (May 14, 1996), 61 FR 26135 (May 24, 1996).

[69] July Release, *supra* note 5, at n.60 and accompanying text, *citing* Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612 (Nov. 17, 1994) (''Exchange Act Release 34962'').

[70] Although a client may waive his or her right to receive the immediate confirmation, the client may not waive his or her right to receive the periodic statement. Exchange Act Release 34962, *supra* note 68, at nn.34–36 and accompanying text.

[71] One commenter observed that a person executing transactions on behalf of a client whose shares are held in nominee name may not know the identity of the client, and asked the Commission to clarify how a program relying on the safe harbor could comply with the confirmation provision with respect to such a client. In the case of transactions effected by a registered broker-dealer, the Division of Market Regulation has expressed the view that a good faith effort should be made in these circumstances to obtain the information necessary to send the confirmation required by rule 10b–10 directly to the client. If these efforts are not successful, then the confirmation should be sent, in accordance with certain procedures, to the client's custodian or a fiduciary authorized to manage the account. See Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, U.S. Securities and Exchange Commission, to George P. Miller, Vice President and Associate General Counsel, Public Securities Association (Sept. 29, 1995).

[72] *See, e.g.*, Westfield Consultants Group, *supra* note 3; Manning & Napier Advisors, Inc., *supra* note 12; Jeffries & Company, *supra* note 12; Rauscher Pierce Refsnes, Inc., *supra* note 3.

external to the program.[73] Otherwise, the Commission is adopting this provision as proposed.[74]

*E. Policies and Procedures and Form N–3a4*

Paragraph (a)(6) of revised proposed rule 3a–4 contemplated the establishment by a program's sponsor of written procedures and agreements governing the operation of the program, and the maintenance of records relating to the program. Paragraph (a)(6) would have provided that the sponsor must: (1) Establish and effect written policies and procedures that are reasonably designed to ensure that each of the provisions of the rule are implemented; (2) maintain and preserve all written policies, procedures and certain other documents relating to the program for specified periods of time; (3) enter into written agreements with other persons that the sponsor designates to retain records pertaining to the program; and (4) furnish to the Commission upon demand copies of the policies, procedures and other documents created pursuant to these policies and procedures. Paragraph (a)(7) of the revised proposed rule would have provided that the sponsor of an investment advisory program intending to rely on the safe harbor file Form N–3a4 with the Commission.

In the July Release, the Commission specifically requested comment whether any of the provisions under paragraph (a)(6) of the rule could be ''eliminated, consolidated, or otherwise made less burdensome without compromising investor protection.'' [75] Most commenters addressing this aspect of the revised proposed rule viewed the provisions as unnecessary, unduly burdensome, irrelevant to determining whether an investment advisory program is an investment company under the Investment Company Act, or as an improper attempt by the Commission to regulate entities—principally banks—that are excepted from the definition of investment adviser under the Advisers Act. A few commenters also suggested that provisions setting forth written policies and procedures would discourage sponsors from relying on the safe harbor. For similar reasons, most commenters also opposed any filing provision under the rule.

Although the Commission does not agree with many of the comments pertaining to the proposed recordkeeping and other operational provisions, the Commission has reevaluated these provisions and determined not to adopt them for a number of reasons. First, the Commission agrees that compliance with these types of formal procedural provisions generally should not be determinative of an entity's status under the Investment Company Act. As one commenter noted, none of the other rules under the Investment Company Act exempting certain entities from investment company regulation contain similar procedural provisions.[76]

Second, with respect to programs sponsored by registered investment advisers, the recordkeeping requirements under the Advisers Act and the Commission's authority to examine registered investment advisers should be sufficient to enable the Commission to detect violations of the Investment Company Act. Most, if not all, of the records that would have been covered by the revised proposed rule currently are required to be maintained under rule 204–2 under the Advisers Act.[77]

With respect to those investment advisory programs sponsored by banks that are not subject to the Advisers Act, the Commission staff intends to consult and work closely with the relevant banking agencies so that these programs will be subject to oversight designed to determine whether the programs are being operated as unregistered investment companies. Further, to the extent these programs include registered investment companies as investment vehicles for their clients, or that registered investment advisers serve as subadvisers in a program sponsored by a bank, the Commission will have access to certain records relating to the programs through its authority to examine such registered entities.

Despite its determination not to include in rule 3a–4 a provision pertaining to written policies and procedures, the Commission continues to believe that it is important for the sponsor of an investment advisory program to monitor the program's compliance with the rule. Each person relying on rule 3a–4 is responsible for demonstrating its compliance with the rule's provisions. A sponsor that establishes and implements written policies and procedures designed to ensure adherence to the provisions of rule 3a–4 would greatly reduce the chance that the program will fail to operate in the manner specified in the rule. Moreover, the implementation of such procedures by an investment adviser may serve to protect the adviser in certain instances from liability for violating, or aiding and abetting violations of, the Investment Company Act and/or the Securities Act, or failing to supervise a person under the adviser's supervision who violates those Acts.[78] The Commission, therefore, strongly recommends that a sponsor of an advisory program seeking to rely on rule 3a–4 establish and implement written policies and procedures, and a system for applying such procedures, that are reasonably designed to ensure that the program operates in the manner contemplated by the rule.

The Commission also believes that it would be advisable for a person seeking to rely on rule 3a–4 to maintain the records necessary to evidence compliance with the rule, even if the person is not subject to rule 204–2 under the Advisers Act or certain of the records are not required by that rule. As noted above, a person seeking to rely on rule 3a–4 must be able to establish compliance with each of the rule's provisions. Compliance with many of these provisions, including those relating to client contact, the delivery of documents to clients, and the opportunity of clients to place reasonable restrictions on the management of their accounts, would be difficult, if not impossible, to demonstrate without contemporaneous recordkeeping.

*F. Investment Advisers Act Issues Raised by Investment Advisory Programs*

The Commission noted in the July Release that wrap fee and other investment advisory programs raise, in addition to the Investment Company

[73] *See supra* Section II.D.

[74] Paragraph (a)(5)(iv) of rule 3a–4, as adopted.

[75] July Release, *supra* note 5, at Section II.A.4.

[76] *See* rule 3a–1 (certain prima facie investment companies); rule 3a–2 (transient investment companies); rule 3a–3 (certain investment companies owned by companies that are not investment companies); rule 3a–5 (exemption for subsidiaries organized to finance the operations of domestic or foreign companies); rule 3a–6 (foreign banks and foreign insurance companies); and rule 3a–7 (issuers of asset-backed securities).

[77] For instance, paragraph (a)(7) of rule 204–2 [17 CFR 275.204–2(a)(7)] generally requires a registered adviser to maintain originals of all written communications received and copies of all written communication sent by the adviser relating to the adviser's advice or recommendations. Under section 204 of the Advisers Act, records maintained under rule 204–2 must be made available to Commission examiners.

[78] Section 203(e)(5) of the Advisers Act [15 U.S.C. 80b–3(e)(5)] provides that no person will be deemed to have failed to supervise another person subject to his or her supervision if: (1) the person has established procedures that would reasonably be expected to prevent or detect the other person's violation, and a system for applying such procedures; and (2) the supervisor reasonably discharged his or her duties under the procedures and system and did not have reasonable cause to believe that such procedures were not being complied with.

Act issues addressed in the release, a number of issues under the Advisers Act. The Commission requested comment on certain of these issues and indicated the possible publication of an interpretive release that would address them.[79] The Commission received few comments in response to this request, and the comments that were received suggested that investment advisory programs did not raise unique issues under the Advisers Act, but simply presented issues under the Act in a specific factual context. The Commission, therefore, has decided not to publish an interpretive release at this time. The staff of the Division will entertain requests for no-action or interpretive guidance with respect to the application of the Advisers Act in the context of investment advisory programs.

## III. Cost/Benefit Analysis

Rule 3a–4 under the Investment Company Act provides a nonexclusive safe harbor from the definition of investment company for investment advisory programs. Programs that are organized and operated in the manner described in the rule are not required to register under the Investment Company Act or to comply with the Act's substantive provisions. The rule is intended to provide guidance to persons operating investment advisory programs regarding the status of these programs under the Investment Company Act, and help to ensure that such programs do not operate as investment companies without clients of the programs benefitting from the Act's protections.

The Commission anticipates that the cost of compliance with rule 3a–4 will be small. In addition, the Commission does not believe that compliance with any of the provisions will be unduly burdensome. Furthermore, because the rule is based principally on long-standing staff positions, the Commission believes that it will not substantially alter current industry practice or the costs associated therewith.

Section 2(c) of the Investment Company Act provides that whenever the Commission is engaged in rulemaking under the Investment Company Act and is required to consider or determine whether an action is consistent with the public interest, the Commission also must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The Commission has considered rule 3a–4 in light of these standards and believes that, by removing uncertainty with respect to the status of certain investment advisory programs under the Investment Company Act, the rule is consistent with the public interest, and will promote efficiency and the competition among sponsors of such programs. In addition, the rule will have no adverse effect on capital formation, nor be unduly burdensome to those sponsors wishing to comply with the rule.

## IV. Paperwork Reduction Act

An investment advisory program structured to take advantage of the safe harbor contained in rule 3a–4 will provide for each client in the program receiving a statement quarterly describing all activities in the client's account during the preceding quarter. Such a provision constitutes a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*),[80] because providing the quarterly statements is necessary to meet the provisions of the safe harbor. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information without display of a valid OMB control number. Accordingly, the Commission submitted the revised proposed rule to the Office of Management and Budget (''OMB'') pursuant to 44 U.S.C. 3507 and received approval of the rule's ''collection of information'' requirement (OMB control number 3235–0459). Because the collection of information requires disclosure to third parties (the client accountholders), assurance of confidentiality is not an issue.

As noted above, the Commission has determined not to adopt the other collection of information requirements it proposed, including the establishment of written procedures and agreements governing the operation of the program, the maintenance of records relating to the program, and the filing of Form N–3a4 with the Commission.[81] Due to this decision, as well as a revision to the Commission's estimate of the amount of assets presently in investment advisory programs, the Commission has revised its estimate of the paperwork burden. The total aggregate estimated annual reporting burden associated with the rule's requirements has been reduced by 152,724.5 hours. The potential respondents are the approximately 53 sponsors of investment advisory programs. The Commission now estimates that there are 1,016,000 clients of investment advisory programs, and the reporting burden imposed by rule 3a–4 is one hour per client, for a total aggregate annual reporting burden of 1,016,000 hours. On average, the annual reporting burden for each respondent is estimated to be 19,169.8 hours. The Commission notes that many sponsors already may provide quarterly statements to clients and the burden under paragraph (a)(4) of rule 3a–4 is likely to be less for such sponsors.

## V. Final Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis regarding revised proposed rule 3a–4 was published in the July Release. No comments were received on the Initial Regulatory Flexibility Analysis, and no comments were received with respect to the effect of the rule on small entities. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 regarding rule 3a–4.

The analysis states that the rule is intended to provide a nonexclusive safe harbor from the definition of investment company for certain programs under which investment advisory services are provided to clients. The analysis notes that the objective of rule 3a–4 is to help ensure that investment advisory programs do not operate as *de facto* investment companies by clarifying the Commission's views regarding the status of investment advisory programs under the federal securities laws. The conditions of the rule are designed to describe certain basic attributes that can differentiate an investment advisory program from an investment company. As discussed more fully in the analysis, because the rule is a nonexclusive safe harbor, no entity, either large or small, is required to operate in accordance with its terms, and notes that a program that is a small entity and that does not operate in the manner contemplated by the rule is not presumed to be an investment company.

As discussed in the analysis, the Commission estimates that of the 53 sponsors offering investment advisory programs in 1995, approximately 6 programs met the Commission's definition of small entity for purposes of the Investment Company Act (*i.e.*, an investment company with net assets of $50 million or less as of its most recent fiscal year [17 CFR 270.0–10]).

The analysis states that the rule does not impose any reporting or recordkeeping requirements with the exception of one condition which requires programs relying on the rule to furnish its clients a statement, at least quarterly, describing activity in the client's account. This condition reflects representations in several no-action

[79] July Release, *supra* note 5, at Section II.C.

[80] *See supra* Section II.C.4.

[81] *See supra* Section II.E.

letters and is consistent with industry practice. In addition, the analysis notes that the Commission has attempted to minimize the rule's burden on all persons, not just small entities, particularly by eliminating provisions included in the Revised Proposed Rule relating to the creation and maintenance of books and records to facilitate and support a program's reliance on the rule, and to the filing of a form with the Commission. The analysis also notes that alternatives for providing different means of compliance for small entities were considered, but that the rule is crafted in a manner designed to permit program sponsors considerable flexibility as to how they comply with the safe harbor's conditions. Furthermore, the analysis states that exempting small entities from the conditions of the rule would be inconsistent with the Commission's statutory authority to protect investors. Cost/benefit information reflected in the ''Cost/Benefit Analysis'' section of this Release also is reflected in the analysis.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Rochelle Kauffman Plesset, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

## VI. Effective Date

Rule 3a–4 is effective upon publication in the **Federal Register**. Pursuant to 5 U.S.C. 553(d)(1), immediate effectiveness is appropriate because rule 3a–4 is purely exemptive in nature. It provides a nonexclusive safe harbor from the definition of investment company for certain programs under which investment advisory services are provided to advisory clients. Under the rule, programs that are organized and operated in the manner described in the rule are not required to register under the Investment Company Act or to comply with the Act's requirements. The benefits of the rule should be available at the earliest possible time.

## VII. Statutory Authority

The Commission is adopting rule 3a–4 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), –37(a)].

## Text of Rule

## List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. By adding § 270.3a–4 to read as follows:

### § 270.3a–4 Status of investment advisory programs.

**Note:** This section is a nonexclusive safe harbor from the definition of investment company for programs that provide discretionary investment advisory services to clients. There is no registration requirement under section 5 of the Securities Act of 1933 [15 U.S.C. 77e] with respect to programs that are organized and operated in the manner described in § 270.3a–4. The section is not intended, however, to create any presumption about a program that is not organized and operated in the manner contemplated by the section.

(a) Any program under which discretionary investment advisory services are provided to clients that has the following characteristics will not be deemed to be an investment company within the meaning of the Act [15 U.S.C. 80a, *et seq.*]:

(1) Each client's account in the program is managed on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions imposed by the client on the management of the account.

(2)(i) At the opening of the account, the sponsor or another person designated by the sponsor obtains information from the client regarding the client's financial situation and investment objectives, and gives the client the opportunity to impose reasonable restrictions on the management of the account;

(ii) At least annually, the sponsor or another person designated by the sponsor contacts the client to determine whether there have been any changes in the client's financial situation or investment objectives, and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions;

(iii) At least quarterly, the sponsor or another person designated by the sponsor notifies the client in writing to contact the sponsor or such other person if there have been any changes in the client's financial situation or investment objectives, or if the client wishes to impose any reasonable restrictions on the management of the client's account or reasonably modify existing restrictions, and provides the client with a means through which such contact may be made; and

(iv) The sponsor and personnel of the manager of the client's account who are knowledgeable about the account and its management are reasonably available to the client for consultation.

(3) Each client has the ability to impose reasonable restrictions on the management of the client's account, including the designation of particular securities or types of securities that should not be purchased for the account, or that should be sold if held in the account; *Provided, however,* that nothing in this section requires that a client have the ability to require that particular securities or types of securities be purchased for the account.

(4) The sponsor or person designated by the sponsor provides each client with a statement, at least quarterly, containing a description of all activity in the client's account during the preceding period, including all transactions made on behalf of the account, all contributions and withdrawals made by the client, all fees and expenses charged to the account, and the value of the account at the beginning and end of the period.

(5) Each client retains, with respect to all securities and funds in the account, to the same extent as if the client held the securities and funds outside the program, the right to:

(i) Withdraw securities or cash;

(ii) Vote securities, or delegate the authority to vote securities to another person;

(iii) Be provided in a timely manner with a written confirmation or other notification of each securities transaction, and all other documents required by law to be provided to security holders; and

(iv) Proceed directly as a security holder against the issuer of any security in the client's account and not be obligated to join any person involved in the operation of the program, or any other client of the program, as a condition precedent to initiating such proceeding.

(b) As used in this section, the term sponsor refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program. If a program has more than one sponsor, one person shall be designated the principal sponsor, and such person shall be

considered the sponsor of the program under this section.

By the Commission.

Dated: March 24, 1997.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–8075 Filed 3–28–97; 8:45 am]

BILLING CODE 8010–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 5, 184, 529, and 610

## Food and Drugs; Technical Amendments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulations to correct certain typographical and other inadvertent errors. This action is being taken to clarify and improve the accuracy of the regulations.

**EFFECTIVE DATE:** April 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

**SUPPLEMENTARY INFORMATION:** FDA has discovered certain nonsubstantive errors that have been incorporated into the agency's codified regulations. FDA is correcting these errors. The errors in the regulations are as follows:

1. In 21 CFR 5.89(b)(1) ''x-reay'' is corrected to read ''x-ray''.

2. In 21 CFR 184.1(a) the phrase ''of this chapter of'' in the third sentence is corrected to read ''of this chapter or''.

3. In 21 CFR 529.50(c)(2) ''*Klebsiella* ssp.'' is corrected to read ''*Klebsiella* spp.''.

4. In 21 CFR 610.53(c), in the table, in the entry for ''Rubella Virus Vaccine Live,'' in the third column, under the heading ''Manufacturer's storage period 0 °C or colder (unless otherwise stated),'' ''°C'' is corrected to read ''do''.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

**List of Subjects**

*21 CFR Part 5*

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

*21 CFR Part 184*

Food ingredients.

*21 CFR Part 529*

Animal drugs.

*21 CFR Part 610*

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 5, 184, 529, and 610 are amended as follows:

### PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

**Authority:** 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

**§ 5.89 [Amended]**

2. Section 5.89 *Notification of defects in, and repair or replacement of, electronic products* is amended in paragraph (b)(1) by removing ''x-reay'' and adding in its place ''x-ray''.

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

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

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

**§ 184.1 [Amended]**

4. Section 184.1 *Substances added directly to human food affirmed as generally recognized as safe (GRAS)* is amended in the third sentence in paragraph (a) by removing the phrase ''of this chapter of'' and adding in its place the phrase ''of this chapter or''.

### PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 529 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 529.50 [Amended]**

6. Section 529.50 *Amikacin sulfate intrauterine solution* is amended in paragraph (c)(2) by removing ''*Klebsiella* ssp.'' and adding in its place ''*Klebsiella* spp.''

### PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

7. The authority citation for 21 CFR part 610 continues to read as follows:

**Authority:** Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

**§ 610.53 [Amended]**

8. § 610.53 *Dating periods for licensed biological products* is amended in the table in paragraph (c), in the entry for ''Rubella Virus Vaccine Live,'' in the third column, under the heading ''Manufacturer's storage period 0 °C or colder (unless otherwise stated),'' by removing ''°C'' and adding in its place ''do''.

Dated: March 25, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97–7971 Filed 3–28–97; 8:45 am]

BILLING CODE 4160–01–F

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## 21 CFR Part 310

**[Docket Nos. 91P–0186 and 93P–0306]**

## Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 15, 1997 (62 FR 2218). The final rule amended the regulations to require label warning statements on products taken in solid oral dosage form to supplement the dietary intake of iron or to provide iron for therapeutic purposes and to require unit dose packaging for iron-containing products that contain 30 milligrams or more of iron per dosage unit. The final rule was published with some typographical errors. This document corrects those errors.

**DATES:** Effective July 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3101.

**SUPPLEMENTARY INFORMATION:**

In FR Doc. 97–947, beginning on page 2218 in the **Federal Register** of January 15, 1997, the following corrections are made in § 310.518 *Drug products containing iron or iron salts*:

**§ 310.518 [Corrected]**

1. On page 2250, in the second column, in paragraph (b)(2), beginning in the fourth line, the phrase ''the provisions of § 111.50(a) of this chapter'' is corrected to read ''the provisions of paragraph (a) of this section''.

2. On page 2250, in the third column, in paragraph (c)(5), in the second line, the phrase ''paragraph (b)(1) of this section'' is corrected to read ''paragraph (c)(1) of this section''.

Dated: March 25, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97–7970 Filed 3–28–97; 8:45 am]

BILLING CODE 4160–01–F

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## 21 CFR Parts 520 and 558

## Animal Drugs, Feeds, and Related Products; Ronnel; Technical Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of new animal drug applications (NADA's) held by Moorman Manufacturing Co. and Pitman-Moore, Inc., that provide for the use of ronnel oral dosage forms and ronnel Type A medicated article. The approval of these NADA's were previously withdrawn. This action is necessary to ensure the accuracy and consistency of the regulations.

**EFFECTIVE DATE:** March 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

**SUPPLEMENTARY INFORMATION:** FDA has discovered that certain errors have been incorporated into the agency's codified regulations on animal drugs. The errors in the regulations addressed in this document follow.

In a notice published in the **Federal Register** of July 19, 1989 (54 FR 30268), the agency announced that Pitman-Moore, Inc., had requested that FDA withdraw NADA's 12–360 and 12–361. In a final rule published in that same issue of the **Federal Register** (54 FR 30205), the agency inadvertently omitted an amendment to the regulations to remove § 520.2080 (21 CFR 520.2080).

In a notice published in the **Federal Register** of June 18, 1990 (55 FR 24646), the agency announced that Moorman Manufacturing Co. had requested that FDA withdraw NADA 13–450. In a final rule published in that same issue of the **Federal Register** (55 FR 24556), the agency inadvertently omitted an amendment to the regulations to remove § 558.525 (21 CFR 558.525).

At this time, the agency is correcting these errors. Accordingly, §§ 520.2080 and 558.525 are removed because the sections no longer represent approved products.

**List of Subjects**

*21 CFR Part 520*

Animal drugs.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 558 are amended as follows:

### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 520.2080 [Removed]**

2. Section 520.2080 *Ronnel oral dosage forms* is removed.

### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

**§ 558.525 [Removed]**

4. Section 558.525 *Ronnel* is removed.

Dated: March 4, 1997.

**Linda Tollefson,**

*Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.*

[FR Doc. 97–8048 Filed 3–28–97; 8:45 am]

BILLING CODE 4160–01–F

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## 21 CFR Part 558

## New Animal Drugs For Use In Animal Feeds; Tylosin; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of December 24, 1996 (61 FR 67713). The document amended the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, Division of Eli Lilly and Co. The approved use level of tylosin Type C medicated swine feed was inadvertently omitted from the document. The document also contained certain editorial errors. This document corrects those errors.

**EFFECTIVE DATE:** December 24, 1996.

**FOR FURTHER INFORMATION CONTACT:** George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

In FR Doc. 96–32549, appearing on page 67713 in the **Federal Register** of Tuesday, December 24, 1996, the following correction is made:

### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

**§ 558.625 [Corrected]**

2. On page 67713, in the second column, § 558.625 is amended by revising paragraph (f)(1)(vi)(*e*) to read as follows:

**§ 558.625 Tylosin.**

* * * * *

(f) * * *

(1) * * *

(vi) * * *

(*e*) *Amount per ton.* Tylosin 100 grams.

(*1*) *Indications for use.* Prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis.*

(*2*) *Limitations.* As tylosin phosphate, administer for 21 days.

Dated: February 6, 1997.

**Robert C. Livingston,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 97–8049 Filed 3–28–97; 8:45 am]

BILLING CODE 4160–01–F

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 756**

**[HO–004–FOR]**

## Hopi Tribe Abandoned Mine Land Reclamation Plan

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Hopi Tribe abandoned mine land reclamation (AMLR) plan (hereinafter, the ''Hopi plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Hopi Tribe proposed to revise, add, or delete plan provisions pertaining to the preface to amended reclamation plan; purpose of the Hopi plan; eligible lands and water subsequent to certification; land acquisition, management, and disposal; rights of entry; Hopi Department of Natural Resources policy on public participation; organization of the Hopi Tribe; a description of aesthetic, cultural and recreational conditions on the Hopi Reservation; and a description of the flora and fauna found on the Hopi Reservation. The amendment revised the Hopi plan to meet the requirements of the corresponding Federal Regulations and to be consistent with SMCRA; to incorporate the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended; to clarify ambiguities; and to improve operational efficiency.

**EFFECTIVE DATE:** March 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: (505) 248–5070, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Hopi Plan

On June 28, 1988, the Secretary of the Interior approved the Hopi plan. General background information on the Hopi plan, including the Secretary's findings and the disposition of comments, can be found in the June 28, 1988, **Federal Register** (53 FR 24262). Subsequent actions concerning the Hopi Tribe's plan and plan amendments can be found at 30 CFR 756.17 and 756.18.

### II. Proposed Amendment

By letter dated September 23, 1996, the Hopi Tribe submitted a proposed amendment to its plan (administrative record No. HO–156) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). The Hopi Tribe submitted the proposed amendment at its own initiative and in response to the required plan amendments at 30 CFR 756.18 (a) through (h). The provisions of the Hopi plan that the Hopi Tribe proposed to revise, add, or delete were: Preface to amended reclamation plan; section I, A, purpose of the Hopi plan; section II, A(1), coal reclamation after certification, and section II, A(1)(i), limited liability (coal reclamation); sections II, B(1)(d) and (d)(ii), noncoal reclamation after certification and the construction of public facilities, and sections II, B(1) (h), (i), and (j), limited liability, contractor responsibility, and reports (noncoal reclamation); section IV, A(1), land acquisition, and section IV, B, management of required land; sections VI, A(1) and B(1), consent to entry and public notice; section XII, description of aesthetic, cultural and recreational conditions of the Hopi Reservation; and section XIV, flora and fauna of the Hopi Reservation.

OSM announced receipt of the proposed amendment in the October 16, 1996, **Federal Register** (61 FR 53884), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. HO–159). Because no one requested a public hearing or meeting, none was held. The public comment period ended on November 15, 1996.

### III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed plan amendment submitted by the Hopi Tribe on September 23, 1996, meets the requirements of the corresponding Federal regulations and is consistent with SMCRA. Thus, the Director approves the proposed amendment.

*1. Nonsubstantive Revisions to the Hopi Plan Provisions*

The Hopi Tribe proposed revisions to the following previously-approved plan provisions that are nonstubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding SMCRA provisions and Federal regulations are listed in parentheses):

Preface to amend reclamation plan, (sections 411(e) and (f) of SMCRA and 30 CFR 875.15), eligible projects;

Section II, A(1)(a), (30 CFR′ 874.12)(c)), eligible coal lands and water;

Section II, A(1)(g), (30 CFR 874.16), contractor responsibility (coal reclamation);

Section II, B(1)(d), (30 CFR 874.15(b)), noncoal reclamation after certification;

Deletion of sections II, E, F, and G, (30 CFR 874.15 and .16, 875.19 and .20, and 886.23(b)), limited liability, contractor responsibility, and reports;

Section II, E, (sections 411(e) and (f) of SMCRA and 30 CFR 875.15(d) and (e) and 884.13(c)(2)), description of needs, proposed construction and activities;

Section VII, B(8), (30 CFR 884.13(c)(7)), public participation;

Section VIII, (30 CFR 884.13(d)(1)), organization of the Hopi Tribe; and

Section XIV, (30 CFR 884.13(f)), flora and fauna.

Because the proposed revisions to these previously-approved Hopi plan provisions are nonsubstantive in nature, the Director finds that they are consistent with the corresponding provisions of SMCRA and meet the requirements of the Federal regulations. Therefore, the Director approves the proposed revisions to these plan provisions.

*2. Substantive Revisions to the Hopi Plan Provisions That Are Substantively Identical to the Corresponding Provisions of SMCRA and the Federal Regulations*

The Hopi Tribe proposed revisions to the following plan provisions that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding provisions of SMCRA and the Federal regulations (listed in parentheses):

Preface to amended reclamation plan, (title IV of SMCRA and 30 CFR subchapter R), introductory paragraph;

Section II, A(1)(i), (30 CFR 874.15), limited liability (coal reclamation);

Section II, B(1)(h), (30 CFR 875.19), limited liability (noncoal reclamation);

Section II, B(1)(i), (30 CFR 875.20), contractor responsibility (noncoal reclamation); and

Section II, B(1)(j), (30 CFR 886.23(b)), reports (noncoal reclamation);

Because these proposed revisions to the Hopi plan provisions are substantively identical to the corresponding provisions of SMCRA and the Federal regulations, the Director finds that they are consistent with the corresponding provisions of SMCRA and meet the requirements of the Federal regulations. Therefore, the Director approves the proposed revisions to these plan provisions.

*3. Revisions to the Hopi Plan Provisions Submitted in Response to Required Amendments*

In response to the required plan amendments at 30 CFR 756.18(d) through (h) (April 23, 1996, 61 FR 17833, 17836–38, finding Nos. 5, 6, 7, and 9), the Hopi Tribe proposed to revise its plan provisions at section II, A(1), concerning coal reclamation after certification; section II, B(1)(d)(ii), concerning noncoal reclamation after certification; section IV, A(1), concerning land acquisition; section IV, B(1), concerning management of acquired lands; and section XII, concerning description of aesthetic, cultural and recreational conditions of the Hopi Reservation.

*Section II, A(1).*—OSM at 30 CFR 756.18(d) (finding No. 5(b), 61 FR 17833, 17836) required the Hopi Tribe to revise section II, A(1) to require that any coal reclamation activities subsequent to certification of coal reclamation are subject to the provisions of sections 401 through 410 of SMCRA.

In response to the required amendment, the Hopi Tribe proposed to add such language to its plan at section II, A(1) to provide for coal reclamation after certification. In addition, the Hopi Tribe corrected a reference in this section to the effective date of the Hopi Tribe's certification that all known abandoned coal mine problems had been addressed. For the reasons discussed in the April 23, 1996, **Federal Register,** the Director finds that the proposed revisions at section II, A(1) of the Hopi plan meet the requirements of the Federal regulations at 30 CFR 875.13(b) and 875.14(b)). Accordingly, the Director approves the proposed revisions to section II, A(1) and removes the required amendment at 30 CFR 756.18(d).

*Section II, B(1)(d)(ii).*—OSM at 30 CFR 756.18(e) (finding No. 6(a), 61 FR 17833, 17836) required the Hopi Tribe to revise section II, B(1)(d)(ii) to delete the word ''property'' for priority two noncoal reclamation.

In response to the required amendment, the Hopi Tribe revised section II, B(1)(d)(ii) to provide for the protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices. For the reasons discussed in the April 23, 1996, **Federal Register,** the Director finds that the proposed revision at section II, B(1)(d)(ii) of the Hopi plan meets the requirements of the Federal regulations at 30 CFR 875.15(b)(2). Accordingly, the Director approves the proposed revision to section II, B(1)(d)(ii) and removes the required amendment at 30 CFR 756.18(e).

*Section IV, A(1).*—OSM at 30 CFR 756.18(f) (finding No. 7(a), 61 FR 17833, 17837) required the Hopi Tribe to revise section IV, A(1) to delete the word ''coal'' from the phrase ''coal refuse thereon'' to ensure that lands eligible for acquisition included those on which refuse from both coal and noncoal mining practices are located.

In response to the required amendment, the Hopi Tribe revised section IV, A(1) to provide that noncoal lands and water may be acquired in the same manner as coal lands and water. For the reasons discussed in the April 23, 1996, **Federal Register**, the Director finds that the proposed revision at section IV, A(1) of the Hopi plan meets the requirements of the Federal regulations at 30 CFR 875.17 and 879.11(a). Accordingly, the Director approves the proposed revision to section IV, A(1) and removes the required amendment at 30 CFR 756.18(f).

*Section IV, B(1).*—OSM at 30 CFR 756.18(g) (finding No. 7(c), 61 FR 17833, 17837) required the Hopi Tribe to revise section IV, B(1) to reinstate the phrase ''may be used pending'' to its provisions concerning the management of acquired lands.

In response to the required amendment, the Hopi Tribe revised section IV, B(1) to provide that land acquired under rules of the Hopi plan may be used pending concurrence of the Hopi AMLR program and Tribal Council for any lawful purpose that is not inconsistent with the reclamation activities and post reclamation uses for which it was acquired. For the reasons discussed in the April 23, 1996, **Federal Register**, the Director finds that the proposed revision at section IV, B(1) of the Hopi plan meets the requirements of the Federal regulations at 30 CFR 879.14. Accordingly, the Director approves the proposed revision to section IV, B(1) and removes the required amendment at 30 CFR 756.18(g).

*Section XII.*—OSM at 30 CFR 756.18(h) (finding No. 9, 61 FR 17833, 17838) required the Hopi Tribe to revise its plan to include information concerning significant aesthetic, historic or cultural, and recreational values.

In response to the required amendment, the Hopi Tribe added section XII to provide a description of aesthetic, cultural and recreational conditions of the Hopi Reservation. For the reasons discussed in the April 23, 1996, **Federal Register**, the Director finds that the proposed addition at section XII of the Hopi plan meets the requirements of the Federal regulations at 30 CFR 884.13(f)(2). Accordingly, the Director approves the proposed revision to section IV, B(1) and removes the required amendment at 30 CFR 756.18(h).

*4. Section I, A, Purpose of Hopi Tribe AMLR Plan*

The Hopi Tribe proposed to revise section I, A, of its plan in response to required amendments at 30 CFR 756.18 (a) through (c) (April 23, 1996, 61 FR 17833, 17835, finding Nos. 4 (a), (d), and (e)). OSM required the Hopi Tribe to revise section I, A to (1) provide separate provisions for coal and noncoal reclamation activities, (2) ensure that the provisions listed in the purpose of the Hopi plan are consistent with the Hopi Tribe's certification of completion of reclamation of known coal-related problems, and (3) provide appropriate provisions for reclamation of eligible lands, waters and facilities under a noncoal reclamation program.

The Hopi Tribe chose not to respond specifically to the required amendments, but rather proposed revisions to section I, A to provide that the Hopi plan's purpose is to ''protect the health, safety, and general welfare of members of the Hopi Tribe and members of the general public from the harmful effects of past coal mining practices and past mineral mining and processing practices.'' In addition, the Hopi Tribe proposed other purposes at section I, A to (1) address adverse effects of mining and processing practices on public facilities; (2) provide for public facilities in communities impacted by coal or other mineral mining and processing practices; and (3) address needs for activities or public facilities related to the coal or minerals industry on Hopi lands impacted by coal or minerals development.

The first purpose at section I, A of the Hopi plan is similar to the provisions of sections 403(a)(2) and 411(c)(2) of SMCRA, which provide, respectively, for the protection of health, safety, and general welfare from the adverse effects of coal mining practices, and from the adverse effects of mineral mining and processing practices. The additional purposes at section I, A are similar to the provisions of section 411(e) of SMCRA and 30 CFR 875.15(a), which provide for the protection, repair, replacement, construction, or enhancement of utilities and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal or other

mineral mining and processing practices.

Because the Hopi Tribe previously certified that it had completed the reclamation of all known coal-related problems (59 FR 29719, June 9, 1994), its plan appropriately provides for both coal and noncoal reclamation. Therefore, the Director finds that section I, A of the Hopi plan, which provides a general description of the purpose of the Hopi Tribe's AMLR program, including descriptions of coal and noncoal reclamation activities, is not inconsistent with sections 403 and 411 of SMCRA and meets the requirements of the Federal regulations at 30 CFR parts 874 and 875. Accordingly, the Director approves the proposed revisions at section I, A and removes the required amendments at 30 CFR 756.18 (a) through (c).

*5. Sections VI, A(1) (a) through (c) and B(1), Consent To Enter and Public Notice*

The Hopi Tribe proposed to revise its plan provisions at sections VI, A(1) (a) through (c), by deleting provisions concerning the ability to enter lands for emergency reclamation. The Hopi Tribe also proposed to revise section VI, B(1) by deleting the phrase ''except in emergency situations,'' from the requirement for the public notice when written consent for entry cannot be obtained.

Deletion of the references to emergency reclamation and emergency situations is consistent with the fact that the Hopi Tribe is unable to exercise emergency powers on Hopi lands, because the Hopi Tribe did not request authority to conduct emergency response reclamation under the original Hopi plan submission (53 FR 24262, June 28, 1988), and it has not subsequently sought emergency powers through the amendment process. For these reasons, only OSM, and its agents, employees, and contractors, are authorized to conduct emergency reclamation activities on Hopi lands. Based upon OSM's exclusive emergency reclamation authority on Hopi lands, the Director finds that the deletions of references to emergency reclamation and emergency situations at sections VI, A(1)(c) and B(1) are consistent with section 410 of SMCRA and meet the requirements of 30 CFR 877.14. Therefore, the Director approves these proposed plan revisions.

## IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

*1. Public Comments*

OSM invited public comments on the proposed amendment, but none were received.

*2. Federal Agency Comments*

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Hopi plan (administrative record No. HO–157).

(a) *Bureau of Indian Affairs (BIA), Hopi Agency.*—BIA commented on October 11, 1996, that the ''Preface to Amended Reclamation Plan'' section of the Hopi plan should be revised to clarify the order of priority for future coal AMLR projects (administrative record No. HO–158). Specifically, BIA recommended that the last paragraph on page iii, which provides a description of the Hopi Tribe's priority system, should be revised to indicate that projects with the most adverse impacts to the public are of the highest priority.

OSM responds that the preface of the Hopi plan provides for both coal and noncoal reclamation projects, and that the order of priority provided by the preface is consistent with the Federal regulations at 30 CFR part 875. Even though the Hopi Tribe provided certification of completion of all known coal-related problems (59 FR 29721, June 9, 1994), it continues to have a responsibility to give any coal-related problems that are found or that occur after certification top priority for AMLR funding. The preface of the Hopi plan reflects this requirement by stating that ''newly discovered projects adversely affected by *coal* mining'' (emphasis added) would receive the highest priority for AMLR funding. The Director finds that the language contained in the preface of the Hopi plan concerning the priority of coal projects is consistent with the counterpart Federal regulations at 30 CFR 875.13(a)(3), and is not requiring the Hopi Tribe to provide any additional clarification about priorities as suggested by BIA.

(b) *Arizona State Historic Preservation Officer (SHPO).*—On November 14, 1996, the Arizona SHPO responded that it was their opinion that the proposed amendment should have no effect on any property listed on the National Register of Historic Places or any project eligible for listing (administrative record No. HO–160).

## V. Director's Decision

Based on the above findings, the Director approves the Hopi Tribe's proposed plan amendment as submitted on September 23, 1996.

The Director approves, as discussed in: Finding No. 1, the preface to the amended reclamation plan, concerning eligible projects, section II, A(1)(a), concerning eligible coal lands and water, section II, A, (1)(g), concerning contractor responsibility for coal reclamation, section II, B(1)(d), concerning noncoal reclamation after certification, deletion of sections II, E, F, and G, concerning limited liability, contractor responsibility, and reports for noncoal reclamation, section II, E, concerning description of needs, proposed construction and activities, section VII, B(8), concerning public participation, section VIII, concerning organization of the Hopi Tribe, and section XIV, concerning flora and fauna; finding No. 2, the preface to the amended reclamation plan, concerning the introductory paragraph, section II, A(1)(i), concerning limited liability for coal reclamation, section II, B(1)(h), concerning limited liability for noncoal reclamation, section II, B(1)(i), concerning contractor responsibility for noncoal reclamation, and section II, B(1)(j), concerning reports for noncoal reclamation; finding No. 3, section II, A(1), concerning coal reclamation after certification, section II, B(1)(d)(ii), concerning noncoal reclamation after certification, section IV, A(1), concerning land acquisition, section IV, B(1), concerning management of acquired lands, and section XII, concerning description of aesthetic, cultural and recreational conditions of the Hopi Reservation; finding No. 4, section I, A, concerning the purpose of Hopi plan; and finding No. 5, sections VI, A(1) (a) through (c) and B(1), concerning consent to entry and public notice.

The Director approves the plan provisions as proposed by the Hopi Tribe with the provision that they be fully promulgated in identical form to the plan provisions submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 756, codifying decisions concerning the Hopi plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State or Indian tribe plan amendment process and to encourage States or Indian tribes to bring their plans into conformity with the Federal standards without undue delay. Consistency of State or Indian tribe and Federal standards is required by SMCRA.

## VI. Procedural Determinations

*1. Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*2. Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State or Indian tribe AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Indian tribe, not by OSM. Decisions on proposed State or Indian tribe AMLR plans and revisions thereof submitted by a State or Indian tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

*3. National Environmental Policy Act*

No environmental impact statement is required for this rule since agency decisions on proposed State or Indian tribe AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

*4. Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*5. Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State or Indian tribe submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State or Indian tribe. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

*6. Unfunded Mandates Reform Act*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or private sector.

### List of Subjects in 30 CFR Part 756

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: March 13, 1997.

**James F. Fulton,**

*Acting Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter E of the Code of Federal Regulations is amended as set forth below:

## PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

1. The authority citation for part 756 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.* and Pub. L. 100–71.

2. Section 756.17 is amended by adding paragraph (c) to read as follows:

### § 756.17 Approval of Hopi Tribe abandoned mine land reclamation plan amendments.

* * * * *

(c) Revisions to, additions of, or deletions of the following plan provisions, as submitted to OSM on September 23, 1996, are approved effective March 31, 1997:

Preface to Amended Reclamation Plan—Introductory paragraph and Eligible Projects;
Section I, A—Purpose of Hopi plan;
Section II, A(1)—Certification of Completion of Coal Sites;
Section II, A(1)(a)—Eligible Coal Lands and Water;
Section II, A, (1)(g)—Contractor Responsibility (for coal reclamation);
Section II, (A)(1)(i)—Limited Liability (for coal reclamation);
Sections II, (B)(1)(d) and (d)(ii)—Noncoal Reclamation After Certification;
Sections II, (B)(1)(h), (i), and (j)—Limited Liability, Contractor Responsibility, and Reports (for noncoal reclamation);
Deletion of sections II, E, F, and G—Limited Liability, Contractor Responsibility, and Reports (for noncoal reclamation);
Section II, E—Description of Needs, Proposed Construction and Activities;
Sections IV, (A)(1) and (B)(1)—Acquisition and Management of Acquired Lands;
Sections VI, A(1) (a) through (c) and B(1)—Consent to Entry and Public Notice;
Section VII, B(8)—Public Participation;
Section VIII—Organization of the Hopi Tribe;
Section XII—Description of Aesthetic, Cultural and Recreational Conditions of the Hopi Reservation; and
Section XIV—Flora and Fauna.

### § 756.18 [Amended]

3. Section 756.18 is amended by removing and reserving paragraphs (a) through (b) and removing paragraphs (c) through (h).

[FR Doc. 97–8103 Filed 3–28–97; 8:45 am]

BILLING CODE 4310–05–M

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## 30 CFR Part 902

**[AK–005–FOR, Amendment No. V]**

## Alaska Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Alaska regulatory program (hereinafter referred to as the ''Alaska program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alaska proposed revisions to and additions of rules pertaining to self-bonding. The amendment revised the Alaska program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATES:** March 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Telephone: (303) 844–1424.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Alaska Program

On March 23, 1983, the Secretary of the Interior conditionally approved the Alaska program. General background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program can be found in the March 23, 1983, **Federal Register** (48 FR 12274). Subsequent actions concerning Alaska's program and program amendments can be found at 30 CFR 902.15 and 902.16.

### II. Proposed Amendment

By letter dated December 12, 1996, Alaska submitted a proposed amendment to its program pursuant to SMCRA (amendment No. V, administrative record No. AK–F–1, 30 U.S.C. 1201 *et seq.*). Alaska submitted the proposed amendment in response to the required program amendment at 30

CFR 902.16(b)(1) (61 FR 48835, 48843; September 17, 1996). The provisions of the Alaska Administrative Code (AAC) that Alaska proposed to revise were: 11 AAC 90.207(f)(3), conditions for accepting a self-bond. The provisions of the Alaska Administrative Code that Alaska proposed to add were: 11 AAC 90.207(f)(8), definitions of self-bonding terms.

OSM announced receipt of the proposed amendment in the January 8, 1997, **Federal Register** (62 FR 1074), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. AK–F–2). Because no one requested a public hearing or meeting, none was held. The public comment period ended on February 9, 1997.

## III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Alaska on December 12, 1996, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

*11 AAC 90.207(f) (3) and (8), Self-bonding*

On September 17, 1996, OSM at 30 CFR 902.16(b)(1) (finding No. 6, 61 FR 48835, 48837) required Alaska to revise 11 AAC 90.207(f)(3) to require the applicant for a self-bond that is guaranteed by a corporate guarantor to retain his or her own agent for service in Alaska and to further revise 11 AAC 90.207(f) to add definitions for the term ''self-bond'' and other financial terms used to describe self bonds. In response to the required amendment, Alaska revised 11 AAC 90.207(f)(3) by referencing as a condition for acceptance by the Commissioner of the Department of Natural Resources the requirement that the applicant for a self-bond that is guaranteed by a corporate guarantor retain an agent for service in Alaska. The proposed revision is consistent with the counterpart Federal regulation at 30 CFR 800.23(c)(2), which provides the specific criteria for approval of a self-bond guaranteed by a corporate guarantor.

In addition, Alaska proposed new regulations at 11 AAC 90.207(f)(8) (A) through (H) that provide definitions of the terms ''self-bond,'' ''current assets,'' ''current liabilities,'' ''fixed assets,'' ''liabilities,'' ''net worth,'' ''parent corporation,'' and ''tangible net worth.'' The proposed definitions contain language that is substantively identical to the requirements of the corresponding Federal regulations at 30 CFR 800.5 and 800.23(a).

For the above reasons, the Director finds that the proposed revision at 11 AAC 90.207(f)(3) and the proposed addition of definitions associated with self-bonding are no less effective than the counterpart Federal regulations. Accordingly, the Director approves the proposed revision of and additions to these rules and removes the required amendment at 30 CFR 902.16(b)(1).

## IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

*1. Public comments*

In response to OSM's invitation of public comments, an individual responded on January 26, 1997, that she supported approval of the amendment (administrative record No. AK–F–5).

*2. Federal Agency Comments*

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Alaska program (administrative record No. AK–F–4).

Minerals Management Service, Alaska Outer Continental Shelf Region, responded on February 19, 1997, that it had no comments on the amendment (administrative record No. AK–F–6).

The Bureau of Indian Affairs, Juneau Area Office, responded on February 20, 1997, that it had no comments specific to the amendment (administrative record No. AK–F–7).

The United States Department of Energy, Alaska Power Administration, responded on February 20, 1997, that it had no comments on the proposed amendment (administrative record No. AK–F–8).

The U.S. Fish and Wildlife Service responded on February 13, 1997, that it had no comments on the amendment (administrative record No. AK–F–9).

The Bureau of Land Management, Alaska State Office, responded on February 28, 1997, that it felt that the proposed amendment should be adopted (administrative record No. AK–F–10).

*3. Environmental Protection Agency (EPA) Concurrence and Comments*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Alaska proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. AK–F–3). It did not respond to OSM's request.

*4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. AK–F–3). Neither the SHPO nor ACHP responded to OSM's request.

## V. Director's Decision

Based on the above finding, the Director approves Alaska's proposed amendment as submitted on December 12, 1996.

The Director approves 11 AAC 90.207(f)(3), concerning conditions of acceptance for a self-bond, and 11 AAC 90.207(f)(8), concerning definitions of self-bonding terms.

The Director approves the rules as proposed by Alaska with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 902, codifying decisions concerning the Alaska program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## VI. Procedural Determinations

*1. Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*2. Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these

standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*3. National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*4. Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*5. Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*6. Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 902**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 13, 1997.

**James F. Fulton,**

*Acting Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 902—ALASKA

1. The authority citation for part 902 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 902.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

**§ 902.15 Approval of Alaska regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * |
| December 12, 1996 | [Insert date of publication in the Federal Register]. | 11 AAC 90.207(f) (3) and (8). |

3. Section 902.16 is amended by removing and reserving paragraph (b)(1).

[FR Doc. 97–8104 Filed 3–28–97; 8:45 am]

BILLING CODE 4310–05–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 65

**[CC Docket No. 96–22; FCC 97–56]**

### Interstate Rate of Return Prescription Procedures and Methodologies

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On February 19, 1997, the Commission adopted a Report and Order that amends the Commission's rules with respect to other postretirement benefits other than pensions (*OPEBs*). This Order also denies an MCI petition for reconsideration of the Commission's March 7, 1996, Order (*Vacate Order*), that rescinded ratemaking instructions for *OPEBs* given by the Common Carrier Bureau in Responsible Accounting Officer Letter No. 20 (*RAO 20*). The intended effect of the rules is to standardize the Commission's rate base rules with respect to similar types of assets and liabilities.

**EFFECTIVE DATE:** April 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Thaddeus Machcinski, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0808.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order adopted February 19, 1997, and released February 20, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, NW., Washington, DC 20037.

**Summary of Report and Order**

1. On March 7, 1996, the Commission released an Order (*Vacate Order*), (61 FR 9968, March 12, 1996), rescinding the rate base instructions issued by the Common Carrier Bureau (*Bureau*) in *RAO 20*. With that Order, we also issued a Notice of Proposed Rulemaking (*NPRM*) (61 FR 9968, March 12, 1996), that proposed amendments to Part 65, Subpart G to address the ratemaking treatment of *OPEBs*.

2. On April 8, 1996, MCI filed a Petition for Reconsideration of the *Vacate Order*. MCI requests that the Commission reconsider its decision to rescind the rate base instructions for *OPEBs* set forth in *RAO 20*.

3. In this Order, we amend Part 65 of our rules to include *OPEBs* in ratemaking and to remove all items

recorded in Account 4310, Other long-term liabilities, that were derived from above-the-line expenses from the interstate rate base. We also deny MCI's petition for reconsideration of the *Vacate Order.*

4. In the *NPRM,* we proposed that prepaid *OPEBs* recorded in Account 1410, Other noncurrent assets, should be included in the interstate rate base. In this Order, we have decided not to adopt our proposal automatically to include prepaid *OPEBs* in the interstate rate base. We find our current rules are adequate to determine what, if any, of the assets recorded in Account 1410 should be included in the rate base. Therefore, if a carrier can show that any of its assets recorded in Account 1410 (including prepaid *OPEBs*) meet the used-and-useful standard, we will allow that asset to be included in the interstate rate base. This decision is consistent with our treatment of similar costs, such as prepaid pension costs. A certain amount of prepaid pension costs are allowed in the rate base because these costs can earn a return that later reduces expenses. Thus, any prepaid *OPEB* costs that meet the used and useful standard will be included in the interstate rate base.

5. In the *NPRM,* we also proposed to amend § 65.830 to remove from the interstate rate base the interstate portion of all accrued liabilities recorded in Account 4310, Other long-term liabilities. In this Order we have decided to modify our proposal so that only those zero-cost sources of funds that result from above-the-line expenses are removed from the rate base. Thus, only those liabilities recorded in Account 4310 that are derived from the expenses specified in § 65.450(a) will be removed from the rate base.

6. In the *NPRM,* we noted that the Bureau in *RAO 20* directed carriers to remove accrued *OPEB* liabilities recorded in Account 4310, Other long-term liabilities, from their rate bases on the basis that *OPEB* benefits are similar to pension benefits, which are deducted from the rate base pursuant to part 65. The *Bureau* concluded that accrued *OPEB* costs should receive similar rate base treatment. We believe the Bureau was correct in that conclusion. Moreover, in the *NPRM,* we noted that all accrued liabilities recorded in Account 4310 represent zero-cost sources of funds including accrued pension and *OPEB* liabilities. We therefore proposed to accord to all items recorded in Account 4310 the same treatment currently accorded to pensions. After reviewing the comments in this proceeding, we conclude that, because the amounts recorded in Account 4310 are zero-cost sources of funds, rates should not provide a return on those amounts. Accordingly, we adopt our proposal except as modified in the preceding paragraph.

7. Finally, we state that the conclusion in the *Vacate Order* that the Bureau did not have the delegated authority to amend the Part 65 rules in *RAO 20* was correct. MCI's petition for reconsideration does not refute this conclusion. Accordingly, the Order denies MCI's petition for reconsideration.

## Ordering Clauses

Accordingly, it is ordered, pursuant to Section 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i) and 405 that the Petition for Reconsideration filed April 8, 1996, by MCI Telecommunications Corporation is denied.

It is further ordered, that pursuant to Sections 1, 4(i), 4(j), 201 through 205, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201 through 205, 220 and 403, Part 65, Subpart G of the Commission's Rules, 47 CFR Part 65, Subpart G, is amended as shown below, effective April 30, 1997.

It is further ordered, that the Secretary shall serve a copy of this Order on each state commission.

It is further ordered, that the Secretary shall send a copy of this Report and Order including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) 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 65

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

## Rule Changes

Part 65 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 65 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154, 201, 202, 203, 204, 205, 218, 219, 220, 403.

2. Section 65.830 is amended by revising paragraphs (a)(3) and (c) to read as follows:

**§ 65.830 Deducted items.**

(a) * * *

(3) The interstate portion of other long-term liabilities (Account 4310) that were derived from the expenses specified in § 65.450(a).

* * * * *

(c) The interstate portion of other long-term liabilities (Account 4310) shall bear the same proportionate relationship as the interstate/intrastate expenses which gave rise to the liability.

[FR Doc. 97–8040 Filed 3–28–97; 8:45 am]

BILLING CODE 6712–01–P

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## 47 CFR Part 76

**[MM Docket No. 92–266; FCC 97–87]**

## Low-Price Cable Television System Rate Regulation

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted a Report and Order regarding low-price system rate regulation. The Report and Order makes permanent the transition relief afforded to low-price cable television systems, and establishes final rules for low-price system rate regulation. Based on data received in a cost survey conducted in the Fall of 1995, the Report and Order finds that low-price system operators have lower cash flow ratios and receive lower profit margins for their low-price systems than operators of systems already regulated under the Commission's revised benchmark approach receive for their systems. The Report and Order, therefore, states that low-price system rates are reasonable and that low-price systems will not be required to reduce their rates by the full competitive differential or any lesser amount. Low-price systems will be able to continue charging for cable services in accordance with the current rules for such systems.

**EFFECTIVE DATE:** April 30, 1997.

**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.

**FOR FURTHER INFORMATION CONTACT:** Rodney McDonald, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained in the Report and

Order, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

**SUPPLEMENTARY INFORMATION:** The main text of this decision is included below. 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. In this Report and Order, we terminate the transition status of low-price systems and establish final rules for low-price system rate regulation pursuant to the provisions of the Cable Television Competition and Consumer Protection Act of 1992, Public Law 102–385, 106 Stat. 1460 (1992), 47 U.S.C. 521 *et seq.* (''1992 Cable Act''). We rely on the results of our cost survey in particular, to determine whether low-price systems should be required to reduce their rates by the full competitive differential or any lesser amount.

## II. Background

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 found that ''our initial effort to regulate rates for cable service should provide for reductions from current rates of regulated cable systems with rates above competitive levels.'' In order to simulate the rates that would be charged by comparable cable systems subject to effective competition, we adopted a ''benchmark'' approach to regulate the basic service tier and the cable programming services tier of systems not subject to effective competition. The initial benchmark formula was primarily derived by examining cable operator's revenues. The formula reflected an implicit assumption that all cable operators faced similar cost conditions, but it took into account variations in rates due to certain other economic and demographic factors. Our initial analysis revealed that the ''rates of systems not subject to effective competition (were), on average, approximately 10 percent higher than rates of comparable systems subject to effective competition.'' This 10% competitive differential was incorporated into the benchmark system, and noncompetitive systems whose rates exceeded the benchmark were deemed to be charging unreasonable rates. These systems were thus required to reduce their rates, at most by the full 10% competitive differential, but not below the benchmark.

3. In the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC 94–38, 59 FR 17943 and 59 FR 18064 (April 15, 1994) (''Second Order on Reconsideration''), the Commission adopted a 17% competitive differential based on a revised analysis of its early competitive survey of the cable industry; it concluded that the 17% differential determined by the revised model more accurately estimated the difference between effectively competitive and noncompetitive cable rates than the ten percent differential established in the Rate Order. The Commission recognized, however, that the rates developed under this revised benchmark approach might not be appropriate for all cable systems. The competitive survey used to establish the new benchmark approach included several cost-related variables, but we remained concerned that our analysis may have failed to identify unusual cost influences that might indicate whether a system was charging unreasonable rates. In particular, the Commission identified two types of systems, small systems and low-price systems, that appeared to exhibit significantly different prices and costs from most other cable systems based on the initial data gathered. The Commission granted transition relief to small systems and low-price systems finding that these systems would not be required to use the new benchmark approach until the Commission gathered further data regarding their particular price/cost profiles. We defined low-price systems as ''(i) systems whose March 31, 1994 rates are at (or) below the revised benchmark and (ii) systems whose March 31, 1994 rates are above the benchmark but whose permitted rates are at or below the benchmark.'' Pending this determination, low-price systems were placed in a ''transition'' status and were subject to ''transition relief'' as ''transition systems.''

4. The Commission established an alternate approach to rate regulation for transition systems pending completion of our price/cost analysis. During the transition period, low-price systems having March 31, 1994 rates below the new benchmark were not required to reduce their rates at all. Low-price systems having March 31, 1994 rates above the new benchmark but having permitted rates at or below the new benchmark were only required to reduce their rates to the new benchmark. We imposed a modified price cap on these transition rates that allowed systems subject to such relief to increase their rates ''to reflect increases in external costs and increases caused by channel changes that accrue after March 31, 1994.'' A transition system was not, however, allowed to increase its transition rate due to increases in inflation until its transition rate was equal to the rate that would have resulted from a full 17% rate reduction under our revised benchmark approach (i.e., their full reduction rate increased by permitted inflation, and increases due to external costs and channel changes). In this way, the transition rates of transition systems would eventually become equal to the full reduction rates these systems would have been required to charge under our new benchmark approach. The Commission reasoned that a system's full reduction rate might eventually exceed its transition rate because the full reduction rate would increase with inflation as well as external costs and channel changes. The Commission stated that transition treatment would terminate at the completion of our price/cost analysis, and that systems that had been provided transition relief would be required to apply the 17% competitive differential upon termination of transition treatment unless our analysis revealed that application of the 17% competitive differential to these systems would be inappropriate.

5. Specifically, we said that we needed to further study whether below-benchmark rates are more likely to be reasonable than above-benchmark rates, because they are comparatively lower, and that in light of this inquiry, it would not be appropriate, at the time, to require regulated systems to reduce their rates below the benchmark level. In addition, we stated that ''requiring any systems whose rates are currently slightly above the benchmark to reduce their rate levels to the full reduction levels, but not requiring below-benchmark systems to reduce their rates at all, would result in inequitable treatment of systems that may be fairly similarly situated.'' Therefore, we stated that upon completion of our collection and analysis of low price system prices and costs ''the regulated rates of such systems [would] be set to reflect the full 17 percent differential if our analysis [did] not show that the resulting rates would be unreasonably low—that is, the rates would be lower than they would be if set by competitive pressures as

determined by cost comparisons between noncompetitive systems and systems subject to effective competition.''

6. The Commission subsequently made adjustments to the transition relief initiated in the Second Order on Reconsideration. In the Ninth Order on Reconsideration in MM Docket No. 92–266, FCC 95–43, 60 FR 10512 (February 27, 1995), the Commission allowed all systems subject to transition relief to further adjust their rates based on inflation. In the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–196, 60 FR 35854 (July 12, 1995) (''Small System Order'') we initiated ''the gradual termination of transition relief for all but low-price systems,'' by limiting transition relief for small systems to two years from the effective date of the new rule. Consistent with our statements in the Second Order on Reconsideration, however, we have continued transition relief for low-price systems until the completion of our collection and analysis of necessary cost data.

7. When the Second Order on Reconsideration was adopted, the Commission noted that we lacked sufficient data regarding the costs faced by low-price systems to establish whether these systems were charging reasonable rates despite the fact that they were charging relatively low rates as compared to the rates of other noncompetitive cable systems. Therefore, the Commission delegated authority to the Chief, Cable Services Bureau to conduct general cost studies of the cable industry. Report and Order and Further Notice of Proposed Rulemaking, in MM Docket No. 93–215 and CS Docket No. 94–28, FCC 94–39, 59 FR 18066 (April 15, 1994). A cable industry cost survey was commenced pursuant to this authority in the Fall of 1995. *See* Order, in MM Docket No. 92–266, 11 FCC Rcd 4003 (released September 29, 1995). This Report and Order analyzes data from our cost survey, and compares the cost and revenue data of noncompetitive low-price systems with the cost and revenue data received for non-low-price systems that are already regulated by the Commission under the revised benchmark approach.

## III. Discussion

### *A. Data*

8. The cost survey we initiated in September of 1995 was based upon a random sample of cable systems. Specifically, the survey was mailed to cable operators owning 660 of the total 2,271 non-small cable systems in the U.S. Small systems were not included in our survey because their treatment was previously determined in the Small System Order. The Commission received 359 usable questionnaires from the cable operators surveyed. Of these 359 questionnaires, 40 were received for low-price systems (''low-price group'') and 38 were received for systems regulated by the Commission under the revised benchmark approach (''non-low-price group''). Of the remaining 281 usable questionnaires, two were received for systems facing effective competition as defined in the 1992 Cable Act, and the remaining 279 were received for several categories of cable systems including those regulated only at the local level, those for which a cost-of-service showing was filed, those unregulated, and those subject to social contracts.

9. Data provided in response to the cost survey included information regarding system plant and equipment costs, intangible assets, operating revenues and expenses, and capital structure as of year end 1992 and year end 1994. We also received information regarding system characteristics.

### *B. Analysis*

10. The data received from our cost survey was analyzed to determine the relative profitability of the low-price group compared with the non-low-price group. In our analysis, we used a standard measure of ''accounting'' profitability as a means of determining the relative profitability of these two groups. Specifically, we used cash flow ratios, which are commonly used in financial analyses of the cable industry. One of the more frequently used cash flow measures is income before interest, taxes, depreciation and amortization (''IBITDA''). We applied this measure in the form of the following ratio: operating revenues minus operating expenses before interest, taxes, depreciation, and amortization divided by operating revenues.

11. We compared the average cash flow ratio of our low-price group with the average cash flow ratio of our non-low-price group. We found that the average cash flow ratio of our low-price group was 36.5% and the average cash flow ratio of our non-low-price group was 39.7%. These findings indicate that, on average, the operators of systems in our low-price group received lower profit margins for their low-price systems than the operators of systems in our non-low-price group received for their non-low-price systems. Based on these findings, we believe that the operators of low-price systems generally receive lower profit margins for their low-price systems than the operators of systems already regulated under the Commission's revised benchmark approach. Under these conditions we believe that rates charged by low-price systems are reasonable. We therefore find it unnecessary for the operators of these systems to reduce the rates on these systems by the full competitive differential or by any lesser amount.

12. We believe that the transition relief afforded low-price systems was appropriate, however, we see no need to maintain the transition status of low-price systems now that we have completed an analysis of the necessary cost data particular to these systems. Therefore, we make that relief permanent. We will allow low-price systems to continue charging the rates they established under transition relief and making appropriate rate increases in accordance with our current rules. 47 CFR 76.922.

## IV. Final Regulatory Flexibility Certification

13. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) for the Fifth Notice of Proposed Rulemaking was incorporated in the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket 92–266, FCC 94–38. The Commission therein provided notice of its intent to establish further requirements concerning the rates permitted for systems subject to transition treatment, and sought written public comments on the IRFA. Comments regarding the treatment of ''small'' transition systems were received by the Commission and addressed in a previous order. Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–196. No comments, however, were received regarding the matter of ''low-price'' transition cable systems.

14. Although we performed an IRFA in the Fifth Notice of Proposed Rulemaking, we received no comments in response to the IRFA with respect to ''low-price'' transition systems and upon further consideration we now believe that we can certify that no regulatory flexibility analysis is necessary. This certification conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). *See* Title II of the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847, 857 (1996), codified at 5 U.S.C. 601 *et seq.*

15. We do not believe that the amendments to the rules adopted in this Report and Order will have a significant economic impact on a substantial number of small entities as defined by statute, by our rules, or by the Small Business Administration (SBA). *See* 47 U.S.C. 543(m)(2); 47 CFR 76.901(e); 13 CFR 121.201 (SIC 4841); 5 U.S.C. 605(b).

16. Our rules for regulating the rates of small systems owned by small cable companies were established in a previous order, so this Report and Order only concerns the permitted rates for low-price systems. Based on the rule changes adopted here, low-price systems will be permitted to maintain the rates originally established pursuant to their status as systems subject to transition relief. Further, the rules adopted in this Report and Order will allow low-price systems to increase their rates in the same manner as our previous transition rules for low-price systems. The rules adopted herein do not alter the method by which low-price cable system rates currently are regulated, and for this reason these amendments will not have a significant economic impact on a substantial number of small cable operators, and will not change the treatment of low-price systems.

17. The Commission will send a copy of this certification, along with this 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), and to the Chief Counsel for Advocacy of the Small Business Association, 5 U.S.C. 605(b). A copy of this certification will also be published in the **Federal Register**. *Id.*

## V. Ordering Clauses

18. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 543, the rules, requirements and policies discussed in this Report and Order are adopted and § 76.922 of the Commission's rules, 47 CFR 76.922, is amended as set forth below.

19. It is further ordered that the Secretary shall send a copy of this Report and 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).

20. It is further ordered that the requirements and regulations established in this decision shall become effective April 30, 1997.

## List of Subjects in 47 CFR Part 76

Cable television.

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 76.922 is amended by revising paragraph (b)(4)(ii) to read as follows:

**§ 76.922 Rates for the basic service tier and cable programming services tiers.**

* * * * *

(b) * * *

(4) * * *

(ii) *Low-price systems.* Low-price systems shall be eligible to establish a transition rate for a tier.

* * * * *

**Note:** This attachment will not be published in the Code of Federal Regulations.

**Attachment**

CASH FLOW RATIOS

| Category | Average operating revenues (million) (A) | Average operating expenses before interest, taxes, depreciation and amortization (million) (B) | Income before interest, taxes, depreciation and amortization (IBITDA) (million) (A – B) | Cash flow ratios [1] (percent) |
|---|---|---|---|---|
| Low-price group (40 systems) | $15.1 | $9.6 | $5.5 | 36.5 |
| Non-low-price group (38 systems) | 12.5 | 7.5 | 5 | 39.7 |
| Competitive group (2 systems) | 76.4 | 46.2 | 30.2 | 39.5 |
| All other [2] (279 systems) | 8.3 | 5.3 | 3 | 36.7 |

[1] Calculated on totals for each group prior to averaging (i.e., cash flow ratios equal total operating revenues minus total operating expenses before interest, taxes, depreciation and amortization divided by total operating revenues).

[2] Includes systems for which a cost-of-service showing was filed, systems regulated only at the local level, unregulated systems, and systems subject to social contracts.

[FR Doc. 97–7976 Filed 3–28–97; 8:45 am]

BILLING CODE 6712–01–P

## 47 CFR Part 76

**[CS Docket No. 95–174; FCC 97–86]**

## Uniform Cable Price-Setting Methodology

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The *Report and Order* modifies rules and policies concerning cable systems. The *Report and Order* amends our regulations to permit the establishment by a cable operator of uniform rates for uniform services offered across multiple franchise areas

on a case-by-case basis upon the Commission's finding that the cable operator's submission of a proposed uniform rate proposal and supporting justification demonstrates that the proposed rate structure is reasonable. This item fulfills Congress' preference that rates be set pursuant to competition rather than regulation.

**DATES:** The amendments in this final rule impose information collection requirements and shall become effective upon approval by OMB but no sooner than April 30, 1997. The Commission will publish a document at that time confirming the effective date and notifying parties that these requirements and regulations have become effective. Written comments by the public on the proposed and/or modified information collections are due on or before May 30, 1997.

**ADDRESSES:** A copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Larry Walke, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained herein, contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

This is a synopsis of the Commission's *Report and Order* in CS Docket No. 95–174, FCC No. 97–86, adopted March 13, 1997 and released March 14, 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, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

This *Report and Order* contains a new information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this *Report and Order,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public comments are due May 30, 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.

A copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov. For additional information, contact Dorothy Conway at 202–418–0217 or via the Internet at the above address.

*OMB Approval Number:* 3060–XXXX.

*Title:* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation; Uniform Rate-Setting Methodology.

*Type of Review:* New Collection.

*Respondents:* Businesses and other for-profit entities; state, local and tribal governments.

*Number of Responses:* 60 (10 rate proposals and 50 LFA reviews).

*Estimated Time Per Response:* 20–50 hours.

*Total Annual Burden to Respondents:* 1,500 hours estimated as follows: We estimate that on an annual basis, cable operators will file no more than 10 uniform rate proposals with the Commission. We estimate that each operator will undergo an average burden of 50 hours to draft the rate proposal and to reply to comments received from interested parties. 10 rate proposals × 50 hours = 500 hours. We estimate that each rate proposal will affect an average of five local franchise areas. The average burden for each LFA to review each rate proposal and file comments is estimated to be 20 hours. 10 rates proposals × 5 LFAs per proposal × 20 hours = 1,000 hours.

*Total Estimated Cost to Respondents:* $400, estimated as follows: Cable operators will have postage and stationery expenses of $15 per rate proposal to serve copies of the proposal and each set of replies on the Commission and affected LFAs. 10 × $15 = $150. We estimate that postage and stationery expenses for each LFA will be $5 to file comments on each proposal. 10 proposals × 5 LFAs per proposal × $5 = $250.

*Needs and Uses:* The information collections contained herein are necessary to implement the statutory provisions for cable operators contained in the 1992 Cable Act. Uniform rate proposals will be filed with the Commission and served on all affected LFAs. The rate proposals, comments received from LFAs and replies received from cable operators will be reviewed by the Commission in considering whether the interests of subscribers will be protected under the new rate proposal.

## I. Introduction

1. On November 29, 1995, the Commission issued a Notice of Proposed Rulemaking (''*NPRM*'') in which we explored the establishment of an optional rate-setting methodology where a cable operator could establish uniform rates for uniform cable service tiers offered in multiple franchise areas. *Notice of Proposed Rulemaking in CS Docket No. 95–174* (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation, Uniform Rate-Setting Methodology), 60 FR 63492 (December 11, 1995). We find that the establishment of such uniform rates would benefit both cable service subscribers and cable operators. We also find, however, that the implementation of uniform rates raises several complex case-by-case issues. Accordingly, we hereby permit the establishment of uniform rates across multiple franchise areas on a case-by-case basis upon the Commission's finding that the cable operator's submission of a proposed uniform rate proposal and supporting justification demonstrates that the proposed rate structure will be reasonable, taking into account all critical factors relevant to its implementation, and subject to one important condition. Under any uniform rates approach permitted by the Commission, rates for regulated basic service tiers (''BSTs'') may not exceed the BST rates that would be established under our existing regulations; thus, BST rates will either decrease or remain the same under a uniform rates mechanism.

2. As discussed more fully below, we have concluded that permitting operators serving multiple franchise areas to establish uniform services at uniform rates in all areas would be beneficial for subscribers, franchising authorities (''LFAs''), and cable operators. Whether to seek to implement uniform rates, however, will be left to the discretion of cable operators. A uniform rates approach could facilitate an operator's ability to promote its service on a regional basis. This approach could better inform consumers and enable them to compare packages of services offered by competitors, thereby improving competition among providers. Increased competition could result in improved service and reduced rates for subscribers.

## II. Background

3. As stated in the *NPRM*, under the Cable Television Consumer Protection and Competition Act of 1992 (the ''1992 Cable Act''), Cable Television Consumer Protection and Competition Act, Public Law 102–385, 106 Stat. 1460 (1992), and the Commission's implementing regulations, 47 CFR §§ 76.901–86, a cable operator serving multiple franchise areas must establish maximum permitted rates independently in each franchise area. Rate-regulated services consist of the basic service tier (''BST''), which includes, at a minimum, all local broadcast stations and public, educational, and governmental (''PEG'') access channels carried on the system, and the cable programming services tier (''CPST''), which includes all non-BST programming offered over the cable system, other than programming offered on a per channel or per program basis.

4. We noted that enforcement of the rate regulations is divided between qualified local franchising authorities (''LFAs'') and the Commission. BST rate regulation is generally enforced by qualified LFAs. An operator's CPST, on the other hand, is subject to rate regulation directly by the Commission.

5. We also discussed the situation where a cable operator acquires a number of contiguous systems from other entities and seeks to establish uniform rates and services for those systems. We stated that, under the Commission's ''going-forward'' rules, the operator will typically have the flexibility to add channels to certain systems and delete channels from others to establish a uniform programming line-up. The operator's efforts, however, to set a uniform rate will be constrained because the going-forward rules specifically dictate permitted rate changes that must accompany changes in the level of service and do not permit regional averaging of the data used to compute rates.

6. In the *NPRM* we tentatively concluded that permitting operators serving multiple franchise areas to establish uniform services at uniform rates in all areas would be beneficial for subscribers, franchising authorities, and operators. We stated that such an approach could facilitate an operator's advertisement of a single rate for cable service over a broad geographic region, which could lower its marketing costs and enhance its ability to respond to competition from alternative service providers that may establish and market uniform services without regard to franchise area boundaries.

7. In the *NPRM* we requested suggestions for an appropriate method for the establishment of uniform rates, and offered for comment two specific alternatives that would be revenue-neutral to an operator. Under the first approach, an operator generally would set BST rates equal to the lowest BST rate for any one franchise area as determined under our existing rate regulations and recoup the resulting foregone BST revenue in a new uniform CPST rate charged to CPST subscribers. Under the second approach, an operator would generally determine a blended average rate for BSTs and CPSTs, respectively, pursuant to a formula designed by the Commission.

8. In the context of both approaches, we sought comment on various aspects of a cable operator's establishment of uniform rates for uniform services, including: (1) How an operator would determine equipment rates; (2) the costs and benefits of requiring an operator, if it chose to set the uniform rate in unregulated franchise areas, to base the uniform rate in part on data from unregulated areas; (3) how an operator would apply our going-forward policies; (4) whether this approach would protect cable subscribers from unreasonable rates in accordance with the 1992 Cable Act, and whether an operator should be required to phase-in any resulting CPST rate increases; (5) whether a cable operator's setting of uniform rates should be restricted to franchise areas located within some level of proximity to each other, such as the Area of Dominant Influence, the same county or state, or whether a cable operator should be permitted to select the region in which to set uniform rates; and (6) how PEG and other franchise-related expenses should be addressed in the context of uniform rates.

## III. Discussion

9. Much of the record submitted in response to the *NPRM* generally endorses our proposal to establish an optional approach under which a cable operator could set uniform rates for uniform services offered in multiple franchise areas, as stated in the *NPRM*. As a general matter, we believe that, under certain conditions, allowing a cable operator to establish uniform regulated cable service rates across multiple franchise areas could benefit consumers, LFAs and the cable operator. The record, however, indicates that the Commission's adoption of a specific methodology that would be applicable to all cable operators nationwide may not be the most feasible course of action, given variations in factors from system to system. We will, therefore, establish procedures to permit uniform rates across multiple franchise areas through the Commission's case-by-case review of a cable operator's proposed uniform rate structure. These procedures will permit the Commission to take account of the variations between cable systems and of the comments of affected LFAs. Accordingly, a cable operator seeking to establish uniform rates will be required to submit a proposal with supporting justification that states fully and precisely all pertinent facts and considerations relied on to demonstrate that the proposed rates will not be unreasonable.

10. Under the rate-setting approach adopted herein, a cable operator may submit to the Commission a proposal for establishing uniform rates for uniform services offered in multiple franchise areas. The Commission, however, will not specify a particular methodology for setting uniform rates. The only condition we place on any proposed uniform rates mechanism is that the BST rates may not exceed the BST rates that would be established under our existing regulations. In addition, below we offer general guidelines that the Commission will consider in deciding whether to approve a particular proposed mechanism.

11. A cable operator will be required to submit with its proposal a certificate of service showing that the proposal and its supporting justification have been served on all affected LFAs. The Commission will place the operator's filing on public notice. Interested persons, including the affected LFAs, may submit comments on the proposal within sixty days after the date of the public notice. The cable operator may file a reply to the comments within thirty days thereafter. The Commission will consider the justification, as well as all other submitted materials, and determine whether the proposed uniform rates will not be unreasonable. Pursuant to this *Order* and any conditions established in a Commission decision on a particular proposal, the Commission may approve uniform rates notwithstanding any differences between the uniform rates and the rates that would be determined under our existing benchmark rate formula.

12. Some LFAs express concern that a uniform rates mechanism will not protect subscribers from unreasonable cable service rates, as required under the 1992 Cable Act. On the contrary, we believe that, in any event, rates will remain reasonable under any uniform rates approach approved by the Commission. First, it is important to note that, while the benchmark formula is the most widely used method for determining rates in compliance with

our rules, we have found rates other than, or that vary from, benchmark rates to be reasonable. For example, an operator may elect to justify BST and CPST rates based on a cost-of-service showing. The Commission has also eliminated the ''all rates in play'' approach so that, if no complaint concerning a CPST rate or rate increase was filed before November 6, 1995, the cable operator's CPST rate as of that date would be deemed not unreasonable under our rules. This may lead to a rate being deemed not unreasonable although the rate might not be accepted under our benchmark formula. We also note that the Commission has an on-going proceeding in which we are considering increased pricing flexibility for operators that may result in somewhat higher CPST and lower BST rates. *See Memorandum Opinion and Order, and Notice of Proposed Rulemaking,* MM Docket No. 92–266 and CS Docket No. 96–157, 61 FR 45356 (August 29, 1996) (''*Cable Pricing Flexibility NPRM*''). Finally, the Commission has allowed, subject to certain conditions, agreements among LFAs and small cable operators to serve as yet another alternative method or process for establishing reasonable rates for regulated tiers of cable service.

13. We further address the concerns of LFAs regarding the reasonableness of uniform rates by placing a condition on an operator's setting of uniform rates. That is, under any uniform rates structure established pursuant to this Order, BST rates for any subscriber in the affected areas may not exceed the BST rates that would be established under our existing regulations. Thus, LFAs can be assured that, at a minimum, BST rates will either decrease or remain unchanged. For example, if an operator sought to implement uniform rates for three franchise areas where the maximum permitted BST rates are $10.00, $11.00 and $12.00, respectively, any uniform rates proposal that resulted in a uniform BST rate greater than $10.00 would be disapproved.

14. The fair implementation of a uniform rate approach is facilitated if the Commission can examine the methodology to be employed and the impact of that methodology on subscribers in advance of its implementation. Our approach will provide the Commission with the ability to render an informed and accurate decision on whether an operator's proposed uniform rates are not unreasonable. An operator's supporting justification must include a specific, detailed description of all relevant financial and economic data, and other factors (including particularly local factors) that demonstrate the impact of the proposal on subscriber rates, and that justify the uniform rates as not unreasonable. This approach also will allow the Commission to consider the views of LFAs and consider whether the interests of subscribers will be protected under the new rate structure.

15. On a going-forward basis, we will require operators that establish initial uniform rates under the regulations we set forth here to adjust future rates on an annual basis, pursuant to FCC Form 1240. We believe that allowing rate changes no more frequently than annually will enhance the efficiency of rate review by LFAs. As under our current rules, review of adjustments to BST rates will be the responsibility of LFAs while the Commission will be responsible for review of CPST rates.

16. We seek to provide guidance in this Order to cable operators that propose uniform rates. First, as we already have indicated, implementing any uniform rate approach across multiple franchise areas inevitably raises issues that do not lend themselves to a global resolution. The most difficult and common issue arises when a cable operator is regulated by multiple LFAs, as compared to a single state-level or regional regulatory body. A methodology that would produce uniform rates throughout multiple franchise areas and would be applicable in one particular franchise area, for example, would be based in part on information that is particular to other franchise areas.

17. The *NPRM* sought comment on how review by one LFA of a proposed uniform rate may affect implementation of that rate in other franchise areas. First, some LFAs contend that a uniform rate approach could increase their administrative burden by requiring them to review the underlying data and rates for all local franchising areas where the uniform rate is charged in order to review the uniform rate charged in its local franchising area. We disagree. The condition specified above, that requires that BST rates determined under a uniform rate approach may not exceed those established under our existing regulations, will ease LFAs' regulatory burdens by ensuring LFAs that any BST rates they must review will either decrease or remain unchanged. LFAs' administrative burdens therefore will not significantly increase.

18. Other LFAs responded to this inquiry by arguing that their jurisdiction over basic cable rates could be compromised under a uniform rates approach. We also reject these arguments. First, we note the discussion above concerning an LFA's option to participate vigorously in the Commission's review of an operator's proposed uniform rates approach. Second, an LFA's authority will not be undermined because the overall process for establishing and regulating uniform rates will be parallel to that of our current regulatory framework. In the development of the benchmark formula, for example, the Commission, after notice and comment and the participation of LFAs, established and approved the regulatory methodology that sets forth reasonable rates for the BST. Using the benchmark formula, the operator then submits proposed initial BST rates for review by each affected LFA. If the BST rate is rejected by an LFA, the operator may appeal to the Commission, where the relevant LFA receives ample opportunity to defend its calculations and review of the operator's proposed BST rates. With respect to the optional rate-setting approach adopted herein, and as with our existing regulations, the Commission merely approves the general methodology to be employed by an operator, while jurisdiction over an operator's implementation of a BST rate remains the exclusive responsibility of LFAs. Thus, contrary to some commenting LFAs' arguments, LFAs' statutory responsibility and obligation with respect to BSTs will not be hindered under a uniform approach.

19. Commenters suggest a variety of approaches for resolving conflicts that could arise if one LFA tolled the effectiveness of the proposed uniform rate in its franchise area while another LFA permitted the rate to take effect in its area. Generally, commenting LFAs seek to maintain their existing authority over BST rates. Although they do not specifically address the tolling of proposed uniform rates, presumably these parties might argue that uniform rates could be disapproved by any one of the affected LFAs, and that rates would be tolled in all the franchise areas until an appeal of the relevant rate decision was resolved. Cable operators, on the other hand, support allowing the proposed uniform rate to take effect immediately, subject to a later ''true-up'' of any discrepancies which the Commission subsequently finds to exist. We believe that the current authority of LFAs should be preserved, and that subscribers must remain fully protected from unreasonable rate increases. Moreover, an operator seeking to take advantage of the benefits of establishing (or adjusting) uniform rates must also shoulder the risks of implementing

uniform rates. We therefore will prohibit a proposed uniform rate to take effect subject only to a subsequent true-up. Rather, an LFA that rejects a proposed uniform rate may toll the effectiveness of that rate in that particular franchise area. Alternatively, if the LFA so chooses, the rate may take effect, however, but only subject to refunds as later determined by the LFA. An LFA's decision with respect to proposed rates will only have effect within the LFA's particular local franchise area, and not the implementation of rates in other franchise areas.

20. As indicated above, an operator may elect to implement a uniform rates structure in a region that covers both regulated and unregulated local franchise areas. Under this approach, an operator would include data from both the unregulated and regulated areas, and determine a uniform rate applicable in all such areas. We believe that permitting uniform rates to include unregulated franchise areas could benefit subscribers living in the uniform rate region. With respect to systems subject to effective competition, Congress determined that rate regulation was not necessary to ensure reasonable rates. With respect to cable systems potentially subject to regulation, but which are currently unregulated because no complaint has been filed, there is no evidence to suggest that these systems have unreasonable rates. Indeed, we would expect that if rates were unreasonable in these franchise areas, complaints would have been filed (especially prior to passage of the Telecommunications Act of 1996 when a single complaint was enough to trigger CPST rate review). Accordingly, we do not believe that including unregulated systems for purposes of determining uniform rates is more likely to lead to unreasonable rates than using exclusively regulated systems to determine uniform rates.

21. With respect to the BST in regulated local franchise areas, the operator would submit to the LFA its proposed initial rates, and the regulating LFA would have authority to review and approve or disapprove the proposed rates. If the LFA determined that a reduction in BST rates is necessary to comply with the rules, the operator would be required to reflect this reduction in the rate charged in the region, if necessary. Again, nothing in this Order is intended to compromise LFAs' authority to regulate BST rates. With respect to CPST rates, we emphasize that, in reviewing a uniform rates proposal, we will closely examine the impact of the proposal on subscribers' rates, and would be disinclined to approve any scheme that results in a more than minimal increase in CPST rates for a large proportion of the affected subscribers.

22. Commenting cable operators argue that they will require broad discretion with respect to several aspects of setting uniform rates, including: (1) the size of the region in which to establish uniform rates; (2) whether all franchise areas located within the uniform rate region must be included for purposes of calculating and offering the uniform rate; (3) which tiers of regulated cable service should be offered at a uniform rate; (4) the methodology employed to determine the uniform rate; (5) how to address variances in the numbers of channels offered in various franchise areas; and (6) how and whether to establish uniform rates for the installation or maintenance of equipment. Below we offer some general guidance regarding what a cable operator should follow to accomplish these goals.

23. First, we anticipate that an operator's uniform rates proposal will be based on some meaningful neutral geographic measure, such as the Area of Dominant Influence (ADI), the Designated Market Area, the Basic Trading Area, or the Standard Metropolitan Statistical Area. Where the operator proposes to include additional franchise areas outside of such a region or measure, our case-by-case review will examine the operator's proposal and justification.

24. Second, with respect to which franchise areas should be included in a uniform rate structure, we would be disinclined to approve a scheme in which an operator selects some of its franchise areas in a contiguous geographic region, but excludes others, unless compelling circumstances were shown to justify such an approach. An example of a situation presenting such circumstances could be one in which an upgrade was in progress and the uniform rates became applicable as the upgrade progressed. In this vein, we note that some commenting LFAs argue that a uniform rate structure may result in cross-subsidization among subscribers living in franchise areas where a cable operator's costs of providing service are relatively low costs and those subscribers in franchise areas where costs are higher. Any cross-subsidization that may occur under a uniform rates structure, however, will be neither significant nor unique. In addition, as stated above, we will be disinclined to approve any proposal that results in a more than minimal increase in CPST rates for a significant proportion of the affected subscribers.

25. Third, with respect to which tiers of regulated service should be offered at uniform rates, we would be inclined generally to ratify a uniform rate proposal that covers all of an operator's BSTs within the proposed uniform rate region. Furthermore, any uniform rate proposal in which BST rates decrease likely will include offsetting CPST rate increases, assuming an operator's overall rates and revenues remain close to neutral under the uniform rate scheme. We believe that in light of the high penetration of at least one CPST in most multi-tiered systems, it will be possible to effect these offsets with minimal CPST rate increases. We also would entertain proposals to offer uniform rates on CPSTs generally, regardless of their penetration.

26. Fifth, we note that in the *NPRM* we sought comment on whether the particular packages of programming services offered at a uniform rate in multiple franchise areas must be identical. In response, cable operators urge the Commission to allow an operator broad discretion in dealing with variances among numbers of channels offered in various areas. With respect to the cable operators' comments, we believe generally that the establishment of uniform rates across multiple franchise areas should be permitted where the cable operator is offering the same number of channels on its regulated tiers of programming services. Generally, subscribers in one franchise area should not pay the same rates as those in another franchise area if the amount of programming services received are not the same. Therefore, we would be inclined to accept uniform rate proposals that apply only to franchise areas that have identical numbers of channels on the respective BSTs and CPSTs.

27. However, with respect to whether the packages of services need be identical, we recognize that there may be circumstances beyond the operator's control that cause dissimilarities among tiers of programming services. For instance, differences in PEG access and must-carry requirements or leased access use are factors that might create deviations in the channel line-ups received by subscribers in a contiguous geographic area. Indeed, because of these circumstances, certain LFAs argue that any uniform rates mechanism implemented pursuant to this *Order* will not result in truly uniform rates, and thus will not succeed in reducing confusion for a subscriber moving between different parts of the same uniform rates region. In order to address

these concerns, as well as provide operators with a measure of flexibility in implementing a uniform rates structure, we will take care when evaluating a proposal for uniform rates across franchise areas that do not receive identical programming services to consider the extent and nature of the deviation in programming services, and whether the deviation's impact on subscriber rates is significant. In the event that a deviation based on PEG access costs or other external costs (including franchise-related external costs) is significant, we would consider a requirement that an operator's uniform rates be determined exclusive of such costs; in which case the operator likely would be permitted to add these costs onto the uniform rate on a franchise-by-franchise basis. In this vein, we note that our existing regulations have always permitted cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs to advertise a ''fee plus'' rate that indicates the core rate plus the range of possible additions, depending on the particular location of the subscriber.

28. Finally, we note that, under the Telecommunications Act of 1996, cable operators may aggregate their equipment costs on a franchise, system, regional, or company level. The Commission has adopted regulations implementing this provision that, among other things, ease the burden of cable rate regulation on operators and increase administrative efficiency for both LFAs and cable operators. Cable operators seeking to implement uniform rates may avail themselves of those rules to bring uniformity to their equipment rates.

29. Accordingly, we find that implementation of any uniform rate approach as offered in the *NPRM* requires resolving several issues, including those of a local nature, that do not lend themselves to global resolution. We find that it is preferable to base our approval of any uniform rate approach on data that accurately reflects the situation of a particular cable operator seeking to establish uniform rates, and the predicted impact on consumers of the operator's proposal. We therefore decline to specify a particular methodology for implementing uniform rates. Rather, as described above, cable operators may submit information in accordance with the procedures outlined above demonstrating that the proposed uniform rates will not be unreasonable. In light of this finding, we decline to reach the arguments presented by the commenters with respect to the appropriate methodology, region, and other aspects of uniform rates offered for comment in the *NPRM*.

## IV. Regulatory Flexibility Act Certification

30. As required by the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* in CS Docket 95–174 (the ''*NPRM*''). The Commission sought written public comments on the proposals in the *NPRM* including comments on the IRFA. No Comments were received.

31. Although we performed an IRFA in the *NPRM*, there were no comments received in response to the IRFA and we believe that we can certify that no Regulatory Flexibility Act Analysis is now necessary.

32. We do not believe that the final rule adopted in the *Report and Order* will have a significant economic impact on a substantial number of small entities, 5 U.S.C. § 605(b). The uniform rate option described in this *Report and Order* gives cable operators an additional option when setting rates, and is not mandatory. This rate adjustment option will not force operators to forgo revenues as it is designed to be revenue neutral to cable operators. The Communications Act at 47 U.S.C. § 543(m)(2) defines a small cable 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.'' Under the Communications Act, at 47 U.S.C. § 543(m)(1), a small cable operator is not subject to the rate regulation requirements of Sections 543(a), (b) and (c) on cable programming services tiers (''CPSTs'') in any franchise area in which it serves 50,000 or fewer subscribers.

33. The Regulatory Flexibility Act defines at 5 U.S.C. § 601(5) ''small governmental jurisdictions'' as ''governments of cities, counties, towns, townships, villages, school districts or special districts with populations of less than 50,000.'' Under the Commissions current rules, if a local franchising authority (''LFA'') has elected to rate regulate the basic service tier (''BST''), a cable operator must submit rate justifications to the LFA on FCC Forms. We do not believe that small LFAs will face a significant economic impact due to this Report *and Order*. The change in our rules adopted herein would not have a significant economic effect on small LFAs because the burden associated with reviewing a uniform rate approach should be no more than the burden under the current regulations. If other rate adjustments are made to the BST at the time of the uniform rate adjustment, or at some time thereafter, the cable operator will be required to submit a rate justification to the LFA that is based on the operator's ''underlying rate,'' *i.e.*, the rate the operator would be charging in the absence of the uniform rate adjustment. The LFA will engage in the same rate review process as would have otherwise occurred for these other rate adjustments. LFA review of the underlying rate entails the same rate review process that would occur normally, without the uniform pricing option adopted herein. Responsibility for the determination of the correctness of the uniform rate adjustment to CPST rates will rest with the Commission because the Commission, and not LFAs, is responsible for insuring that CPST rates are not unreasonable.

34. The Commission will send a copy of this certification, along with this *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), and to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the **Federal Register**.

## V. Final Paperwork Reduction Act of 1995 Analysis

35. This *Report and Order* contains a new information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this *Report and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public comments are due May 30, 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.

36. A copy of any comments on the information collection 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. For

additional information, contact Dorothy Conway at 202–418–0217 or via the Internet at the above address.

## VI. Ordering Clauses

37. Accordingly, it is ordered that, pursuant to the authority granted in sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r) and 543, part 76 of the Commission's rules is amended as set forth below. The amendments impose information collection requirements and shall become effective upon approval of the Office of Management and Budget (''OMB'') but no sooner than April 30, 1997. The Commission will issue a document at that time notifying parties that the regulations adopted herein have become effective.

38. It is further ordered that, the Secretary shall send a copy of this *Report and 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

Cable television.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

## Rule Changes

Part 76 of the 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, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.922 is amended by revising paragraph (c)(2) and adding a new paragraph (n) to read as follows:

### § 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(c) * * *

(2) The Commission's price cap requirements allow a system to adjust its permitted charges for inflation, changes in the number of regulated channels on tiers, or changes in external costs. After May 15, 1994, adjustments for changes in external costs shall be calculated by subtracting external costs from the system's permitted charge and making changes to that ''external cost component'' as necessary. The remaining charge, referred to as the ''residual component,'' will be adjusted annually for inflation. Cable systems may adjust their rates by using the price cap rules contained in either paragraph (d) or (e) of this section. In addition, cable systems may further adjust their rates using the methodologies set forth in paragraph (n) of this section.

* * * * *

(n) *Further rate adjustments—Uniform rates.* A cable operator that has established rates in accordance with this section may then be permitted to establish a uniform rate for uniform services offered in multiple franchise areas. This rate shall be determined in accordance with the Commission's procedures and requirements set forth in CS Docket No. 95–174.

[FR Doc. 97–8041 Filed 3–28–97; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 960531152–7062–03; I.D. 031297C]**

**RIN 0648–AI18**

## Fisheries of the Exclusive Economic Zone Off Alaska; Technical Amendment; Correction

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** NMFS is correcting regulations that contain inadvertent omissions that resulted from NMFS' consolidation of six parts in title 50 of the CFR, related to the Alaska regulations, into one CFR part in response to the President's Regulatory Reform Initiative. This action corrects regulations that authorize the release of pollock, flatfish, and Pacific cod reserves in the Gulf of Alaska.

**EFFECTIVE DATE:** March 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** When the consolidated rule was published in the **Federal Register** on June 19, 1996 (61 FR 31228), it was intended to contain no substantive changes to the existing regulations. Inadvertently, text that had existed at § 672.20(d)(1)(ii) was omitted. This technical amendment is reinstating the omitted text into the regulation.

NMFS is correcting the regulations as follows:

(1) Section 679.20(b)(2) is revised by changing the word ''flounder'' to read ''flatfish.''

(2) Section 679.20(b)(2)(i) and (ii) are added to include inshore/offshore pollock and Pacific cod provisions to the Gulf of Alaska (GOA) reserves.

(3) Section 679.20(3) is revised by adding text that was inadvertently omitted to include the GOA in the apportionment text.

## Classification

Because this technical amendment makes only non-substantive corrections to an existing rule, notice and public procedure thereon and a delay in effective date would serve no purpose. Accordingly, under 5 U.S.C. 553(b)(B) and (d), notice and public procedure thereon and a delay in effective date are unnecessary.

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This rule makes minor technical changes to a rule that has been determined to be not significant under E.O. 12866. No changes in the regulatory impact previously reviewed and analyzed will result from implementation of this technical amendment.

## List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: March 24, 1997.

**Rolland A. Schmitten,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

## PART 679–-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.20, paragraphs (b)(2)(i) and (ii) are added, the introductory text of (b)(2), the heading for (b)(3), paragraphs (b)(3)(i)(A), and (b)(3)(ii)(A) and (B) are revised to read as follows:

### § 679.20 General limitations.

* * * * *

(b) * * *

(2) *GOA*. Initial reserves are established for pollock, Pacific cod, flatfish, and ''other species,'' which are equal to 20 percent of the TACs for these species or species groups.

(i) *Pollock inshore/offshore reapportionment (Applicable through December 31, 1998).* Any amounts of the GOA reserve that are reapportioned to pollock as provided by this paragraph (b) must be apportioned between inshore and offshore components in the same proportion specified in paragraph (a)(6)(ii) of this section.

(ii) *Pacific cod inshore/offshore reapportionment (Applicable through December 31, 1998).* Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by this paragraph (b) must be apportioned between inshore and offshore components in the same proportion specified in paragraph (a)(6)(iii) of this section.

(3) *Apportionment of reserves*.

(i) * * *

(A) As soon as practicable after April 1, June 1, and August 1, and on such other dates as NMFS determines appropriate, NMFS will, by notification in the **Federal Register**, apportion all or part of the BSAI or GOA reserve in accordance with this paragraph (b).

(B) * * *

(ii) * * *

(A) *General*. Except as provided in paragraph (b)(3)(ii)(B) of this section, NMFS will apportion the amount of BSAI or GOA reserve that will be harvested by U.S. vessels during the remainder of the year.

(B) *Exception*. Part or all of the BSAI or GOA reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

* * * * *

[FR Doc. 97–8058 Filed 3–28–97; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 62, No. 61
Monday, March 31, 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 AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 46

**[Docket No. FV96–351A]**

**RIN: 0581–AB41**

### Amendments to the Perishable Agricultural Commodities Act (PACA)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; reopening of the comment period.

**SUMMARY:** This document reopens the period for filing written comments on revisions to the Perishable Agricultural Commodities Act (PACA) license fees. These changes would conform current regulations to new legislative changes signed into law by President Clinton. Specifically, the changes to the license fee structure phase retailers and grocery wholesalers out of license fee payments over a 3-year period; establish a one-time administrative fee for new retailers and grocery wholesalers entering the program after the 3-year phase-out period; and increase license fees from $400 to $550 annually for all other licensees.

**DATES:** Comments must be received by April 30, 1997.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this reopened action. Comments must be sent to James R. Frazier, Chief, PACA Branch, Fruit and Vegetable Division, Room 2095-South Building, 1400 Independence Avenue, S.W., P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for inspection in the PACA Branch during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James R. Frazier, Chief, PACA Branch, F&V Division, AMS, USDA, Room 2095-South Building, P.O. Box 96456, Washington, DC 20090–6456, Phone (202) 720–2272.

**SUPPLEMENTARY INFORMATION:** The PACA was amended by Public Law 104–48. The regulations implementing the PACA (other than the Rules of Practice) are published in the Code of Federal Regulations at Title 7, Part 46 (7 CFR Part 46). A proposed rule to amend the regulations to implement Public Law 104–48 was published in the September 10, 1996 issue of the **Federal Register** (61 FR 47674). The 60-day comment period closed on November 12, 1996. Twelve comments were received on the proposed rule from four trade associations representing growers and shippers, three trade groups representing retailers and grocery wholesalers, three law firms, one association representing the frozen food industry, and one fruit and vegetable broker.

Section 46.6 of the proposed rule would phase all retailers and grocery wholesalers out of license fee payments over the 3-year period, beginning November 15, 1995 and ending November 14, 1998. The gradual phase-out of fee payments under this proposed rule is inclusive of all retailers and grocery wholesalers, regardless of when they were initially licensed under the PACA.

Of the twelve comments received, three addressed the collection of renewal fees paid by grocery wholesalers and retailers licensed by USDA after enactment of Public Law 104–48. The three commentors write that USDA is incorrectly proposing that first-time licensed retailers and grocery wholesalers pay renewal fees. They refer to section 499 (c) (3) of the statute designated, ''ONE-TIME FEE FOR RETAILERS AND GROCERY WHOLESALERS THAT ARE DEALERS'', which specifies the fees to be paid by a retailer or a grocery wholesaler making an initial application during the phase-out period and after such period ends. The commentors emphasized the statutory language ending section 499 (c) (3) which states: ''* * *a retailer or grocery wholesaler paying a fee under this paragraph shall not be required to pay any fee for renewal of the license for subsequent years.'' Since the commentors' interpretation of the legislative amendment is substantially different from USDA's view but appears to be plausible, USDA has determined that reopening the comment period until April 30, 1997, would allow other parties interested in this matter more time to review this section of the proposed rule and provide their comments. In the meantime, USDA will continue to assess license renewal fees as provided in 7 CFR Part 46.6. Should USDA, after notice and comment, conclude that the law excludes certain categories of licensees from the requirement to pay regular renewal fees, all such fees paid by those firms or individuals shall be refunded with interest. If USDA reaches such a conclusion, the PACA program will face a projected $750,000 loss in revenue over the three-year phase-out period.

Accordingly, the period in which to file written comments is reopened until April 30, 1997.

### List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

Dated: March 21, 1997.

**Eric M. Forman,**

*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 97–7808 Filed 3–28–97; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91–CE–45–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; de Havilland DHC–6 series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

**SUMMARY:** This document proposes to revise an earlier proposed airworthiness directive (AD), which would have superseded AD 78–26–02. That AD currently requires repetitively inspecting the fuselage side frame flanges at Fuselage Station (FS) 218.125 and FS 219.525 for cracks on certain de Havilland DHC–6 series airplanes, and repairing or replacing any cracked part. The previous document would have

required modifying the fuselage side frames at the referenced FS areas, as terminating action for the repetitive inspections that are currently required by AD 78–26–02. As currently written, the document allows continued flight if cracks are found in the fuselage side frames that do not exceed certain limits. Since publication of that proposal, the Federal Aviation Administration (FAA) has established a policy to disallow airplane operation when known cracks exist in primary structure (the fuselage area is considered primary structure). The actions specified by the proposed AD are intended to prevent failure of the fuselage because of cracks in the fuselage side frames, which, if not detected and corrected, could result in loss of control of the airplane. Since the comment period for the original proposal has closed and the change described above goes beyond the scope of what was originally proposed, the FAA is allowing additional time for the public to comment.

**DATES:** Comments must be received on or before June 13, 1997.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–45–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 de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7523; facsimile (516) 568–2716.

**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. 91–CE–45–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of Supplemental NPRM

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

## Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain de Havilland DHC–6 series airplanes without Modification Nos. 6/1461 and 6/1462 incorporated was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 11, 1995 (60 FR 41030). The NPRM proposed to supersede AD 78–26–02 with a new AD that would (1) retain the current requirement of repetitively inspecting the fuselage side frame flanges at Fuselage Station (FS) 218.125 and FS 219.525, as applicable, and repairing or replacing any cracked part; and (2) require modifying the fuselage side frame flanges in the referenced FS areas (Modification Nos. 6/1461 and 6/1462), as terminating action for the repetitive inspections. Accomplishment of the proposed actions as specified in the NPRM would be in accordance with de Havilland Service Bulletin (SB) No. 6/371, dated June 2, 1978.

Modification No. 6/1461 introduces fuselage side frames manufactured from material having improved stress corrosion properties at FS 218.125, and Modification No. 6/1462 introduces fuselage side frames of this material at FS 219.525.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

## The FAA's Aging Commuter-Class Aircraft Policy

The actions specified in the NPRM are part of the FAA's aging commuter class aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination 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 of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (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.

## Events Leading to the Issuance of This Supplemental NPRM

As currently written, the existing NPRM (as does AD 78–26–02) allows continued flight if cracks are found in the fuselage side frames that do not exceed certain limits. Since issuing the NPRM, the FAA has established a policy to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The fuselage structure is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area. For this reason, the FAA has determined that the crack limits contained in the NPRM and AD 78–26–02 should be eliminated, and that AD action should be taken to require immediate replacement of any cracked fuselage flange.

## Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland DHC–6 series airplanes of the same type design without Modification Nos. 6/1461 and 6/1462 incorporated, the proposed AD would supersede AD 78–26–02 with a new AD that would (1) retain the current requirement of repetitively inspecting the fuselage side frame flanges at FS 218.125 and FS 219.525,

as applicable, and repairing or replacing any cracked part (except that the repair or replacement would be required prior to further flight); and (2) require modifying the fuselage side frame flanges in the referenced FS areas (Modification Nos. 6/1461 and 6/1462), as terminating action for the repetitive inspections. Accomplishment of the proposed actions would be in accordance with de Havilland SB No. 6/371, dated June 2, 1978.

The FAA prepared a Regulatory Flexibility Determination and Analysis for the original proposal. This analysis is unchanged and is repeated in this supplemental NPRM.

**Cost Impact**

The FAA estimates that 94 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 300 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $16,200 (average) per airplane. Based on these figures, the total cost impact of the proposed modification on U.S. operators is estimated to be $3,214,800 or $34,200 per airplane. This cost figure is based upon the presumption that no affected airplane owner/operator has incorporated Modification Nos. 6/1461 and 6/1462.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 94 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 45 percent are operated in scheduled passenger service. A significant number of the remaining 55 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 4,800 hours time-in-service (TIS) after the proposed AD would become effective before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 24 to 48 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 24 to 48 years before the proposed modification would be mandatory.

The following paragraphs present cost scenarios for airplanes where no cracks were found and where cracks were found during the inspections, and where the remaining airplane life is 15 years with an average annual utilization rate of 1,600 hours TIS. A copy of the full Cost Analysis and Regulatory Flexibility Determination for the proposed action may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

- No Cracks Scenario: Under the provisions of AD 78–26–02, an owner/operator of an affected de Havilland DHC–6 series airplane in scheduled service who operates an average of 1,600 hours TIS annually would inspect every 400 hours TIS. This would amount to a remaining airplane life (estimated 15 years) cost of $18,420; this figure is based on the presumption that no cracks are found during the inspections. The proposed AD would require the same inspections except at 600-hour TIS intervals until 4,800 hours TIS after the proposed AD would become effective where the operator would have to replace the fuselage side frame flanges (eliminating the need for further repetitive inspections), which would result in a present value cost of $31,433. The incremental cost of the proposed AD for such an airplane would be $13,013 or $4,959 annualized over the three years it would take to accumulate 4,800 hours TIS. An owner of a general aviation airplane who operates 800 hours TIS annually without finding any cracks during the 600-hour TIS inspections would incur a present value incremental cost of $7,598. This would amount to a per year amount of $1,594 over the six years it would take to accumulate 4,800 hours TIS.
- Cracks found scenario: AD 78–26–02 requires repairing or replacing the fuselage side frames if excessive cracking is found (as defined by SB No. 6/371), as would the proposed AD. The difference is that AD 78–26–02 requires immediate crack repair and then replacement within 360 days after finding the crack, and the proposed AD would require immediate repair and mandatory replacement of the fuselage side frames within 4,800 hours TIS after the proposed AD would become effective. This would result in a present value total cost of $34,709 per airplane in scheduled service, which would make immediate replacement more economical ($32,400) than repetitively inspecting. With this scenario, the proposed AD would average a present value cost savings over that required in AD 78-26–02 of $2,083 ($794 annualized over three years) for each airplane operated in scheduled service, and $6,607 ($1,386 annualized over six years) for each airplane operated in general aviation service.

**Regulatory Flexibility Determination and Analysis**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a ''significant economic impact on a substantial number of small entities,'' and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A ''substantial number'' is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed rule, or any number of small entities judged to be substantial by the rulemaking official. A ''significant economic impact'' is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at nine aircraft owned and the annualized cost thresholds, adjusted to 1994 dollars, at $69,000 for scheduled operators and $5,000 for unscheduled operators.

Of the 94 U.S.-registered airplanes affected by the proposed AD, four airplanes are owned by the federal government. Of the other 90 airplanes, one business owns 26 airplanes, two businesses own 7 airplanes each, one business owns 3 airplanes, seven businesses own 2 airplanes each, and thirty-three businesses own 1 airplane each.

Because the FAA has no readily available means of obtaining data on sizes of these entities, the economic analysis for the proposed AD utilizes the worst case scenario, using the lower annualized cost threshold of $5,000 for operators in unscheduled service instead of $69,000 for operators in scheduled service. With this in mind and based on the above ownership distribution, the 33 entities owning two

or fewer airplanes would not experience a ''significant economic impact'' as defined by FAA Order 2100.14A. Since the remaining 11 entities do not constitute a ''substantial number'' as defined in the Order, the proposed AD would not have a ''significant economic impact on a substantial number of small entities.''

## 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) 78–26–02, Amendment 39–3370, and adding the following new AD to read as follows:

**De Havilland:** Docket No. 91–CE–45–AD. Supersedes AD 78–26–02, Amendment 39–3370.

*Applicability:* Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (serial numbers 1 through 411), certificated in any category, that do not have Modification Nos. 6/1461 and 6/1462 incorporated.

**Note 1:** Modification No. 6/1461 introduces fuselage side frames manufactured from material having improved stress corrosion properties at Fuselage Station (FS) 218.125, and Modification No. 6/1462 introduces fuselage side frames of this material at FS 219.525.

**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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless already accomplished.

To prevent failure of the fuselage because of cracks in the fuselage side frames, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 78–26–02), and thereafter as indicated below, inspect the fuselage side frames for cracks at FS 218.125 and FS 219.525, as applicable (see chart below) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin (SB) No. 6/371, dated June 2, 1978. Utilize the following chart to determine which fuselage stations are affected:

| Serial Nos. | Modification 6/1553 incorporated | Fuselage stations affected (both sides) |
|---|---|---|
| 1 through 395 | No ..... | 218.125 and 219.525. |
| 1 through 395 | Yes ..... | 219.525 only. |
| 396 through 411. | N/A ..... | 219.525 only. |

**Note 3:** Modification 6/1553 incorporates fuselage side frames of improved stress corrosion resistant material at FS 218.125.

(1) If any crack is found during any inspection required by this AD, prior to further flight, accomplish one of the following:

(i) Repair the cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS: *REPAIR:* section of de Havilland SB No. 6/371, dated June 2, 1978. Reinspect thereafter at intervals not to exceed 600 hours TIS until the modification specified in paragraph (b) of this AD is incorporated; or

(ii) Replace the cracked fuselage side frame in accordance with the ACCOMPLISHMENT INSTRUCTIONS: *REPLACEMENT:* section of de Havilland SB No. 6/371, dated June 2, 1978. Reinspect any fuselage side frame not replaced at intervals not to exceed 600 hours TIS until the modification specified in paragraph (b) of this AD is incorporated.

(2) If no cracks are found, reinspect thereafter at intervals not to exceed 600 hours TIS until the modification specified in paragraph (b) of this AD is incorporated, provided no cracks are found during an inspection. If cracks are found, prior to further flight, repair or replace and reinspect as specified in paragraph (a)(1) of this AD.

(b) Within the next 4,800 TIS after the effective date of this AD, incorporate Modification Nos. 6/1461 and 6/1462 in accordance with the ACCOMPLISHMENT INSTRUCTIONS: *REPLACEMENT:* section of de Havilland SB No. 6/371, dated June 2, 1978. This consists of replacing all fuselage side frames required as specified in the following chart:

| Serial Nos. | Modification 6/1553 incorporated | Fuselage stations affected (both sides) |
|---|---|---|
| 1 through 395 | No ..... | 218.125 and 219.525. |
| 1 through 395 | Yes ..... | 219.525 only. |
| 396 through 411. | N/A ..... | 219.525 only. |

(c) Incorporating Modification Nos. 6/1461 and 6/1462 as specified in paragraph (b) of this AD is considered terminating action for the inspection requirement of this AD. The modifications may be incorporated at any time prior to the next 4,800 hours TIS after the effective date of this AD, at which time they must be incorporated.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft ACO. Alternative methods of compliance approved in accordance with AD 78–26–02 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 New York ACO.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario

M3K 1Y5 Canada; 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.

(g) This amendment supersedes AD 78–26–02, Amendment 39–3370.

Issued in Kansas City, Missouri, on March 24, 1997.

**Henry Armstrong,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–7967 Filed 3–28–97; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 39

**[Docket No. 93–ANE–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Teledyne Continental Motors IO–360, TSIO–360, LTSIO–360, IO–520, and TSIO–520 Series, and Rolls-Royce plc IO–360 and TSIO–360 Series Reciprocating Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** This notice revises an earlier proposed airworthiness directive (AD), applicable to certain Teledyne Continental Motors (TCM) IO–360, TSIO–360, LTSIO–360, IO–520, and TSIO–520 series reciprocating engines. Airworthiness directive 87–23–08 currently requires ultrasonic inspection for subsurface fatigue cracks in crankshafts installed in TCM IO–520 and TSIO–520 series engines and replacement of the crankshaft if a crack is found. The proposed AD would have superseded AD 87–23–08 by expanding the applicability of the AD to include IO–360, TSIO–360 and LTSIO–360 series engines, requiring the removal of all crankshafts manufactured using the airmelt process on all of the affected engine models and replacement with crankshafts manufactured using the vacuum arc remelt (VAR) process. That proposal was prompted by reports of crankshaft failures due to subsurface fatigue cracking on engines that had been inspected in accordance with the current AD. This action revises the proposed rule by superseding AD 87–23–08, making the new AD applicable to TCM IO–360, TSIO–360, LTSIO–360, IO–520, LIO–520, TSIO–520, LTSIO–520 and Rolls-Royce, plc IO–360 and TSIO–360 series engines, incorporating new ultrasonic inspection criteria in the AD and revising the economic impact analysis. The proposed action would still require removal of crankshafts manufactured using the airmelt process and replacement with crankshafts manufactured using the VAR process. The actions specified by this proposed AD are intended to prevent crankshaft failure and subsequent engine failure.

**DATES:** Comments must be received by April 30, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@dot.faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Ave., Suite 2–160, College Park, GA 30337–2748; telephone (404) 305–7371, fax (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 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 93–ANE–08.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299.

### 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 Teledyne Continental Motors (TCM) IO–360, TSIO–360, LTSIO–360, IO–520 and TSIO–520 series reciprocating engines was published as a supplemental notice of proposed rulemaking (SNPRM) in the **Federal Register** on August 24, 1995 (60 FR 43995). That proposal would have superseded AD 87–23–08, Amendment 39–5735 (52 FR 41937, October 30, 1987), which currently requires ultrasonic inspection of TCM IO–520 and TSIO–520 series engines for sub-surface fatigue cracks in the crankshaft and replacement of the crankshaft, if a crack is found. The proposed AD would have retained the ultrasonic inspection, but would have required the removal of crankshafts manufactured using the airmelt process and required replacement with crankshafts that were manufactured using the vacuum arc remelt (VAR) process. The proposed AD would have also expanded the affected population of engines to add the TCM IO–360, TSIO–360 and LTSIO–360 series engines to the IO–520 and TSIO–520 series engines affected by AD 87–23–08. That proposal was prompted by reports of crankshaft failures due to subsurface fatigue cracking on engines that had been inspected in accordance with AD 87–23–08. That condition, if not corrected, could result in crankshaft failure and subsequent engine failure.

Since the issuance of that SNPRM, the Federal Aviation Administration (FAA) has determined that TCM LIO–520 and LTSIO–520 and Rolls-Royce, plc IO–360 and TSIO–360 series engines are also affected and should be included in this proposal as they are identical in design and manufacturing process. The number

of engines to be added is small, estimated to be 500 worldwide. In addition, TCM has revised and improved the ultrasonic test procedure and the proposed AD should reference this new procedure. The FAA received numerous unfavorable comments centering on the FAA's data and the economic impact of the proposed AD on small entities. Additional data was presented in the SNPRM and will not be repeated here. Since the issuance of the SNPRM, there have been additional crankshaft failures due to subsurface fatigue cracking. The following table presents crankshaft failure data available to date for each of the last eleven years, showing the number of airmelt failures versus the number of VAR failures (airmelt/VAR):

| | Airmelt | | | VAR | | |
|---|---|---|---|---|---|---|
| | Engine model 360 | Engine model 520 | Total | Engine model 360 | Engine model 520 | Total |
| Year: | | | | | | |
| 1986 | 0 | 7 | 7 | 0 | 2 | 2 |
| 1987 | 2 | 6 | 8 | 0 | 1 | 1 |
| 1988 | 0 | 2 | 2 | 0 | 0 | 0 |
| 1989 | 3 | 6 | 9 | 0 | 0 | 0 |
| 1990 | 3 | 9 | 12 | 0 | 0 | 0 |
| 1991 | 0 | 5 | 5 | 1 | 0 | 1 |
| 1992 | 0 | 5 | 5 | 0 | 0 | 0 |
| 1993 | 0 | 6 | 6 | 0 | 0 | 0 |
| 1994 | 0 | 2 | 2 | 0 | 0 | 0 |
| 1995 | 1 | 1 | 2 | 0 | 0 | 0 |
| 1996 | 0 | 2 | 2 | 0 | 0 | 0 |
| Total | 9 | 51 | 60 | 1 | 3 | 4 |

In addition, the exchange price of the VAR crankshaft has increased since the regulatory process was initiated. The current price range is $2,143 to $2,599.

The number of crankshafts affected, even with the Rolls-Royce plc crankshafts added, has decreased, primarily because TCM has been replacing airmelt crankshafts with VAR crankshafts in rebuilt engines for some time. The FAA estimates that 10,100 engines are installed on aircraft of U.S. registry and would need to have the crankshaft replaced, that it would take approximately 1 work hour per engine to determine the type of crankshaft installed and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,599 and shipping will cost approximately $100. Based on these figures, the cost impact of replacing crankshafts on U.S. operators is estimated to be $27,865,900 over a 10-year period or $2,786,590 annually.

The FAA further estimates that 59,300 engines with VAR crankshafts installed would require ultrasonic inspections and the estimated cost of performing an ultrasonic inspection is $200. The FAA estimates that approximately 10%, or 5,930 engines, would need to be overhauled annually, so the estimated total cost impact for ultrasonic inspections is $1,186,000 annually.

Therefore, the FAA estimates the total cost impact of the AD to be $27,865,900 over a 10-year period, plus an additional $1,186,000 annually for the repetitive ultrasonic inspections.

Since this change expands 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.

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 andProcedures (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:

**Teledyne Continental Motors and Rolls-Royce, plc:** Docket No. 93–ANE–08.

*Applicability:* Teledyne Continental Motors (TCM) IO–360, LTSIO–360, TSIO–360, IO–520, LIO–520, LTSIO–520 and TSIO–520 series engines built on or prior to December 31, 1980; rebuilt TCM IO–360, LTSIO–360, TSIO–360, IO–520, LIO–520, LTSIO–520 and TSIO–520 series engines with serial numbers lower than those listed in TCM Critical Service Bulletin (SB) No. CSB96–8, dated June 25, 1996; TCM factory overhauled IO–360, LTSIO–360, TSIO–360, IO–520, LIO–520, LTSIO–520 and TSIO–520 series engines with serial number of 901203H and lower; and Rolls-Royce, plc IO–360 and TSIO–360 series engines with any serial number. These engines are installed on but not limited to the following aircraft: Raytheon (formerly Beech) models 95–C55, 95–C55A, D55, D55A, E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, S35, V35, V35A, V35B, E33A, E33C, 35–C33A, 36, A36, F33A,

F33C and A36TC; Bellanca model 17–30A; Cessna models 172XP, A185, 188, A188, 206, T206, 207, T207, 210, T210, P210, 310R, T310P, T310Q, T310R, 320D, 320E, 320F, 336, 337, T337, P337, 340, 401, 402, 414 and T41B/C; Colemill conversion of Commander 500A; Goodyear Airship Blimp 22; Maule model M–4; Mooney model M20–K; Navion model H; Pierre Robin HR 100; The New Piper Aircraft, Inc. (formerly Piper Aircraft Company) models PA28–201T, PA28R–201T, PA28RT–201T, PA34–200T and PA34–220T; Prinair Dehavilland Heron; Reims models FR172, F337 and FT337; and Swift Museum Foundation, Inc. models GC–1A and GC–1B equipped with the IO–360 engine.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent crankshaft failure and subsequent engine failure, accomplish the following:

(a) At the next engine overhaul, or whenever the crankshaft is next removed from the engine, after the effective date of this AD, whichever occurs first, determine if the crankshaft was manufactured using the airmelt or vacuum arc remelt (VAR) process in accordance with the identification procedure described in TCM Critical SB No. CSB96–8, dated June 25, 1996. If the crankshaft was manufactured using the airmelt process or if the manufacturing process is unknown, remove the crankshaft from service and replace with a serviceable crankshaft manufactured using the VAR process.

(b) For all TCM IO–360, LTSIO–360, TSIO–360, IO–520, LIO–520, LTSIO–520 and TSIO–520 and Rolls-Royce, plc IO–360 and TSIO–360 engine models that have VAR crankshafts installed, regardless of serial number; at the next and every subsequent crankshaft removal from the engine case or installation of a replacement crankshaft, prior to crankshaft installation in the engine, conduct an ultrasonic inspection of the crankshaft in accordance with the procedures specified in TCM Mandatory SB No. MSB96–10, dated August 15, 1996, and, if necessary, replace with a serviceable part.

**Note 2:** Accomplishment of the ultrasonic inspection required by this AD does not fulfill any requirements for magnaflux or any other inspections specified in TCM or Rolls-Royce, plc overhaul manuals.

(c) The ultrasonic inspection of the crankshaft must be performed by a non-destructive test (NDT) ultrasonic (UT) Level II inspector who is qualified under the guidelines established by the American Society of Nondestructive Testing or MIL–STD–410 or FAA-approved equivalent, or must be trained by TCM personnel or their designated representative on how to accomplish and conduct this inspection procedure. The person approving the engine for return to service is required to verify that the UT inspection was accomplished in accordance with the requirements of this paragraph.

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

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

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

Issued in Burlington, Massachusetts, on March 12, 1997.

**James C. Jones,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 97–7978 Filed 3–28–97; 8:45 am]

BILLING CODE 4910–13–U

## FEDERAL TRADE COMMISSION

## 16 CFR Part 425

## Request for Comments Concerning Rule Regarding Use of negative Option Plans by Sellers in Commerce

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for public comments.

**SUMMARY:** The Federal Trade Commission (''Commission'') requests public comments about the overall costs and benefits and the continuing need for its Trade Regulation Rule regarding the Use of Negative Option Plans by Sellers in Commerce (''the Negative Option Rule'' or ''the Rule''), as part of the Commission's systematic review of all current Commission regulations and guides.

**DATES:** Written comments will be accepted until June 2, 1997.

**ADDRESSES:** Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments should be identified as ''Negative Option Rule, 16 CFR Part 425—Comment.''

**FOR FURTHER INFORMATION CONTACT:** Edwin Rodriguez, Attorney, Federal Trade Commission, Washington, D.C. 20580, telephone number (202) 326–3147.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Negative Option Rule*

The Commission promulgated the Negative Option Rule on February 15, 1973, 38 FR 4896 (1973), under section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45.[1] The Rule became effective on June 7, 1974. In promulgating the Rule following a rulemaking proceeding, the Commission made the following findings:

(1) marketers of prenotification negative option plans had failed to disclose adequately the provisions of such plans to the detriment of their subscribers, Id. at 4899;

(2) subscribers had encounters difficulties in substantiating that they were not given adequate time to respond to the negative option notice supplied by the merchandiser, Id. at 4900;

(3) marketers of prenotification negative option plans had delivered unordered or substituted merchandise in the place of merchandise specifically ordered by subscribers, without their subscribers' prior consent, Id.;

(4) marketers of prenotification negative option plans had failed to honor proper cancellation notices from contract-complete subscribers[2] and continued to send them merchandise, Id. at 4901;

(5) subscribers had been dunned or billed for unordered merchandise, and sellers had failed to provide meaningful service to a large number of their subscribers in connection with complaints involving operations, particularly in regard to billing problems, Id.; and

(6) marketers of prenotification negative option plans had operated their entire systems in such a manner as to place the burden for correcting ''errors'' on their subscribers, Id. at 4902.

Based on these findings, the Commission determined that it was in the public interest to prescribe

[1] Section 5 of the FTC Act declares unfair methods of competition and unfair or deceptive acts or practices to be unlawful.

[2] Negative option plans often require subscribers to purchase a minimum quantity of merchandise, after which they may cancel their subscriptions. The Rule refers to a subscriber who has purchased the minimum quantity of merchandise required by the terms of the plan as a ''contract-complete subscriber.''

regulations for the operation of prenotification negative option plans.[3] The Rule defines covered ''negative option plans'' as contractual arrangements under which a seller and a subscriber enter into an agreement whereby the seller periodically sends the subscriber an announcement in advance (the ''prenotification'') that identifies merchandise it proposes to send to the subscriber, and thereafter bills the subscriber for the merchandise unless the subscriber instructs the seller by a date or within a time specified in the announcement not to send the merchandise (the ''negative option'').[4] In summary, the Negative Option Rule requires a seller using a prenotification ''negative option plan'' to:

(1) disclose specific material information about the plan ''clearly and conspicuously'' in promotional materials;

(2) send the subscriber an announcement (which identifies the merchandise selection to be sent) in advance of shipping merchandise and give the subscriber a specific amount of time to notify the seller that the subscriber does not want the selection (otherwise, the seller may send the merchandise and bill the subscriber for it);

(3) notify subscribers that they may return merchandise with return postage guaranteed and receive credit under certain circumstances;

(4) give credit to subscribers and guarantee postage adequate to return merchandise under certain circumstances;

(5) ship introductory and bonus merchandise within four weeks of receipt of an order;

(6) terminate promptly the subscription of a contract-complete subscriber upon written request; and

(7) ship substitute merchandise only with the express consent of the subscriber.

In 1986, the Commission conducted a review of the Negative Option Rule pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., to determine the impact of the Rule on small entities. In a **Federal Register** notice published on November 21, 1986, 51 FR 42087, the Commission announced the results of that review, concluding that ''there is a continued need for the Rule; there is no reason to believe that the Rule has had a significant economic impact on a substantial number of small entities; and the rule should not be changed.''

*B. Treatment of Unordered Merchandise*

In commenting on the Negative Option Rule; interested parties should be aware of certain other legal requirements that apply to any marketer who ships and attempts to collect for unordered merchandise. Specifically, it is unlawful to send any merchandise by any means without the express prior request of the recipient (unless the merchandise is clearly identified as a gift, free sample, or the like, or is mailed by a charitable organization soliciting contributions); or, to try to obtain payment for or the return of the unordered merchandise. Merchandise sent without the customer's prior express agreement may be treated as unordered merchandise pursuant to section 3009 of the Postal Reorganization Act of 1970, 39 U.S.C. 3009, and section 5 of the FTC Act.[5] Customers who receive unordered merchandise are legally entitled to treat the merchandise as a gift. The law concerning unordered merchandise is not being reviewed in this proceeding. An understanding of how that law works in tandem with the Negative Option Rule, however, is useful.

## II. Regulatory Review Program

The Commission has determined to review all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or recision. Therefore, the Commission solicits comments on, among other things, the economic impact of and the continuing need for the Negative Option Rule; possible conflict between the Rule and state, local, or other federal laws; and the effect on the Rule of any technological, economic, or other industry changes.

## III. Request for Comment

The Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Negative Option Rule?

(a) What benefits has the Rule provided to purchasers of the products affected by the Rule?

(b) Has the Rule imposed costs on purchasers?

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on firms subject to its requirements? How would these changes affect the benefits to purchasers?

(3) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

(a) Has the Rule provided benefits to such firms? If so, what benefits?

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule? For example, do sellers use E-mail or the Internet to promote or sell subscriptions to negative option plans? If so, in what manner; and does use of this new technology affect consumers' rights or sellers' responsibilities under the Rule?

(7) Are there any abuses occurring in the promotion, sale, or operation of negative option plans that are not prohibited or regulated by the Rule? If so, what mechanisms should be explored to address such abuses (e.g., consumer education, industry self-regulation, rule amendment)?

[3] The Rule applies only to prenotification negative option plans, i.e., those in which marketers send a notice of selection to subscribers prior to shipment of merchandise and ship and bill the subscriber for the merchandise if the subscriber does not return a rejection notice within a prescribed time. The Rule does not apply to negative option marketing arrangements under which marketers optionally tender merchandise to subscribers without previously sending a prenotification announcement. The Commission determined that the latter arrangements that were used at the time the Commission promulgated the Rule (which were known as continuity plans, subscription shipments, library standing order arrangements, or annual and series arrangements) were so different from the prenotification negative option plans (such as book and record clubs) that separate treatment by the Commission would be warranted if and when consumer complaints justified Commission attention. Id. at 4908.

[4] The Commission considered and rejected assertions that it should ban prenotification negative option plans as being inherently unfair. Id. at 4902–04.

[5] Under section 3009(a) of the Postal Reorganization Act, mailing of unordered merchandise constitutes a violation of section 5 of the FTC Act. In a public notice it published on September 11, 1970, the Commission formally recognized section 3009 as the proper interpretation of section 5, 35 FR 14328 (1970). In order to clarify the 1970 notice and avoid misunderstanding concerning the Commission's enforcement policy, the Commission published an additional notice on January 31, 1978, stating that the standard under section 5 of the FTC Act was not limited to unordered merchandise sent by U.S. mail. The Commission explained that it might, for example, prosecute as a violation of section 5 a nonmail shipment of merchandise that does not meet the standards of 39 U.S.C. 3009, 43 FR 4113 (1978).

**List of Subjects in 16 CFR Part 425**

Trade practices.

**Authority:** 15 U.S.C. 41–58.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97–8064 Filed 3–28–97; 8:45 am]

BILLING CODE 6750–01–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

## 36 CFR Part 1258

**RIN 3095–AA71**

## NARA Reproduction Fee Schedule

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** NARA proposes to revise its schedule of fees for reproduction of records created by other Federal agencies and transferred to the custody of the Archivist of the United States; donated historical materials; Presidential records and Presidential historical materials transferred to the custody of the Archivist; and records filed with the Office of the Federal Register. The fees are being changed to reflect current costs of providing the reproductions. This rule will affect members of the public and Federal agencies who order reproductions from NARA.

**DATES:** Comments must be received by May 30, 1997.

**ADDRESSES:** Submit comments to the Regulation Comment Desk (NPOL), Room 4100, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. Comments may also be faxed to (301)713–7270.

**FOR FURTHER INFORMATION CONTACT:** Nancy Allard on (301) 713–7360.

**SUPPLEMENTARY INFORMATION:** The fees for reproduction of records promulgated in 36 CFR Part 1258 are set in accordance with 44 U.S.C. 2116(c), which requires that, to the extent possible, NARA recover the actual cost of making copies of records and other materials transferred to the custody of the Archivist of the United States. In general, NARA has chosen to recoup only the order handling labor, the direct materials costs, shipping, and the labor directly associated with making the reproduction. The majority of these fees were last revised in 1991 on the basis of a cost study conducted in 1989 and 1990. That study concentrated on a few ''typical'' organizations in the Washington, DC, area and applied the resulting fees nationwide.

Since 1991, NARA costs have increased because of higher materials and shipping costs and mandatory cost of living adjustments to staff salaries. Changes in work processes from the opening of the new Archives II facility, use of vendor services for fulfillment of textual and non-textual orders in the Washington, DC, area, and a need to better reflect reproduction processes at our field locations required a comprehensive review of the reproduction process. In 1995, NARA contracted with a nationally recognized accounting firm to conduct a new fee schedule study. The activity-based costing (ABC) method was used for the study, which surveyed all NARA organizations involved in the reproduction order process.

Based on recommendations in the study, we propose to modify the way that NARA charges for certain types of reproductions. For electrostatic copies of paper documents made by NARA staff in the Washington, DC, area and original camera microfilming, we propose to use ''blended'' pricing, i.e., a price per block of copies, rather than per unit fees. This pricing structure is intended to reduce the amount of time spent by archival staff estimating the number of pages to be copied when preparing quotes for researchers and to reduce the amount of time spent by the Trust Fund staff in processing refunds for overestimated copy counts and in pursuing debt collection for underestimated copy counts. We also propose to sell copies of accessioned microfilm by the roll, rather than by the foot as we currently do, to eliminate the need to measure the film before preparing quotes and to make the pricing structure parallel to the microfilm publications program.

We propose to raise the minimum fee for mail orders from $6 to $10 to better cover the costs that are directly associated with handling an order of any size, including order tracking, payment processing, and shipping. We are deleting published fees for products and services for which there has been little demand in the past several years, including technical service fees, although fees will be computed upon request as stated in paragraph § 1258.12(i).

We are retaining the current fees for self-service paper-to-paper (10 cents per copy) and microfilm-to-paper copies (25 cents per copy), which represent approximately 42 percent of our reproduction volume. While the new fees for electrostatic copying done by NARA staff are significantly higher than the current fee, comparisons of NARA's fees to the prices charged by quick-copy shops would be misleading. Due to the fragile condition of our paper records and the need to preserve them for future use, NARA must forego the use of certain automating features available for today's copiers. We have compared our fees with those charged by similar organizations: the Library of Congress, the Georgia State Archives, and the University of Maryland Interlibrary Loan Program.

In general, our prices fall into the same range as these organizations. Using a mail order for 30 paper-to-paper copies as an example, this would be the cost to the customer at each organization:

$15 at NARA ($10 for the first block of 20 copies; $5 for each additional block of 20 copies);

$15.50 at the Library of Congress ($10 for the first 25 copies; 50¢ for each additional copy; $3 for each citation or item handled);

$15 or $25 at the Georgia State Archives (25¢ per copy with minimum mail order amounts determined by residency of the customer); and

$14.50 at the University of Maryland Interlibrary Loan Program ($12.50 for the first 20 copies; 20¢ for each additional copy).

We have removed §§ 1258.2(c)(10) and 1258.11 relating to fees for reproduction of accessioned records in response to Freedom of Information Act (FOIA) requests as unnecessary. The fees in § 1258.11 have always been identical to the fees in § 1258.12 since NARA has long held the position that the fee provisions of the FOIA do not apply to archival records, rather that our specific fee statute (44 U.S.C. 2116(c)) serves as an alternative statute for fee issues.

Finally, we propose to make this fee schedule effective July 1, 1997, as we indicate in proposed § 1258.16.

This proposed rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

**List of Subjects in 36 CFR 1258**

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend chapter XII of title 36, Code of Federal Regulations, as follows:

## PART 1258—FEES

1. The authority citation for part 1258 continues to read as follows:

**Authority:** 44 U.S.C. 2116(c).

2. Section 1258.2 is amended by revising paragraphs (c)(1)and (c)(3) through (c)(5), adding paragraph (c)(6)(v), and removing paragraph (c)(10) to read as follows:

### § 1258.2 Applicability.

* * * * *

(c) * * *

(1) National Archives Trust Fund Board publications, including microfilm publications. Prices are available from the Product Sales Section (NWPS), 700 Pennsylvania Ave., NW., Room G–9, Washington, DC 20408.

* * * * *

(3) Motion picture, sound recording, and video holdings of the National Archives and Presidential libraries. Information on the availability of and prices for reproduction of these materials are available from the Motion Picture, Sound, and Video Branch (NWDNM), 8601 Adelphi Rd., Room 3340, College Park, MD 20740–6001, or from the Presidential library which has such materials (see § 1253.3 of this chapter for addresses).

(4) Electronic records. Information on the availability of and prices for duplication are available from the Center for Electronic Records (NWRE), 8601 Adelphi Rd., Room 5320, College Park, MD 20740–6001, or from the Presidential library which has such materials (see § 1253.3 of this chapter for addresses).

(5) Still photography, including aerial film, and oversize maps and drawings. Information on the availability and prices of reproductions of records held in the Still Pictures Branch (NWDNS) and the Cartographic and Architectural Branch (NWDNC), both located at the National Archives at College Park facility, 8601 Adelphi Rd., College Park, MD 20740–6001, and in the Presidential libraries and regional records services facility (see §§ 1253.3 and 1253.7 of this chapter for addresses) should be obtained from the unit which has the original records.

(6) * * *

(v) Land entry records (order form NATF 84)—$10.

* * * * *

3. The introductory text of § 1258.4(f) is revised to read:

### § 1258.4 Exclusions.

* * * * *

(f) For records center records only:

* * * * *

4. Section 1258.10 is amended by revising paragraph (a) to read:

### § 1258.10 Mail orders.

(a) There is a minimum fee of $10 per order for reproductions which are sent by mail to the customer.

* * * * *

### § 1258.11 [Removed]

5. Section 1258.11 is removed.

6. Section 1258.12 is amended by revising paragraphs (a) through (f), removing paragraph (g), and redesignating paragraphs (h) and (i) as paragraphs (g) and (h), respectively, to read:

### § 1258.12 Fee schedule.

(a) *Certification:* $10.

(b) *Electrostatic copying:* (1) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by the customer on a NARA self-service copier: $0.10 per copy.

(2) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by NARA staff:

(i) At a Presidential library; at a regional records services facility; and, when ordered on a same-day ''cash and carry'' basis, at a Washington, DC, area facility: $0.50 per copy.

(ii) All other orders placed at a Washington, DC, area facility: $10 for the first 1–20 copies; $5 for each additional block of up to 10 copies.

(3) Oversized electrostatic copies (per linear foot): $2.50.

(4) Electrostatic copies (22 in. by 34 in.): $2.50.

(5) Microfilm or microfiche to paper copies made by the customer on a NARA self-service copier: $0.25.

(6) Microfilm or microfiche to paper copies made by NARA staff: $1.75.

(c) *Microfilm*. (1) Original negative microfilm (paper-to-microfilm): $10 for the first 1–15 images; $14 for each additional block of up to 20 pages.

(2) Direct duplicate copy of accessioned microfilm: $34.00 per roll.

(3) Positive copy of accessioned microfilm: $34.00 per roll.

(d) *Diazo microfiche duplication (per fiche):* $2.10.

(e) *Self-service video copying in the Motion Picture, Sound and Video Research Room:* (1) Initial 90-min use of video copying station with 120-minute videocassette: $20.

(2) Additional 90-minute use of video copying station with no videocassette: $14.

(3) Blank 120-minute VHS videocassette: $6.

(f) *Self-service Polaroid prints:* $9 per print.

* * * * *

7. Section 1258.16 is revised to read:

### § 1258.16 Effective date.

The fees in § 1258.12 are effective on July 1, 1997.

Dated: March 24, 1997.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 97–7898 Filed 3–28–97; 8:45 am]

BILLING CODE 7515–01–P

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## DEPARTMENT OF ENERGY

## 48 CFR Parts 915, 927, 952, and 970

**RIN 1991–AB33**

## Revisions to Rights in Data Regulations

**AGENCY:** Department of Energy.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Energy (DOE) proposes to amend its Acquisition Regulation to effect changes to its rights in technical data regulations to reflect a greater reliance upon the rights in technical data coverage in the Federal Acquisition Regulation and the requirements relating to technology transfer activities at certain DOE laboratories.

**DATES:** Written comments must be submitted no later than May 30, 1997.

**ADDRESSES:** Comments (three copies) should be addressed to: Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, Office of Policy, HR–51, Room 8H–023, 1000 Independence Avenue, SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:**

Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–8264

Judson Hightower, U.S. Department of Energy, Office of Assistant General Counsel for Technology Transfer and Intellectual Property, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–2813.

**SUPPLEMENTARY INFORMATION:**

I. Background.
II. Discussion.
III. Public Comments.
A. Consideration and Availability of Comments.
B. Public Hearing Determination.
IV. Procedural Requirements.
A. Review Under Executive order 12866.
B. Review Under Executive order 12988.
C. Review Under the Regulatory Flexibility Act.
D. Review Under the Paperwork Reduction Act.

E. Review Under the National Environmental Policy Act.
F. Review Under Executive Order 12612.

## I. Background

The Department has in place policy, reflected in Acquisition Letter 87–5, instructing its contracting officers to rely substantially on the rights in technical data coverage in the Federal Acquisition Regulation (FAR).

Congress enacted the National Competitiveness Technology Transfer Act of 1989 (Pub. L. 101–189) which had the effect of establishing technology transfer missions for certain of DOE's management and operating contractors. Acquisition Letters 88–1 and 91–8 were issued on this subject, and on December 22, 1995 (60 FR 66510), the Department promulgated technology transfer regulations to implement that Act.

The purpose of this proposed rule is to codify the policies in the acquisition letters and provide an up-to-date uniform treatment of the subject of rights in technical data, including provision for technology transfer.

## II. Discussion

### *a. General*

This proposed rule proposes to delete the existing coverage of rights in technical data, including regulations, solicitation provisions, and contract clauses currently in the Department of Energy Acquisition Regulation (DEAR). The proposed coverage would rely substantially on the rights in technical data regulations, provisions, and clauses in the Federal Acquisition Regulation (FAR), except where additional coverage would be necessary to fulfill DOE's statutory duties to disseminate data produced in its research, development and demonstration programs. Also, the coverage in Subpart 970.27 of the DEAR is proposed to be rewritten to reflect the considerations relating to and use of proposed versions of the two alternate rights in technical data clauses intended for DOE's management and operating contracts.

### *b. Section-by-Section Analysis*

The proposed rule would amend subpart 915.4 of the DEAR by revising subsection 915.413–2 to provide for the use of non-Federal personnel in the evaluation of competitive proposals. That subsection would implement the provisions of subsection 15.413–2 of the FAR. In addition, that subsection would supplement the FAR coverage at 37.204, which implements sec. 6002 of Pub. L. 103–355, the Federal Acquisition Streamlining Act of 1994, to provide DOE's process for determining that neither sufficient DOE personnel nor personnel from other Federal agencies are available to evaluate proposals, leading to the use of non-Federal personnel for that purpose. The coverage would include a standard agreement to be executed by the non-Federal evaluator, stating his or her responsibilities in the treatment of proposal data. The current source of regulatory coverage on this subject, Subpart 927.70, would be deleted. That same subpart also contains provisions dealing with the Government's rights in proposal data and holding proposal data in confidence. The proposed rule would rely on the FAR coverage on these subjects.

Subsection 915.608(d) would be added to provide a reference to the DEAR provision proposed to deal with the use of non-Federal evaluators. Subsection 927.303(b) is proposed to be amended to include reference to DOE's patent waiver regulations now promulgated at 10 CFR Part 784. In this latter regard, section 927.370 has been deleted because it is duplicative of those patent waiver regulations. Portions of sections 927.401 through 927.403 have been proposed for deletion. A new section 927.404 has been proposed to be added. It would supplement the FAR coverage at 27.404 by adding a paragraph (k) on the subcontract flowdown obligations under the rights in technical data clause at FAR 52.227–14, adding paragraph (l) to obtain, in appropriate situations, the right for DOE to require the contractor to license proprietary data relating to the subject of an individual contract to DOE or others and adding (m) dealing with a modification of the FAR clause in contracts where access to DOE restricted data is contemplated.

The proposed rule would add a section 927.408 to make clear that, as a result of DOE's statutes that require dissemination, this Department may not apply the provisions of FAR 27.408 to cosponsored or cost shared contracts. The proposed rule would also add a section 927.409 to supplement the FAR with regard to the requirement of contracting officers to include the FAR rights in technical data clause at 52.227–14. In the Department of Energy, Alternates I and V will always be used. The proposed rule would substitute definitions for use by DOE that simplify and shorten the FAR definitions. The only change to the definitions worthy of note is that computer data bases would be considered technical data and not computer software. This reflects more accurately the nature of computer data bases. They are, in fact, a form of technical data. The accurate depiction of computer data bases becomes increasingly important as a result of DOE's, the Government's, and our society's increasing reliance on computers and computer software. This change has a beneficial result in that it would create an enhanced opportunity to prepare data bases in common languages, not computer program dependent. As a result more data bases created under DOE contracts may receive wider dissemination than when data bases are considered computer software. We have also proposed a minor change to the definition of unlimited rights, also taking into account our increasing dependence on computer networks, stating expressly, what is implicit, that unlimited rights include the right to disseminate data by electronic means.

The Additional Data Requirements clause at FAR 52.227–16 would be required for use in all contracts for research, development, and demonstration except those with universities or colleges for basic or applied research of $500,000 or less.

The various existing provisions and clauses from 952.227 would be deleted from the DEAR with the intention that DOE's Contracting Officers use the provisions and clauses on the same subject that appear in FAR Subpart 52.227.

The proposed rule would insert into the DEAR Alternate VI, dealing with contractor licensing and Alternate VII, dealing with contractor access to DOE restricted data. Those alternates would be used in conjunction with the FAR Rights in Technical Data clause at 52.227–14.

The solicitation provision at Subsection 952.227–84 would be amended to make references consistent with the DEAR.

In DEAR part 970 sections 970.2705 and 970.2706 would be revised to describe the use of and the general content of the two rights in technical data clauses that would be used alternatively in DOE management and operating contracts.

The proposed rule would add a new section 970.2707 to instruct the appropriate use of the management and operating contract rights in technical data clauses.

Finally, the proposed rule would add a rights in technical data clause, 970.5204–XX, for DOE management and operating contracts that do not have a technology transfer mission and another, 970.5204–YY, for those management and operating contracts that do have a technology transfer mission.

## III. Public Comments

*A. Consideration and Availability of Comments*

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed Department of Energy Acquisition Regulation amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESS** section of this notice. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9 am and 4 pm, Monday through Friday, except Federal holidays. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR Part 1004.11).

*B. Public Hearing Determination*

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule. However, should a sufficient number of people request a public hearing, the Department will reconsider its determination.

## IV. Procedural Requirements

*A. Review Under Executive Order 12866*

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

*B. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

*C. Review Under the Regulatory Flexibility Act*

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, that requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. The contracts to which this rulemaking would apply are agreements that contemplate the creation of technical data. Normally, such contracts, and any resulting subcontracts, would be cost reimbursement type contracts. Thus, there would not be an adverse economic impact on contractors or subcontractors. Accordingly, DOE certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

*D. Review Under the Paperwork Reduction Act*

No additional information or recordkeeping requirements are proposed to be imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

*E. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the proposed amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

*F. Review Under Executive Order 12612*

Executive Order 12612, (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule, when finalized, would merely reflect current practice relating to rights in technical data. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

**List of Subjects in 48 CFR Parts 915, 927, 952, and 970**

Government Procurement.

Issued in Washington, D.C. on March 18, 1997.

**Richard H. Hopf,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set out in the preamble, Chapter 9 of Title 48 of the

Code of Federal Regulations is proposed to be amended as set forth below.

## PART 915—CONTRACTING BY NEGOTIATION

1. The authority citation for Part 915 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subsection 915.413–2 is revised to read as follows:

### 915.413–2 Evaluation of Proposals. (DOE coverage-paragraphs (e) and (f))

(e) In order to maintain the integrity of the procurement process and to assure that the propriety of proposals will be respected, the notice at FAR 15.413–2(e) for solicited proposals and FAR 15.509(d) for unsolicited proposals shall be affixed to a cover sheet attached to each proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose data or information.

(f)(1) Normally, evaluations of proposals shall be performed only by employees of the Department of Energy. As used in this section, ''proposals'' includes the offers in response to requests for proposals, sealed bids, program opportunity announcements, program research and development announcements, or any other method of solicitation where the review of proposals or bids is to be performed by other than peer review. In certain cases, in order to gain necessary expertise, employees of other agencies may be used in instances in which they will be available and committed during the period of evaluation. Evaluators or advisors who are not Federal employees, including employees of DOE management and operating contractors may be used where necessary. Where such non-Federal employees are used as evaluators, they may only participate as members of technical evaluation committees. They may not serve as members of the Source Evaluation Board or equivalent board or committee.

(2)(i) Pursuant to section 6002 of Public Law 103–355, a determination is required for every competitive procurement as to whether sufficient DOE personnel with the necessary training and capabilities are available to evaluate the proposals that will be received. This determination, discussed at FAR 37.204, shall be made in the memorandum appointing the technical evaluation committee by the Source Selection Official, in the case of Source Evaluation Board procurements, or by the Contracting Officer in all other procurements.

(ii) Where it is determined such qualified personnel are not available within DOE but are available from other Federal agencies, a determination to that effect shall be made by the same officials in the same memorandum. Should such qualified personnel not be available, a determination to use non-Federal evaluators or advisors must be made in accordance with paragraph (f)(3) of this subsection.

(3) The decision to employ non-Federal evaluators or advisors, including employees of DOE management and operating contractors, in Source Evaluation Board procurements must be made by the Source Selection Official with the concurrence of the Head of the Contracting Activity. In all other procurements, the decision shall be made by the senior program official or designee with the concurrence of the Head of the Contracting Activity. In a case where multiple solicitations are part of a single program and would call for the same resources for evaluation, a class determination to use non-Federal evaluators may be made by the DOE Procurement Executive.

(4) Where such non-Federal evaluators or advisors are to be used, the solicitation shall contain a provision informing prospective offerors that non-Federal personnel may be used in the evaluation of proposals.

(5) The nondisclosure agreement as it appears in paragraph (f)(6) of this subsection shall be signed before DOE furnishes a copy of the proposal to non-Federal evaluators or advisors, and care should be taken that the required handling notice described in paragraph (e) of this subsection is affixed to a cover sheet attached to the proposal before it is disclosed to the participant. In all instances, such persons will be required to comply with nondisclosure of information requirements and requirements involving Procurement Integrity, see FAR 3.104; with requirements to prevent the potential for personal conflicts of interest; or, where a non-Federal evaluator or advisor are acquired under a contract with an entity other than the individual, with requirements to prevent the potential for organizational conflicts of interest.

(6) Non-Federal evaluators or advisors shall be required to sign the following agreement prior to having access to any proposal:

**Nondisclosure Agreement**

Whenever DOE furnishes a proposal for evaluation, I, the recipient, agree to use the information contained in the proposal only for DOE evaluation purposes and to treat the information obtained in confidence. This requirement for confidential treatment does not apply to information obtained from any source, including the proposer, without restriction. Any notice or restriction placed on the proposal by either DOE or the originator of the proposal shall be conspicuously affixed to any reproduction or abstract thereof and its provisions strictly complied with. Upon completion of the evaluation, it is agreed all copies of the proposal and abstracts, if any, shall be returned to the DOE office which initially furnished the proposal for evaluation. Unless authorized by the contracting officer, I agree that I shall not contact the originator of the proposal concerning any aspect of its elements.

Recipient: _____

Date: _____

(End of Agreement)

3. Subpart 915.6, Source Selection, is added to read as follows:

## Subpart 915.6—Source Selection

### 915.608 Proposal evaluation. (DOE coverage-paragraph (d))

(d) Personnel from DOE, other Government agencies, consultants, and contractors, including those who manage or operate Government-owned facilities, may be used in the evaluation process as advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are to be used as advisors or as evaluators, approval and nondisclosure procedures as required by 48 CFR (DEAR) 915.413–2 shall be followed and a notice of the use of non-Federal evaluators shall be included in the solicitation. In all instances, such personnel will be required to comply with DOE conflict of interest and nondisclosure requirements.

## PART 927—PATENTS, DATA, AND COPYRIGHTS

4. The authority citation for Part 927 continues to read as follows:

**Authority:** Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, Sec. 9, (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, Sec. 152, (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, Sec. 3131(a), (42 U.S.C. 7261a.)

### 927.300 [Amended]

5. Section 927.300(b) is amended by replacing the phrase ''41 CFR 9–9.109''

as it appears in the second sentence with ''10 CFR part 784.''

**927.303 [Amended]**

6. Section 927.303(b) is amended by inserting the phrase '', pursuant to 10 CFR part 784,'' after ''advance waiver'' in the first sentence and after ''identified invention'' in the second sentence.

**927.370 [Removed and reserved]**

7. Remove and reserve section 927.370.

**927.401 [Removed]**

8. Section 927.401 is removed.

**927.402–1 [Amended]**

9. In section 927.402–1, paragraphs (c) through (g) are removed, and paragraph (h) is redesignated as paragraph (c).

**927.402–3 [Removed]**

10. Section 927.402–3 is removed.

11. Section 927.404 is added to read as follows:

**927.404 Rights in Technical Data in Subcontracts. (DOE coverage—paragraphs (g), (k), (l), and (m))**

(g)(4) Contractors are required by paragraph (d)(3) of the clause at FAR 52.227–14, as modified pursuant to 48 CFR 927.409(a)(1) to acquire permission from DOE to assert copyright in any computer software first produced in the performance of the contract. This requirement reflects DOE's established software distribution program, recognized at FAR 27.404(g)(2), and the Department's statutory dissemination obligations. When a contractor requests permission to assert copyright in accordance with paragraph (d)(3) of the Rights in Data-General clause as prescribed for use at 48 CFR 927.409(a)(1), patent counsel shall predicate its decision on the policy and procedures reflected in paragraph (e) of the clause at 48 CFR 970.5204–YY Rights in Data-Technology Transfer.

(k) *Subcontracts.* (1)(i) It is the responsibility of prime contractors and higher tier subcontractors, in meeting their obligations with respect to contract data, to obtain from their subcontractor the rights in, access to, and delivery of such data on behalf of the Government. Accordingly, subject to the policy set forth in this section, and subject to the approval of the contracting officer, where required, selection of appropriate technical data provisions for subcontracts is the responsibility of the prime contractors or higher-tier subcontractors. In many but not all instances, use of the Rights in Technical Data clause of FAR 52.227–14 in a subcontract will provide for sufficient Government rights in and access to technical data. The inspection rights afforded in Alternate V of that clause normally should be obtained only in first-tier subcontracts having as a purpose the conduct of research, development, or demonstration work or the furnishing of supplies for which there are substantial technical data requirements as reflected in the prime contract.

(ii) If a subcontractor refuses to accept technical data provisions affording rights in and access to technical data on behalf of the Government, the contractor shall so inform the Contracting Officer in writing and not proceed with the award of the subcontract without written authorization of the Contracting Officer.

(iii) In prime contracts (or higher-tier subcontracts) which contain the Additional Technical Data Requirements clause at FAR 52.227–16, it is the further responsibility of the contractor (or higher-tier subcontractor) to determine whether inclusion of such clause in a subcontract is required to satisfy technical data requirements of the prime contract (or higher-tier subcontract).

(2) As is the case for DOE in its determination of technical data requirements, the Additional Technical Data Requirements clause at FAR 52.227–16 should not be used at any subcontracting tier where the technical data requirements are fully known. Normally the clause will be used only in subcontracts having as a purpose the conduct of research, development, or demonstration work. Prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to inequitably acquire rights in the subcontractor's confidential data developed at private expense for their private use, and they shall not acquire rights to confidential data developed at private expense on behalf of the Government for standard commercial items unless required by the prime contract.

(l) *Contractor licensing.* In many contracting situations the achievement of DOE's objectives would be frustrated if the Government, at the time of contracting, did not obtain on behalf of responsible third parties and itself limited license rights in and to confidential data developed at private expense necessary to the practice of subject inventions or data first produced or delivered in the performance of the contract. Where the purpose of the contract is research, development, or demonstration, contracting officers should consult with program officials and patent counsel to consider whether such rights should be acquired. No such rights should be obtained from a small business or non-profit organization, unless similar rights in background inventions of the small business or non-profit organization have been authorized. In all cases when the contractor has agreed to include a provision assuring commercial availability of background patents, consideration should be given to securing for the Government and responsible third parties at reasonable royalties and under appropriate restrictions, co-extensive license rights for data which are proprietary data. When such a license right is deemed necessary, the Rights in Data-General clause at FAR 52.227–14 should be supplemented by the addition of Alternate VI as provided at 48 CFR 952.227–14. Alternate VI will normally be sufficient to cover proprietary contract data for items and processes that were used in the contract and are necessary in order to insure widespread commercial use or practical utilization of a subject of the contract. The expression ''subject of the contract'' is intended to limit the licensing required in Alternate VI to the fields of technology specifically contemplated in the contract effort and may be replaced by a more specific statement of the fields of technology intended to be covered in the manner described in the patent clause at 48 CFR 952.227–13 pertaining to ''Background Patents.'' Where, however, proprietary contract data cover the main purpose or basic technology of the research, development, or demonstration effort of the contract, rather than subcomponents, products, or processes which are ancillary to the contract effort, the limitations set forth in paragraphs (j)(1) through (j)(4) of Alternate VI of 48 CFR 952.227–14 should be modified or deleted. Paragraph (j) of 48 CFR 952.227–14 further provides that technical data may be specified in the contract as being excluded from or not subject to the licensing requirements thereof. This exclusion can be implemented by limiting the applicability of the provisions of paragraph (j) of 48 CFR 952.227–14 to only those classes or categories of proprietary data determined as being essential for licensing. Although contractor licensing may be required under paragraph (j) of FAR 52.227–14, the final resolution of questions regarding the scope of such licenses the terms thereof, including provisions for confidentiality, and reasonable royalties, is then left to the negotiation of the parties.

(m) *Access to restricted data.* In contracts involving access to certain categories of DOE-owned Category C–24 restricted data, as set forth in 10 CFR part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related data and technology. Accordingly, in contracts where access to such restricted data is to be provided to contractors, Alternate VII shall be incorporated into the appropriate rights in technical data clause of the contract in accordance with the instructions at 48 CFR 952.227–14. In addition, in any other types of contracting situations in which the contractor may be given access to restricted data, appropriate limitations on the use of such data must be specified.

12. Subsection 927.404–70 is added to read as follows:

**927.404–70 Statutory Programs.**

Occasionally Congress enacts legislation that authorizes or requires the Department to protect from public disclosure specific data first produced in the performance of the contract. Examples of such programs are ''the Metals Initiative'' and section 3001(d) of the Energy Policy Act. In such cases DOE Patent Counsel is responsible for providing the appropriate contractual provisions for protecting the data in accordance with the statute. Generally, such clauses will be based upon the Rights in Data-General clause prescribed for use at 48 CFR 927.409(a) with appropriate modifications to define and protect the ''protected data'' in accordance with the applicable statute. When contracts under such statutes are to be awarded, contracting officers must acquire from patent counsel the appropriate contractual provisions. Additionally, the Contracting Officer must consult with DOE program personnel and patent counsel to identify data first produced in the performance of the contract that will be recognized by the parties as protected data and what protected data will be made available to the public notwithstanding the statutory authority to withhold the data from public dissemination.

13. Section 927.408 is added to read as follows:

**927.408 Cosponsored research and development activities.**

Because of the Department of Energy's statutory duties to disseminate data first produced under its contracts for research, development, and demonstration, the provisions of FAR 27.408 do not apply to cosponsored or cost shared contracts.

14. Section 927.409 is added to read as follows:

**927.409 Solicitation provisions and contract clauses. (DOE coverage—paragraphs (a), (h), (s), and (t)).**

(a)(1) The contracting officer shall insert the clause at FAR 52.227–14, Rights in Data-General, substituting the following paragraph (a) and including the following paragraph (d)(3), Alternate I, and Alternate V in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract:

(a) Definitions.

(1) *Computer data bases,* as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) *Computer software,* as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) *Data,* as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software.

(4) *Limited rights data,* as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g)(2) if included in this clause.

(5) *Restricted computer software,* as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose Restricted Computer Software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) if included in this clause.

(6) *Technical data,* as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base. Technical data does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(7) *Unlimited rights,* as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

* * * * *

(d)(3) The Contractor agrees not to establish claim to copyright in computer software first produced in the performance of this contract without prior written permission of the patent counsel assisting the contracting activity. When such permission is granted, the patent counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to patent counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(2) However, rights in data in these specific situations will be treated as described, where the contract is—

(i) For the production of special works of the type set forth in FAR 27.405(a), but the clause at FAR 52.227–14, Rights in Data-General, shall be included in the contract and made applicable to data other than special works, as appropriate (See paragraph (i) of FAR 27.409);

(ii) For the acquisition of existing data works, as described in FAR 27.405(b) (See paragraph (j) of FAR 27.409);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case agencies may prescribe different clauses (See paragraph (n) of FAR 27.409);

(iv) For architect-engineer services or construction work, in which case contracting officers shall utilize the clause at FAR 52.227–17, Rights in Data-Special Works;

(v) A Small Business Innovation Research contract (See paragraph (l) of FAR 27.409);

(vi) For management and operating of a DOE facility or the production of data necessary for the management or operation of a DOE facility (See 970.2705); or

(vii) Awarded pursuant to a statute expressly providing authority for the protection of data first produced thereunder from disclosure or dissemination. (See 927.404–70).

(h) The contracting officer shall insert the clause at FAR 52.227–16, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the

contract. See FAR 27.406(b). This clause may also be used in other contracts when considered appropriate.

* * * * *

(s) Contracting officers shall incorporate the solicitation provision at FAR 52.227–23, Rights to Proposal Data (Technical), in all requests for proposals.

(t) Contracting officers shall include the solicitation provision at 952.227–84 in all solicitations involving research, development, or demonstration work.

**Subpart 927.70 [Removed and Reserved]**

15. Subpart 927.70 (Secs. 927.7000 through 927.7005) is removed and reserved.

## PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. The authority citation for Part 952 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

**§ 952.227–13 [Amended]**

17. Subsection 952.227–13 is amended in paragraph (a) of the clause by inserting the sentence ''See 10 CFR part 784.'' at the end of the definition of ''DOE patent waiver regulations'' and in paragraph (c)(1)(ii) of the clause by inserting ''(10 CFR part 784)'' after the phrase ''patent waiver regulations''.

18. Subsection 952.227–14 of part 952 is added to read as follows:

**952.227–14 Rights in data—general. (DOE coverage alternates VI and VII)**

**Alternate VI (XXX 1997)**

As prescribed at 48 CFR 927.404(l) insert Alternate VI to require the contractor to license data regarded as limited rights data or restricted computer software to DOE and third parties at reasonable royalties upon request by the Department of Energy.

(j) *Contractor Licensing.* Except as may be otherwise specified in this contract as data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any limited rights data or restricted rights software on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obliged to license any such data if the contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternate available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

(End of Alternate)

**Alternate VII (XXX 1997)**

As prescribed in 48 CFR 927.404(m) insert Alternate VII to limit the contractor's use of DOE restricted data.

Insert the parenthetical phrase ''(except Restricted Data in category C–24, 10 CFR 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology).'' after the phrase ''data first produced or specifically used by the Contractor in the performance of this contract'' in paragraph (b)(2)(i) of the clause at FAR 52.227–14.

(End of Alternate)

**952.227–73 through 952.227–83 [Removed]**

19. In part 952, subsections 952.227–73, 952.227–75, 952.227–76, 952.227–77, 952.227–78, 952.227–79, 952.227–80, 952.227–81, 952.227–82, and 952.227–83 are removed.

20. Subsection 952.227–84 is revised to read as follows:

**952.227–84 Notice of right to request patent waiver.**

Include this provision in all appropriate solicitations in accordance with 48 CFR 927.409(t).

**Right To Request Patent Waiver (XXX 1997)**

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at 952.227–13 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR part 784.

(End of Provision)

## PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

21. The authority citation for Part 970 continues to read:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

22. Section 970.2705 is revised to read as follows:

**970.2705 Rights in Data—General.**

(a) Rights in data relating to the performance of the contract and to all facilities are significant in assuring continuity of the management and operation of DOE facilities. It is crucial in assuring DOE's continuing ability to perform its statutory missions that DOE obtain rights to all data produced or specifically used by its management and operating contractors and their subcontractors. In order to obtain the necessary rights in technical data, DOE contracting officers shall assure that management and operating contracts contain either the Rights in Data clause at 48 CFR 970.5204–XX or the clause at 48 CFR 970.5204–YY. Selection of the appropriate clause is dependent upon whether technology transfer is a mission of the management and operating contract. If technology transfer is not a mission of the management and operating contractor, the clause at 48 CFR 970.5204–XX will be used. In those instances in which technology transfer is a mission, the clause at 48 CFR 970.5204–YY will be used.

(b) Employees of the management and operating contractor may not be used to assist in the preparation of a proposal or bid for the performance of services, which are similar or related to those being performed under the contract, by the contractor or its parent or affiliate organization for commercial customers unless the employee has been separated from work under the DOE contract for such period as the Head of the Contracting Activity or designee shall have directed.

(c) Management and operating contractors shall not use data acquired from other Government agencies or private entities in the performance of their contracts for the private purposes of the contractor unless the agency or entity authorizes such use.

23. Revise Section 970.2706 as follows:

**970.2706 Rights in Technical Data—Procedures.**

(a) The clauses at 48 CFR 970.5204–XX and 48 CFR 970.5204–YY both provide generally for Government ownership and for unlimited rights in the Government for all data first produced in the performance of the contract and unlimited rights in data specifically used in the performance of the contract. Both clauses provide that, subject to patent, security, and other provisions of the contract, the contractor may use contract data for its private purposes. The contractor, under either clause, must treat any data furnished by DOE or third parties in accordance with any restrictive legends contained therein.

(b) Since both clauses secure access to and, if requested, delivery of technical data used in the performance of the contract, there is generally no need to use the Additional Technical Data Requirements clause at FAR 52.227–16 in the management and operating contract.

(c)(1) Paragraph (d) of the clause at 48 CFR 970.5204–XX and paragraph (f) of the clause at 48 CFR 970.5204–YY provide for the inclusion of the Rights in Technical Data-General clause at FAR 52.227–14, with Alternates I and V, and, as appropriate and with DOE's prior approval, Alternates II, III, and IV, and the Additional Technical Data Requirements clause at FAR 52.227–16 in all subcontracts for research, development, or demonstration and all other subcontracts having special requirements for the production or delivery of data, except in those subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated by the contractor under its contract with DOE. In those latter subcontracts, the management and operating contractor shall include the Rights in Data-Facilities clause at 48 CFR 970.5204–XX.

(2) Where, however, a subcontract is to be awarded by the management and operating contractor in connection with a program, as discussed at 927.404–70, which provides statutory authority to protect from public disclosure, data first produced under contracts awarded pursuant to the program, contracting officers shall ensure that the M&O contractor includes in that subcontract the rights in data clause provided by DOE Patent Counsel, consistent with any accompanying guidance.

(d) Paragraphs (e) and (f) of the clause at 48 CFR 970.5204–XX and paragraphs (g) and (h) of the clause at 48 CFR 970.5204–YY provide for the contractor's granting a nonexclusive license in any limited rights data and restricted computer software specifically used in performance of the contract.

(e) The Rights in Data-Technology Transfer clause at 48 CFR 970.5204–YY differs from the clause at 48 CFR 970.5204–XX in the context of its more detailed treatment of copyright. In management and operating contracts that have technology transfer as a mission, the right to assert copyright in data first produced under the contract will be a valuable right, and commercialization of such data, including computer software, will assist the M&O contractor in advancing the technology transfer mission of the contract.

(f) Contracting officers should consult with patent counsel to assure that requirements regarding royalties and conflicts of interest associated with asserting copyright in data first produced under the contract are appropriately addressed in the Technology Transfer Mission clause of the management and operating contract. Where it is not otherwise clear which DOE contractor funded the development of a computer software package, such as where the development was funded out of a contractor's overhead account, the DOE program which was the primary source of funding for the entire contract is deemed to have administrative responsibility. This issue may arise, among others, in the decision whether to grant the contractor permission to assert copyright. See paragraph (e) of the Rights in Data-Technology Transfer clause at 970.5204–YY.

(g) In management and operating contracts involving access to DOE-owned Category C–24 restricted data, as set forth in 10 CFR part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related restricted data and technology. Alternate I to each clause shall be used where access to Category C–24 restricted data is contemplated in the performance of a contract.

24. Section 970.2707 is added to read as follows:

**970.2707 Rights in Data Clauses.**

(a) Contracting officers shall insert the clause at 48 CFR 970.5204–XX, Rights in Data-Facilities, in management and operating contracts which do not contain the clause at 48 CFR 970.5204–40, Technology Transfer Mission.

(b) Contracting officers shall insert the clause at 970.5204–YY, Rights in Data-Technology Transfer, in management and operating contracts which contain the clause at 970.5204–40, Technology Transfer Mission.

(c) In accordance with 48 CFR 970.2706(f), in contracts where access to Category C–24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors, Contracting Officers shall incorporate Alternate I of the appropriate rights in data clause prescribed in paragraph (a) or (b) of this section.

22. Subsection 970.5204–XX is added to read as follows:

**970.5204–XX Rights in Data-Facilities.**

Insert the following clause in the management and operating contracts in accordance with 48 CFR 970.2707.

**Rights in Data-Facilities (XXX 1997)**

(a) Definitions.

(1) *Computer data bases,* as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) *Computer software,* as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) *Data,* as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software.

(4) *Limited rights data,* as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) *Restricted computer software,* as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose Restricted Computer Software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) *Technical data,* as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data

base. Technical data does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(7) *Unlimited rights,* as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.*

(1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause (''Rights in Limited Rights Data'') or paragraph (f) of this clause (''Rights in Restricted Computer Software'');

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software in accordance with the provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

(1) The Contractor shall not, without prior written authorization of the Patent Counsel, establish a claim to statutory copyright in any technical data first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a royalty-free, nonexclusive, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such 08347material in the technical data prior to its delivery.

(d) *Subcontracting.*

(1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts in which technical data is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR (FAR) subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled ''Rights in Data''—General at 48 CFR 52.227–14 with the paragraph (a) of this clause substituted for paragraph (a) of that clause and including Alternates I & V, including its use with Alternate II through Alternate IV as may be required or authorized pursuant to FAR 27.409. Prior to using Alternate II, Alternate III, or Alternate IV, the Contractor shall consult with the DOE Patent Counsel.

(2) It is the responsibility of the Contractor to obtain from its Subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a Subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons or the Subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(e) *Rights in Limited Rights Data.*

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the ''Limited Rights Notice'' set forth below. All such limited rights data shall be marked with the following ''Limited Rights Notice'':

**Limited Rights Notice**

These data contain ''limited rights data,'' furnished under Contract No. _____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the ''limited rights data'' may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(c) This ''limited rights data'' may be disclosed to other Contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(d) This ''limited rights data'' may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed. This Notice shall be marked on any reproduction of this data in whole or in part.

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

(End of Notice)

(f) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the

extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the ''Restricted Rights Notice'' set forth below. All such restricted computer software shall be marked with the following ''Restricted Rights Notice'':

**Restricted Rights Notice—Long Form**

(a) This computer software is submitted with restricted rights under Government Contract No. _____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b) (1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

**Restricted Rights Notice—Short Form**

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Contract No. _____ with (name of Contractor ).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted rights computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, unlimited rights, unless the Contractor includes the following statement with such copyright notice ''Unpublished—rights reserved under the Copyright Laws of the United States.''

(g) Relationship to patents.

Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

**Alternate I (XXX 1997)**

In accordance with 48 CFR 970.2706(f), insert the parenthetical phrase ''(except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology)'' after ''technical data'' in paragraph (b)(2)(ii) of the clause at 48 CFR 970.5204–XX, as appropriate.

(End of Alternate)

26. Subsection 970.5204–YY is added to read as follows:

**970.5204–YY Rights in Data-Technology Transfer.**

Insert the following clause in management and operating contracts in accordance with 48 CFR 970.2707.

**Rights in Data-Technology Transfer (XXX 1997)**

(a) Definitions.

(1) *Computer data bases,* as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) *Computer software,* as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) *Data,* as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software.

(4) *Limited rights data,* as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.

(5) *Restricted computer software,* as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose Restricted Computer Software are as set forth in the Restricted Rights Notice of subparagraph (h) of this clause.

(6) *Technical data,* as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base. Technical data does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(7) *Unlimited rights,* as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, subject to the withholding provisions for protected CRADA information in accordance with Technology Transfer actions under this Contract;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer. If such data are limited rights data or restricted computer software the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause (''Rights in Limited Rights Data'') or

paragraph (f) of this clause (''Rights in Restricted Computer Software'');

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software in accordance with the provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General).

(1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause below. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles).

(1) The Contractor shall have the right to assert, without prior approval of the Contracting Officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The contractor shall mark each scientific or technical article first produced or composed under this contract and submitted for journal publication with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, royalty free, world-wide license in the copyright.

This manuscript has been authored by [insert the name of the contractor] under contract no. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, royalty-free, world-wide license to publish or reproduce the published form of this manuscript, or allow other to do so, for United States Government purposes.

(End of notice)

(3) The title to the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical articles).

The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) *Contractor Request to Assert Copyright.*

(i) For data other than scientific and technical articles, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. Each request by the Contractor must include:

(A) the identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes, (B) the program under which it was funded, (C) whether the data is subject to an international treaty or agreement, (D) whether the data is subject to export control, (E) a statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled ''Technology Transfer Mission,'' within five (5) years after obtaining permission to assert copyright, and (F) for data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization. For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(ii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE will be expressly withheld. Such excepted categories include data whose release (A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (B) would not enhance the appropriate transfer or dissemination and commercialization of such data, (C) would have a negative impact on U.S. industrial competitiveness, (D) would prevent DOE from meeting its obligations under treaties and international agreements, or (E) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Intellectual Property where data are determined to be subject to export controls. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. Additionally, the rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the Contracting Officer.

(2) *DOE Review and Response to Contractor's Request.* The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software

pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond and the reasons therefor.

(3) *Permission for Contractor to Assert Copyright.*

(i) For computer software, the Contractor shall furnish to a DOE designated, centralized software distribution and control point, at the time permission to assert copyright is given under paragraph (e)(2) of this clause: (A) an abstract describing the software suitable for publication, (B) the source code for each software program, and (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the Contracting Officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iii) For a period of five (5) years beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Subject to DOE approval, the five-year period for assertion of copyright is renewable for successive five year periods. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the authorized five (5) year period, or successive five year period(s) for assertion of copyright by the contractor as described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgement of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S Copyright Office. The acknowledgement of Government sponsorship and license rights shall be as follows:

NOTICE: These data were produced under Contract No._____ with the Department of Energy. The Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly. Beginning five (5) years after (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The initial five year period may have been extended for successive periods of five years, thereby allowing the contractor to assert its copyright for that additional period. However, prior to the expiration of the initial and any successive five year period, the conditions underlying the permission to assert copyright might have been violated, denying the contractor the right to assert the copyright. NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY INFORMATION, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

(End of Notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the 5 year period or successive five year period set forth in subparagraph (e)(1)(i) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65—''Appeals''.

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee and which exceeds DOE Program needs, except as expressly provided in writing by the Contracting Officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(4) The following notice may be placed on the software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the software pursuant to paragraph (c)(3) of this section.

NOTICE

This program was prepared by [Insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [Insert the Contract Number] with the Department of Energy (DOE). All rights in the program are reserved by DOE on behalf of the United States Government and the Contractor as provided in the contract. You are authorized to use this program for Governmental purposes but it is not to be released or distributed to the public. Neither the Government nor the Contractor makes any warranty, express or implied, or assumes any liability or responsibility for the use of this software. This notice including this sentence must appear on any copies of this program.

(End of Notice)

(f) *Subcontracting.*

(1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts in which technical data is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR (FAR) subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled ''Rights in Data—General'' at 48 CFR 52.227–14 with the paragraph (a) of this clause substituted for paragraph (a) of that clause and including Alternates I & V, including its use with Alternate II through Alternate IV as may be required or authorized pursuant to 48 CFR 27.409. Prior to using Alternate II, Alternate III, or Alternate IV, the Contractor shall consult with the DOE Patent Counsel.

(2) It is the responsibility of the Contractor to obtain from its Subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the

Contractor's obligations to the Government with respect to such data. In the event of refusal by a Subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons or the Subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(g) *Rights in Limited Rights Data.*

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the ''Limited Rights Notice'' set forth below. All such limited rights data shall be marked with the following ''Limited Rights Notice'':

**Limited Rights Notice**

These data contain ''limited rights data,'' furnished under Contract No. _____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the ''limited rights data'' may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(c) This ''limited rights data'' may be disclosed to other Contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(d) This ''limited rights data'' may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed. This Notice shall be marked on any reproduction of this data in whole or in part.

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

(End of Notice)

(h) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the ''Restricted Rights Notice'' set forth below. All such restricted computer software shall be marked with the following ''Restricted Rights Notice'':

**Restricted Rights Notice-Long Form**

(a) This computer software is submitted with restricted rights under Government Contract No. _____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

**Restricted Rights Notice—Short Form**

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Contract No. _____ with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted rights computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, unlimited rights, unless the Contractor includes the following statement with such copyright notice ''Unpublished-rights reserved under the Copyright Laws of the United States.''

(i) Relationship to patents.

Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

Alternate I (XXX 1996): In accordance with 970.2706(f), insert the parenthetical phrase ''(except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology)'' after ''technical data'' in paragraph (b)(2)(ii) of the clause at 970.5204–44, as appropriate.

(End of Alternate)

[FR Doc. 97–7327 Filed 3–28–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 49 CFR Part 395

## [FHWA Docket No. MC–96–28]

**RIN 2125–AD93**

## Hours of Service of Drivers

March 24, 1997.

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM); extension of comment period.

**SUMMARY:** The FHWA is extending this rulemaking's comment period until June 30, 1997. This is in response to two petitions received by the FHWA requesting an extension of the comment period closing date. The petitioners based their requests upon the FHWA's

pending publication of the Driver Fatigue and Alertness Study full report. This ANPRM is mandated by the ICC Termination Act of 1995.

**DATES:** Comments to the general ANPRM should be received no later than June 30, 1997. Late comments will be considered to the extent practicable.

**ADDRESSES:** Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** *For information regarding rulemaking and operational issues:* Mr. David Miller, Office of Motor Carrier Research and Standards, (202) 366–1790; *for information regarding human factors and fatigue research programs:* Ms. Deborah Freund, Office of Motor Carrier Research and Standards, (202) 366–1790; and *for information regarding legal issues:* Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** On November 5, 1996 (61 FR 57251), the FHWA published an ANPRM requesting answers to numerous questions related to commercial motor vehicle driver hours-of-service regulations, including fatigue, loss of alertness, and hours off duty. The ANPRM set March 31, 1997, as the docket closing date for signed, written comments.

On March 5, 1997, the Advocates for Highway and Auto Safety (AHAS) delivered a petition to the FHWA. This petition requested the FHWA to extend this rulemaking's comment period closing date by 60 days. The AHAS believes it and the public should have ample opportunity to review and critique the Driver Fatigue and Alertness Study's full report. The full report has not yet been published or placed in the docket. A 59-page technical summary and a 17-page executive summary have been placed in the docket.

On March 13, 1997, the Insurance Institute for Highway Safety (IIHS) petitioned the FHWA to extend this rulemaking's comment period closing date by 60 days. The IIHS believes it also should have ample opportunity to review and critique the Driver Fatigue and Alertness Study's full report, including its data.

At the time of the original publication in November 1996 (61 FR 57251), the FHWA believed the full report would be published and available well in advance of the comment closing date. The FHWA, however, has experienced unforeseen editorial delays in publishing the full report. The FHWA believes publication will now be accomplished by the end of April 1997. The FHWA believes it should allow the public to review and critique the full report of the Driver Fatigue and Alertness Study.

The FHWA has also conducted listening sessions, specifically listening to drivers, about how the hours-of-service regulations affect their daily lives and their recommended changes to improve the rules. See 62 FR 6161, February 11, 1997. Many interested persons have attended these sessions and would like to review the transcripts of these listening sessions. A few of the transcripts will not be delivered to the FHWA docket prior to March 31, 1997.

For the reasons above, the FHWA finds good cause to extend this ANPRM comment period closing date for 60 days after the expected publication date of the full report of the FHWA's Driver Fatigue and Alertness Study in late April 1997.

### List of Subjects in 49 CFR Part 395

Global positioning systems, Highway safety, Highways and roads, Intelligent Transportation Systems, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: March 26, 1997.

**Authority:** 23 U.S.C. 315 and 49 CFR 1.48.

**Jane Garvey,**

*Acting Administrator, Federal Highway Administration.*

[FR Doc. 97–8198 Filed 3–27–97; 1:06 pm]

BILLING CODE 4910–22–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[I.D. 032097E]**

## Groundfish Fisheries of the Bering Sea/Aleutian Islands Area and the Gulf of Alaska

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

**ACTION:** Notice of intent; scoping meetings; request for comments.

**SUMMARY:** NMFS announces its intention to prepare a supplemental environmental impact statement (SEIS) on the Federal action by which total allowable catch (TAC) specifications and prohibited species catch limits in the groundfish fisheries that are conducted in the Bering Sea and Aleutian Islands Area (BSAI) and the Gulf of Alaska (GOA) are annually established and apportioned.

NMFS will hold scoping meetings to provide for public input into the range of actions, alternatives, and impacts that the SEIS should consider. In addition to holding the scoping meetings, NMFS is accepting written comments on the range of actions, alternatives, and impacts it should be considering for this SEIS.

**DATES:** Written comments will be accepted through July 1, 1997. See **SUPPLEMENTARY INFORMATION** for meeting times and special accommodations.

**ADDRESSES:** Written comments and requests to be included on a mailing list of persons interested in the SEIS should be sent to Lori Gravel, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

See **SUPPLEMENTARY INFORMATION** for meeting locations and special accommodations.

**FOR FURTHER INFORMATION CONTACT:** Tamra Faris, (907) 586–7645.

**SUPPLEMENTARY INFORMATION:** Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the United States has exclusive fishery management authority over all living marine resources, except for migratory species, found within the exclusive economic zone between 3 and 200 nautical miles from the baseline used to measure the territorial sea.

The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in eight Regional Fishery Management Councils. The North Pacific Fishery Management Council (Council) has the responsibility to prepare fishery management plans (FMPs) for the marine resources, which it finds require conservation and management, in the Alaska region of responsibility. The Council consists of Federal and State officials having authority for fishery management and of private persons nominated by the governors of the States of Alaska,

Oregon, and Washington and appointed by the Secretary.

The FMPs must specify the optimum yield from each fishery, which would provide the greatest benefit to the Nation, and must state how much of that optimum yield can be expected to be harvested by U.S. vessels. The FMPs must also specify the level of fishing that would comprise overfishing.

The Council prepared and the Secretary approved the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area in 1981. An environmental impact statement (EIS) was prepared for the action implementing the FMP and was filed in 1981. The BSAI FMP has been amended 42 times. National Environmental Policy Act (NEPA) environmental documents have been prepared for each amendment as well as for subsequent regulatory actions, including the annual process of establishing TAC specifications.

The Council prepared and the Secretary approved the Fishery Management Plan for Groundfish of the Gulf of Alaska in 1978. An EIS was prepared for the action implementing the FMP and was filed in 1978. The GOA FMP has been amended 45 times. NEPA environmental documents have been prepared for each amendment as well as for subsequent regulatory actions, including the annual process of establishing TAC specifications.

The purpose of the original FMPs was to manage the groundfish fisheries for the optimum yield and to allocate harvest between domestic and foreign fishermen. The fisheries have evolved since then through the Council process including FMP amendments, regulations, and continued compliance with other Federal laws and executive orders. The frequencies of marine mammal, marine bird, and fish species in the biological assemblage present now are different from frequencies that existed and were displayed in 1978 and 1981 environmental analyses. Several marine species have been listed under the Endangered Species Act, some of which may be affected by fishery management actions. New information about the ecosystem, impacts of the fisheries, and management tools has become available since the EISs were prepared.

For the above reasons, NMFS has determined that a SEIS shall be prepared that incorporates the following: The amendments to the groundfish FMPs; the annual process for determining the TAC specifications; and the public processes in place for implementing new regulations, revising existing ones, and incorporating new information. Because the BSAI and GOA groundfish fisheries utilize similar resources from adjacent locations in the large North Pacific ecosystem, use similar gear deployed by interrelated constituents, and are overseen by the same Fishery Management Council, NMFS has decided to display the impacts of both fisheries in one SEIS.

The SEIS will analyze the process by which annual TAC specifications and prohibited species catch limits are determined, together with the procedures for implementing changes to those processes. The processes encompass decisions about location and timing of each fishery, harvestable amounts, exploitation rates, exploited species, groupings of exploited species, gear types and groupings, allocations, product quality, organic waste and secondary utilization, at-sea and on-land organic discard, species at higher and lower trophic levels, habitat alterations, and relative impacts to coastal communities, society, the economy, and the domestic and foreign groundfish markets. Effects of these decisions are manifested over many years in multifaceted social and biological arenas. Inherent in implementing any groundfish fisheries management regime are commitments to provide in-season management, enforcement, monitoring, stock assessment, and summary analyses. In addition to evaluating the mandated No Action Alternative (i.e., the management process that is in place now would continue to apply), the SEIS will include a full range of alternatives and discussions of their potential impacts on the biological and socioeconomic environments. NMFS is seeking suggested additional alternatives from the public through the scoping process and written responses to this document.

Preparation of the SEIS is expected to take 1 year and include distribution of a draft SEIS and incorporation of comments on it into the final SEIS.

The scoping meetings for Anchorage, Dutch Harbor, Juneau, Ketchikan, Kodiak, Portland, Seattle, and Sitka will be held at the following times and locations:

1. Juneau—June 11, 1997, 1–3 p.m., Juneau Federal Building, Room 445, 709 West 9th Street, Juneau, AK.
2. Anchorage—June 13, 1997, 2–5 p.m., Anchorage Federal Building Executive Dining Room, 222 West Seventh Avenue, Anchorage, AK.
3. Dutch Harbor—June 16, 1997, 2–5 p.m., Grand Aleutian Hotel 100 Salmon Way, Dutch Harbor, AK.
4. Kodiak—June 18, 1997, 7–10 p.m., Westmark Hotel, 236 West Rezanof Drive, Kodiak, AK, in combination with meeting of the North Pacific Fishery Management Council meeting.
5. Sitka—June 23, 1997, 1–3 p.m., University of Alaska, Sitka, Room 133, 1332 Seward Avenue (Duponski Island), Sitka, AK.
6. Seattle—June 25, 1997, 2–5 p.m., Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Room 2039, Seattle, WA.
7. Portland—June 27, 1997, 7–10 p.m., Red Lion - Downtown, 310 SW. Lincoln, Portland, OR.

## Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Rebecca Campbell (907) 586–7228 at least 5 days before the meeting dates.

Dated: March 25, 1997.

**Bruce C. Morehead,**

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

[FR Doc. 97–8059 Filed 3–28–97; 8:45 am]

BILLING CODE 3510–22–F

# Notices

Federal Register
Vol. 62, No. 61
Monday, March 31, 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

### Food and Consumer Service

### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Poverty Income Guidelines

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program). These poverty income guidelines are to be used in conjunction with the WIC Regulations.

**EFFECTIVE DATE:** July 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FCS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

**SUPPLEMENTARY INFORMATION:**

#### Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

#### Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

#### Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112 June 24, 1983).

#### Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced price school meals is 185 percent of the Federal Poverty Income Guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 1997 was published by the Department of Health and Human Services (DHHS) in the **Federal Register** on March 10, 1997 at 62 FR 10856. The guidelines published by DHHS are referred to as the poverty income guidelines.

Section 246.7(d)(1) of the WIC regulations specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced price school meals or identical to State or local guidelines for free or reduced price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced price school meals, or which are less than 100 percent of the Federal poverty income guidelines. Consistent with the method used to compute eligibility guidelines for reduced price meals under the National School Lunch Program, the poverty income guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC poverty income limits by household size for the period July 1, 1997 through June 30, 1998. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.). State agencies may coordinate implementation with the revised Medicaid guidelines, but in no case may implementation take place later than July 1, 1997. State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines July 1, 1997. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 1997 to June 30, 1998]

| Household size | Federal Poverty Guidelines | | | Reduced Price Meals—185% | | |
|---|---|---|---|---|---|---|
| | Annual | Month | Week | Annual | Month | Week |
| **48 CONTIGUOUS UNITED STATES, DISTRICT OF COLUMBIA, GUAM AND TERRITORIES** | | | | | | |
| 1 | 7,890 | 658 | 152 | 14,597 | 1,217 | 281 |

INCOME ELIGIBILITY GUIDELINES—Continued

[Effective from July 1, 1997 to June 30, 1998]

| Household size | Federal Poverty Guidelines | | | Reduced Price Meals—185% | | |
|---|---|---|---|---|---|---|
| | Annual | Month | Week | Annual | Month | Week |
| 2 | 10,610 | 885 | 205 | 19,629 | 1,636 | 378 |
| 3 | 13,330 | 1,111 | 257 | 24,661 | 2,056 | 475 |
| 4 | 16,050 | 1,338 | 309 | 29,693 | 2,475 | 572 |
| 5 | 18,770 | 1,565 | 361 | 34,725 | 2,894 | 668 |
| 6 | 21,490 | 1,791 | 414 | 39,757 | 3,314 | 765 |
| 7 | 24,210 | 2,018 | 466 | 44,789 | 3,733 | 862 |
| 8 | 26,930 | 2,245 | 518 | 49,821 | 4,152 | 959 |
| For each add'l family member add | +2,720 | +227 | +53 | +5,032 | +420 | +97 |
| **ALASKA** | | | | | | |
| 1 | 9,870 | 823 | 190 | 18,260 | 1,522 | 352 |
| 2 | 13,270 | 1,106 | 256 | 24,550 | 2,046 | 473 |
| 3 | 16,670 | 1,390 | 321 | 30,840 | 2,570 | 594 |
| 4 | 20,070 | 1,673 | 386 | 37,130 | 3,095 | 715 |
| 5 | 23,470 | 1,956 | 452 | 43,420 | 3,619 | 835 |
| 6 | 26,870 | 2,240 | 517 | 49,710 | 4,143 | 956 |
| 7 | 30,270 | 2,523 | 583 | 56,000 | 4,667 | 1,077 |
| 8 | 33,670 | 2,806 | 648 | 62,290 | 5,191 | 1,198 |
| For each add'l family member add | +3,400 | +284 | +66 | +6,290 | +525 | +121 |
| **HAWAII** | | | | | | |
| 1 | 9,070 | 756 | 175 | 16,780 | 1,399 | 323 |
| 2 | 12,200 | 1,017 | 235 | 22,570 | 1,881 | 435 |
| 3 | 15,330 | 1,278 | 295 | 28,361 | 2,364 | 546 |
| 4 | 18,460 | 1,539 | 355 | 34,151 | 2,846 | 657 |
| 5 | 21,590 | 1,800 | 416 | 39,942 | 3,329 | 769 |
| 6 | 24,720 | 2,060 | 476 | 45,732 | 3,811 | 880 |
| 7 | 27,850 | 2,321 | 536 | 51,523 | 4,294 | 991 |
| 8 | 30,980 | 2,582 | 596 | 57,313 | 4,777 | 1,103 |
| For each add'l family member add | +3,130 | +261 | +61 | +5,791 | +483 | +112 |

Dated: March 21, 1997.

**William E. Ludwig,**

*Administrator.*

[FR Doc. 97–8096 Filed 3–28–97; 8:45 am]

BILLING CODE 3410–30–P

## Food Safety and Inspection Service

**[Docket No. 97–002N]**

## Solicitations for Bids on Proposals Relating to FSIS's Farm to Table Strategy

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) has announced in the Commerce Business Daily a series of solicitations for bids concerning animal production practices as they relate to food safety. Four of these solicitations consist of demonstrating voluntarily implemented pre-slaughter practices that reduce contaminants in or on food animals presented for slaughter and enhance the ability of slaughter establishments to meet pathogen reduction performance standards and institute sound risk-based HACCP plans for incoming animals. The interest areas are pork, poultry, non-fed beef and sheep. A fifth project is to learn what training methodologies have been effective in improving food animal production safety practices. A sixth project is to support a survey of small producers to determine producer needs as slaughter establishments develop pathogen reduction HACCP systems.

**ADDRESSES:** Solicitation packages may be requested from Julie Adams, Head, Acquisition Agreements Section, Room 2161, South Agriculture Building, FSIS, USDA, Washington, DC 20250; FAX (202) 690–1814.

**FOR FURTHER INFORMATION CONTACT:** Refer to the Commerce Business Daily, dated 2/27/97, page 4.

**SUPPLEMENTARY INFORMATION:**

### Background

In the final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (61 FR 38806), published on July 25, 1996, FSIS discussed its farm-to-table food safety strategy (61 FR 38810). This strategy focuses on the control of food safety hazards throughout the continuum of animal production, slaughter and processing, distribution, and sale of meat and poultry products. FSIS has historically focused on the manufacturing of meat and poultry products through its inspection program; however, the Agency's public health mandate requires that it also consider the pre- and post-processing hazards as part of a comprehensive strategy to prevent foodborne illness.

The farm-to-table food safety strategy is founded on three principles:

- Hazards that could result in foodborne illness arise at each stage of the farm-to-table continuum: animal production and slaughter, and the processing, transportation, storage, and retail, restaurant, or food service sale of meat and poultry products. Each stage presents hazards of pathogen and other contamination and each provides opportunities for minimizing the effect of those hazards.
- Those in control of each segment of the farm-to-table continuum bear responsibility for identifying and preventing or reducing food safety hazards that are under their operational control.

• The Agency's public health mandate requires that it address foodborne illness hazards within each segment of the food production chain and implement or encourage preventive strategies that improve the whole system.

As part of this farm-to-table strategy, FSIS is interested in supporting a series of pilot demonstration projects which may assist food animal producers, markets, the slaughter and processing industry, and the Agency in meeting food safety challenges in a preventive HACCP framework. These projects are intended to develop and foster voluntary food safety measures that can reasonably be taken on the farm, through marketing channels, and during preslaughter preparation to decrease public health hazards in animals presented for slaughter.

Therefore, the Agency has announced in the Commerce Business Daily a series of solicitations for bid on proposals to gain information concerning animal production practices as they pertain to food safety. Briefly, these solicitations are as follows:

**Proposals 1–4—Pathogen Reduction in Four Species**

FSIS is interested in funding pilot projects that use risk assessment strategies to demonstrate the application, feasibility, and effectiveness of current technologies for controlling contaminants and that emphasize pre-slaughter pathogen reduction. Multi-disciplinary teams in multiple geographical locations are required. Projects must demonstrate multi-geographical and multi-seasonal applicability.

There are four project/species areas of interest: pork, poultry, non-fed beef, and sheep. For poultry, there is information available on intervention methods used to reduce pathogens in/on poultry during production and transportation to slaughter. A possible approach would be to demonstrate whether or not multi-faceted (two or more) risk reduction practices carried out pre-slaughter could reliably reduce carcass contamination. With regard to pork, non-fed beef, and sheep, the Agency is interested in learning the relationship of current production practices to the incidence of pathogens in slaughter facilities. Using animal identification techniques to improve information-sharing between production and slaughter/processing entities is required for non-fed beef and encouraged for pork and sheep.

**Proposal 5—Training for Food Animal Producers**

FSIS is also interested in learning which training methodologies will work best to maximize the effectiveness of future food safety initiatives directed at food animal producers, particularly small producers. The purpose of these programs is to improve the ability of food animal producers to maintain sustainable operations as they address requirements of slaughter establishments implementing preventive HACCP systems and other food safety responsibilities.

**Proposal 6—Survey of Small Producer HACCP Needs**

FSIS is interested in supporting a survey of small producers and small and very small slaughter establishments. The purpose of the survey is to determine the needs of producers who supply slaughter establishments as these establishments consider developing pathogen reduction and HACCP systems. Proposals should address multiple geographic locations with a focus on disadvantaged areas and various slaughter classes. The evaluation must include access to and use of veterinary services, knowledge and implementation of commodity food safety/quality assurance programs, and recordkeeping practices for animal drug use.

Done at Washington, DC, on March 24, 1997.

**Thomas J. Billy,**

*Administrator.*

[FR Doc. 97–7996 Filed 3–28–97; 8:45 am]

BILLING CODE 3410–DR–P

## Natural Resources Conservation Service

## Changes in the State Technical Guides in Oregon

**AGENCY:** Natural Resources Conservation Service (formerly the Soil Conservation Service), USDA.

**ACTION:** Notice of change.

**SUMMARY:** Pursuant to section 343 of Subtitle E of the Federal Agricultural Improvement and Reform Act of 1996 (FAIRA) that requires the Secretary of Agriculture to provide public notice and comment under Section 553 of Title, United States Code, with regard to any future technical guides that are used to carry out Subtitles A, B, and C of Title XII of the Food Security Action of 1985 (16 U.S.C. 3801 *et seq.*), the Natural Resources Conservation Service, United States Department of Agriculture, gives notice of revisions to all conservation practices in Section IV of the State technical guides in Oregon. The distribution of these revisions and an updated index of conservation practices standards and specifications will be via Oregon Bulletin OR 450–7–2 dated March 14, 1997.

These revisions to conservation practices in Section IV of State technical guides are subject to these provisions since one or more used or could be used as part of a conservation management system to comply with the Highly Erodible Land Conservation or Wetland Conservation requirements.

**FOR FURTHER INFORMATION CONTACT:** Roy M. Carlson, Jr., Leader—Technology Development, USDA–NRCS, 101 SW Main, Suite 1300, Portland, OR 97204–3221. FAX (503) 414–3277 or Internet: rcarlson@or.nrcs.usda.gov.

A copy of the new index and any of the revised items can be obtained from Roy Carlson. These items will also be available at each of the NRCS field offices in Oregon beginning March 31, 1997. Comments can be sent to Roy Carlson at the NRCS state office in Portland, Oregon.

**SUPPLEMENTARY INFORMATION:** In Oregon, ''technical guides'' refers to the Field Office Technical Guide maintained at each NRCS field Office in Oregon. The previous revisions to conservation practices in technical guides in Oregon were issued in June 1994. The former Oregon ''Index of Conservation Practice Standards and Specifications'' was dated June 1994. The revised conservation practices and revised index will be dated March 1997 and include all of the conservation practices and standards and conservation practice specifications. Revisions include word changes, reformatting sections of practice standards to be consistent with new national guidelines, name changes, renumbering, additions, deletions and redating.

Dated: March 25, 1997.

**Leonard Jordan,**

*Asst. State Conservationist, Natural Resources Conservation Service.*

[FR Doc. 97–8023 Filed 3–28–97; 8:45 am]

BILLING CODE 3410–16–M

## Rural Business-Cooperative Service

## Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Proposed collection; Comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection or recordkeeping requirements contained in the Federal-State Research on Cooperatives Program, as found in 7 CFR Part 4285.

**DATES:** Comments on this notice must be received on or before May 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Thomas Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, Stop 3252, Room 4204, 1400 Independence Ave. SW, Washington, DC 20080–3252, telephone (202) 690–0368. (This is not a toll free number.) E-mail: tstaff@rurdev.usda.gov. The Federal Information Relay service on 1–800–877–8339 may be used by TDD users.

**SUPPLEMENTARY INFORMATION:**

*Title:* Federal-State Research on Cooperatives Program.

*OMB Number:* 0570–0005.

*Expiration Date of Approval:* June 30, 1997.

*Type of Request:* Intent to extend the currently approved information collection and record keeping requirements.

*Abstract:* The Federal-State Research on Cooperatives (FSROC) Program, is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq*). The FSROC Program is a matching fund program designed to assist State Department of Agriculture and State Agricultural Experiment Stations in conducting research related to cooperatives. The program is not currently funded, but existing agreements are in place and future funding is anticipated.

The FSROC Program is conducted using cooperative agreements which include a need for reporting information on the project proposals. In addition, the accepted proposals are required to keep financial records of the project funds and to make program and financial progress reports on a quarterly basis.

*Estimate of Burden:* Public reporting for this collection information is estimated to average 3.48 hours per response with a variation of from 10 minutes to 36 hours.

*Respondents:* State departments of Agriculture, State Agricultural Experiment Stations, and other related State agencies.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses Per Respondent:* 14.25.

*Estimated Total Annual Burden on Respondents:* 1712 Hours.

Copies of this information collection and record keeping can be obtained from Sam Spencer, Regulations and Paperwork Management Division, at (202) 720–9588.

**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 will have practical utility; (b) 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; (c) ways to enhance the quality, to 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 forms of information technology. Comments may be sent to Sam Spencer, Regulations and Paperwork Management Division, U. S. Department of Agriculture, Rural Development, STOP 0743, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 21, 1997.

**Dayton J. Watkins,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 97–7997 Filed 3–28–97; 8:45 am]

BILLING CODE 3410–XY–U

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

### Business Development Center Applications: Chicago I and Chicago II

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Cancellation.

**SUMMARY:** The Minority Business Development Agency (MBDA) is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Chicago I and Chicago II MBDCs. This solicitation was originally published in the **Federal Register,** Tuesday, June 18, 1996, Vol. 61, No. 118, page 30856.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development Center)

Dated: March 25, 1997.

**Frances B. Douglas,**

*Alternate Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 97–8022 Filed 3–28–97; 8:45 am]

BILLING CODE 3510–21–M

## National Institute of Standards and Technology

### Manufacturing Extension Partnership Program Evaluation Survey

**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 30, 1997.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Phone number: (202) 482–3272.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to: Elizabeth Bury, Manufacturing Extension Partnership, Building 301, Room C–100, National Institute of Standards and Technology, Gaithersburg, Maryland 20899; phone: (301) 975–3944, and fax: (301) 926–3787.

**SUPPLEMENTARY INFORMATION**

**I. Abstract**

This submission under the Paperwork Reduction Act represents a request for extension of a currently approved collection by the Department of Commerce's National Institute of Standards and Technology. The information collection activity referenced is being conducted in partnership with the Department's Bureau of the Census.

The Manufacturing Extension Partnership (MEP) is a nationwide

system of services and support for smaller manufacturers giving them unprecedented access to new technologies, resources, and expertise. Sponsored by the National Institute of Standards and Technology, the MEP is comprised of a network of locally based manufacturing extension centers working with small manufacturers to help them improve their manufacturing competitiveness.

Obtaining specific information from clients about the impact of MEP services is essential for the National Institute of Standards and Technology officials to evaluate program strengths and weaknesses and plan improvements in program effectiveness and efficiency. This information is not available from existing programs or other sources.

### II. Method of Collection

The survey will be administered using Computer Assisted Telephone Interviewing (CATI) technology.

### III. Data

*OMB Number:* 0693–0021.

*Form Number:* None.

*Type of Review:* Renewal of an existing collection.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated Number of Respondents:* 8,460.

*Estimated Total Annual Burden Hours:* 1,410.

*Estimated Time Per Response:* 10 minutes.

*Estimated Annual Cost:* There is no cost to respondents other than their time to respond to the survey.

### IV. Requests 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 will also become a matter of public record.

Dated: March 25, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–7980 Filed 3–28–97; 8:45 am]

BILLING CODE 3510–13–P

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## National Oceanic and Atmospheric Administration

**[I.D. 032197B]**

## Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Socioeconomic Assessment Panel (SEP).

**DATES:** The meeting will be held beginning at 1:00 p.m. on Wednesday, April 23, 1997 and will conclude on Friday, April 25, 1997.

**ADDRESSES:** This meeting will be held at the Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL; telephone: 813–281–8900.

*Council address*: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Antonio B. Lamberte, Economist; telephone: 813–228–2815.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review available social and economic data on the Gulf migratory group of king and Spanish mackerels and to determine the social and economic implications of the levels of acceptable biological catches recommended by the Council's Mackerel Stock Assessment Panel. The SEP may recommend to the Council total allowable catch levels for the 1997–1998 fishing year.

A copy of the agenda can be obtained by contacting the Gulf Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 16, 1997.

Dated: March 24, 1997.

**Bruce C. Morehead,**

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

[FR Doc. 97–8061 Filed 3–28–97; 8:45 am]

BILLING CODE 3510–22–F

**[I.D. 032497B]**

## Western Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Western Pacific Fishery Management Council will hold its 92nd meeting.

**DATES:** The meetings will be held on April 21–25, 1997. See SUPPLEMENTARY INFORMATION for specific dates and times.

**ADDRESSES:** The meetings will be held at the Ala Moana Hotel, Garden Lanai and Pakalana/Anthurium Rooms, Honolulu, HI; telephone: (808) 855–4811.

*Council address*: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** A meeting of the full Advisory Panel (AP) will be held on Monday, April 21, 1997, from 8:00 a.m. to 5:30 p.m. On Tuesday, April 22, 1997, the Pacific Insular Area Fishing Agreement (PIAFA) Working Group will meet from 9:00 a.m. to 1:00 p.m., and the Fishery Data Collection Committee will meet from 1:00 p.m. to 5:00 p.m. The Council's Standing Committees will meet on Wednesday, April 23, 1997, from 7:30 a.m. to 5:30 p.m. The Council's Vessel Monitoring System (VMS) Committee will meet concurrently with the Enforcement Standing Committee. The full Council will meet from 8:00 a.m. to 5:00 p.m. on Thursday, April 24, 1997, and from 9:00 a.m. to 3:30 p.m. on Friday, April 25, 1997.

The Council will discuss and may take action on the following agenda items:

1. Report on the AP meeting and recommendations to the Council.
2. Reports from the islands.
3. Reports on enforcement issues, including;
   (a) U.S. Coast Guard report,
   (b) NMFS activities and VMS update,
   (c) VMS Data Request for research, and
   (d) status of violations.
4. Magnuson-Stevens Fishery Conservation and Management Act requirements for Fishery Management Plan (FMP) amendments, including:
   (a) consistency of definitions;
   (b) bycatch;
   (c) fishing sectors (commercial, recreational, charter);

(d) Essential Fish Habitat;
(e) fishing communities;
(f) overfishing.
5. Pelagic fishery issues, including:
(a) pelagic fisheries research and data reporting;
(b) determination of total allowable level of foreign fishing for American Samoa, Guam, and the Northern Mariana Islands (NMI);
(c) status of bycatch/incidental take, interaction issues and assessments for turtles, sharks and seabirds;
(d) gear conflict between handliners and longliners;
(e) Scientific and Statistical Committee (SSC) recommendations;
(f) public hearing; and
(g) other issues.
6. Crustacean fishery issues, including:
(a) possible changes to the Northwestern Hawaiian Islands (NWHI) lobster fishery regulations under the framework procedures of the FMP, regarding: model to estimate exploitable lobster population in the NWHI; risk analysis estimation procedure; high-grading during 1996 NWHI lobster season; 1997 NWHI lobster harvest guideline; grandfathered permit transferability issue; NWHI revised lobster catch report form; and impact of expanding live lobster product;
(b) NMFS lobster research activities;
(c) industry concerns;
(d) summary of Review Panel's report/recommendations;
(e) Crustacean Plan Team/Hawaii-Crustacean AP recommendations;
(f) SSC recommendations;
(g) public hearing; and
(h) other issues.
7. Reports from fishery agencies and organizations.
8. Bottomfish issues, including:
(a) overfished Main Hawaiian Islands Onaga and Ehu (State of Hawaii Draft Management Plan and Council's Management Plan);
(b) status of NWHI management system;
(c) SSC recommendations;
(d) public hearing; and
(e) other issues.
9. Native rights and indigenous fishing issues, including:
(a) PIAFA Magnuson Act requirements such as Conservation Plans for American Samoa, Guam, the NMI and other U.S. possessions;
(b) report of PIAFA Working Group;
(c) status of AP for demonstration projects;
(d) status of Commonwealth of Northern Mariana Islands turtle study;
(e) SSC recommendations;
(f) Native Rights Committee recommendations;
(g) public hearing; and
(h) other issues.
10. Ecosystems and Habitat, including:
(a) summary of recent activities; and
(b) SSC recommendations.
12. Precious corals, including:
application to harvest precious corals;
13. Program planning, including:
(a) Statement of Organization, Practices, and Procedures revision;
(b) Education and Outreach Program; and
(c) status of Western Pacific Fisheries Information Network.
14. Administrative matters, including:
(a) administrative reports; and
(b) other business as required.
Special Accommodations
This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 24, 1997.

**Bruce C. Morehead,**

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

[FR Doc. 97–8060 Filed 3–28–97; 8:45 am]

BILLING CODE 3510–22–F

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## Technology Administration

## Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure

**AGENCY:** Technology Administration, Commerce.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure will hold a meeting on April 23–24, 1997. The Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure was established by the Secretary of Commerce to provide industry advise to the Department on encryption key recovery for use by federal government agencies. All sessions will be open to the public.

**DATES:** The meeting will be held on April 23 and 24, 1997, from 9:00 a.m. to 6:00 p.m.

**ADDRESSES:** The meeting will take place at the Tremont Hotel, 275 Tremont Street, Boston, Massachusetts.

**FOR FURTHER INFORMATION CONTACT:** Edward Roback, Committee Secretary and Designated Federal Official, Computer Security Division, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, Maryland, 20899; telephone 301–975–3696. Please do not call the hotel facility regarding details of this meeting.

**AGENDA:**

—Opening Remarks
—Chairperson's Remarks
—News Updates
—Working Group (WG) Reports
—WG1—Framework
—WG2—Security Models
—WG3—Key Recovery Agents (KRA)
—WG4—Non-KRA Elements
—WG5—Interoperability
—Federal records archiving briefing
—Intellectual Property Issues (as necessary)
—Public Participation
—Plans for Next Meeting
—Closing Remarks

Note that the items in this agenda are tentative and subject to change due to logistics and speaker availability.

**PUBLIC PARTICIPATION:** The Committee meeting will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the individual identified in the **FOR FURTHER INFORMATION** section. In addition, written statements are invited and may be submitted to the Committee at any time. Written comments should be directed to the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899. It would be appreciated if sixty copies could be submitted for distribution to the Committee and other meeting attendees.

Additional information regarding the Committee is available at its world wide web homepage at: http://csrc.nist.gov/tacdfipsfkmi.

Should this meeting be canceled, a notice to that effect will be published in the **Federal Register** and similar notice placed on the Committee's electronic homepage.

Dated: March 21, 1997.

**Mark Bohannon,**

*Chief Counsel for Technology.*

[FR Doc. 97–7981 Filed 3–28–97; 8:45 am]

BILLING CODE 3510–CN–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Suspension of the Group II Restriction for Certain Man-Made Fiber Textile Products Produced or Manufactured in India and Request for Public Comment

March 26, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs suspending the Group II restriction for certain products from India.

**EFFECTIVE DATE:** March 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The purpose of this notice is to advise the public that, effective on March 31, 1997, the Group II restriction is suspended for rayon filament yarn in HTS number 5403.31.0040 in Category 606 from India. The United States has conferred with the Government of India and interested parties regarding this action. A visa is still required for this product.

The Committee for the Implementation of Textile Agreements is considering eliminating permanently the restriction on these products from India at the beginning of the next agreement year (January 1, 1998), pursuant to Article 2:15 of the Agreement on Textiles and Clothing (ATC).

Anyone wishing to comment or provide data or information regarding the treatment of imports in HTS number 5403.31.0040 from India or to comment on domestic production or availability of products included in HTS number 5403.31.0040 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996).

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 26, 1997.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on March 31, 1997, man-made fiber textile products in HTS 5403.31.0040 in Category 606, in Group II, produced or manufactured in India and exported during the period March 31, 1997 through December 31, 1997, shall not be charged to the Group II restraint level. A visa is still required for this product. Import charges already made to this HTS number shall be retained.

For U.S. Customs' administrative purposes, the remaining HTS numbers in Category 606 shall be designated Category 606(1) [1].

To facilitate implementation of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), I request that, effective on March 31, 1997, entry/entry summary procedures be required, and that you count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2) [2], produced or manufactured in India and exported during the period March 31, 1997 through December 31, 1997.

Inasmuch as these imports may later be charged against the Group II level, it is important that an accurate count be taken.

This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 97–8046 Filed 3–28–97; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 606(1): all HTS numbers except 5403.31.0040 (Category 606(2)).

[2] Category 606(2): only HTS number 5403.31.0040.

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed Collection: Comment Request

March 26, 1997.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS), 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. 3508(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 the collection requirement on respondents can be properly assessed. Currently, the Corporation for National and Community Service is soliciting comments concerning proposed revisions to the National Senior Service Corps Project Grant Application. Copies of the draft application can be obtained by contacting the office listed below in the address section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section on or before May 30, 1997.

The Corporation for National and Community Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency 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 Janice Forney Fisher, Program Officer, Senior Corps, Room 9403A, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525.

**FOR FURTHER INFORMATION CONTACT:** Janice Forney Fisher, (202) 606–5000, ext. 275.

**SUPPLEMENTARY INFORMATION:**

## Part I

*I. Background*

The National Senior Service Corps Grant Application is submitted by prospective grantees to apply for or renew sponsorship of projects under the National Senior Service Corps Programs—the Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), Senior Companion Program (SCP), or Senior Corps Demonstration Program. The application serves as the foundation for making award decisions. Completion of the application is required to obtain or retain sponsorship.

*II. Current Action*

Once finalized and approved, the Grant Application will be completed by all public and private, non-profit organizations applying for National Senior Service Corps funds when the proposed grant start date will be April 1, 1998 or thereafter. Three year approval of the Grant Application is proposed.

*Type of Review:* 60-day review and comment.

*Agency:* Corporation for National and Community Service.

*Title:* National Senior Service Corps Grant Application.

*OMB Number:* 3045–0035.

*Agency Number:* 424–NSSC.

*Affected Public:* Prospective Sponsors for National Senior Service Corps Grants.

*Total Respondents:* 1,620.

*Frequency:* Ranges From Annually to Every Three Years Based on Specific Program Requirements.

*Average Time Per Response:* 15.9 hours.

*Estimated Total Burden Hours:* 25,758.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* $2,754.

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 will also become a matter of public record.

Dated: March 25, 1997.

**Thomas E. Endres,**

*Director, National Senior Service Corps.*

[FR Doc. 97–8094 Filed 3–28–97; 8:45 am]

BILLING CODE 6050–28–P

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and Associated Form:* Department of Defense Security Agreement, Appendage to the Department of Defense Security Agreement, Certificate Pertaining to Foreign Interests, DD Forms 441, 441–1, and 441s, OMB Number 0704–0194.

*Type of Request:* Reinstatement; Emergency Processing requested with a shortened public comment period ending April 7, 1997. An approval date of April 14, 1997, is requested.

*Number of Respondents:* 6,225.

*Responses Per Respondent:* 1.

*Annual Responses:* 6,225.

*Average Burden Per Response:* 36 minutes.

*Annual Burden Hours:* 3,735.

*Needs and Uses:* DD Forms 441, 441–1, and 441s are legally binding contractual documents that allow contractors access to classified information and obligates said contractors to adhere to the security requirements as prescribed in DoD 5220.22–M, ''National Industrial Security Program Operating Manual.'' These requirements are necessary in order to preserve and maintain national security through establishing standards to prevent the improper disclosure of classified information.

*Affected Public:* Business or Other For-Profit.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 25, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–8045 Filed 3–28–97; 8:45 am]

BILLING CODE 5000–04–M

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0075]**

### Proposed Collection; Comment Request Entitled Government Property

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0075).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Government Property. This OMB clearance expires on May 31, 1997.

**DATES:** Comment Due Date: May 30, 1997.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0075 in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3856.

**SUPPLEMENTARY INFORMATION:**

## A. Purpose

''Property,'' as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to:

(a) Provide financial accounts for Government-owned property in the contractor's possession or control;

(b) Identify all Government property (to include a complete, current, auditable record of all transactions);

(c) Locate any item of Government property within a reasonable period of time.

This clearance covers the following requirements:

(a) FAR 45.307–2(b) requires a contractor to notify the contracting officer if it intends to acquire or fabricate special test equipment.

(b) FAR 45.502–1 requires a contractor to furnish written receipts for Government property.

(c) FAR 45.502–2 requires a contractor to submit a discrepancy report upon receipt of Government property when overages, shortages, or damages are discovered.

(d) FAR 45.504 requires a contractor to investigate and report all instances of loss, damage, or destruction of Government property.

(e) FAR 45.505–1 requires that basic information be placed on the contractor's property control records.

(f) FAR 45.505–3 requires a contractor to maintain records for Government material.

(g) FAR 45.505–4 requires a contractor to maintain records of special tooling and special test equipment.

(h) FAR 45.505–5 requires a contractor to maintain records of plant equipment.

(i) FAR 45.505–7 requires a contractor to maintain records of real property.

(j) FAR 45.505–8 requires a contractor to maintain scrap and salvage records.

(k) FAR 45.505–9 requires a contractor to maintain records of related data and information.

(l) FAR 45.505–10 requires a contractor to maintain records for completed products.

(m) FAR 45.505–11 requires a contractor to maintain records of transportation and installation costs of plant equipment.

(n) FAR 45.505–12 requires a contractor to maintain records of misdirected shipments.

(o) FAR 45.505–13 requires a contractor to maintain records of property returned for rework.

(p) FAR 45.505–14 requires a contractor to submit an annual report of Government property accountable to each agency contract.

(q) FAR 45.508–2 requires a contractor to report the results of physical inventories.

(r) FAR 45.509–1(a)(3) requires a contractor to record work accomplished in maintaining Government property.

(s) FAR 45.509–1(c) requires a contractor to report the need for major repair, replacement and other rehabilitation work.

(t) FAR 45.509–2(b)(2) requires a contractor to maintain utilization records.

(u) FAR 45.606–1 requires a contractor to submit inventory schedules.

(v) FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(w) FAR 52.245–2(a)(3) requires a contractor to notify the contracting officer when Government-furnished property is received and is not suitable for use.

(x) FAR 52.245–2(a)(4) requires a contractor to notify the contracting officer when Government-furnished property is not timely delivered and the contracting officer will make a determination of the delay, if any, caused the contractor.

(y) FAR 52.245–2(b) requires a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(z) FAR 52.245–4 requires a contractor to submit a timely written request for an equitable adjustment when Government-furnished property is not furnished in a timely manner.

(aa) FAR 52.245–5(a)(4) requires a contractor to notify the contracting officer when Government-furnished property is received that is not suitable for use.

(bb) FAR 52.245–5(a)(5) requires a contractor to notify the contracting officer when Government-furnished property is not received in a timely manner.

(cc) FAR 52.245–5(b)(2) requests a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(dd) FAR 52.245–7(f) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ee) FAR 52.245–7(l)(2) requires a contractor to alert the contracting officer within 30 days of receiving facilities that are not suitable for use.

(ff) FAR 52.245–9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

(gg) FAR 52.245–10(h)(2) requires a contractor to notify the contracting officer if facilities are received that are not suitable for the intended use.

(hh) FAR 52.245–11(e) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ii) FAR 52.245–11(j)(2) requires a contractor to notify the contracting officer within 30 days of receiving facilities not suitable for intended use.

(jj) FAR 52.245–17 requires a contractor to maintain special tooling records.

(kk) FAR 52.245–18(b) requires a contractor to notify the contracting officer 30 days in advance of the contractor's intention to acquire or fabricate special test equipment (STE).

(ll) FAR 52.245–18(d) & (e) requires a contractor to furnish the names of subcontractors who acquire or fabricate special test equipment (STE) or components and comply with paragraph (d) of this clause, and contractors must comply with the (b) paragraph of this clause if an engineering change requires acquisition or modification of STE. In so complying, the contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(mm) FAR 52.245–19 requires a contractor to notify the contracting officer if there is any change in the condition of property furnished ''as is'' from the time of inspection until time of receipt.

This information is used to facilitate the management of Government property in the possession of the contractor.

### B. Annual Reporting Burden

Public reporting burden for this collection of information I estimated to average .4826 hours per response, including the time for reviewing instructions, searching existing data sources, fathering and maintaining the data needed, and completing and reviewing he collection of information.

The annual reporting burden is estimated as follows: Respondents, *26,409;* responses per respondent, *506.3;* total annual responses, *13,624,759;* preparation hours per response, *.4826;* and total response burden hours, *6,575,805.*

### Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0075, Government Property, in all correspondence.

Dated: March 25, 1997.

**Sharon A. Kiser,**

*FAR Secretariat.*

[FR Doc. 97–7985 Filed 3–28–97; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0146]**

## Clearance Request Entitled Collection of Historically Black Colleges and Universities/Minority Institutions Award Data

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0146).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Collection of Historically Black Colleges and Universities (HBCUs)/Minority Institutions (MIs) Award Data. A request for public comments concerning this burden estimate was published at 62 FR 2358, January 16, 1997. No public comments were received.

**DATES:** Comment Due Date: April 30, 1997.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0146 in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

This collection of information is necessary to implement the reporting requirements of Executive Order 12928. The information collection requirement consists of a FAR solicitation provision to provide reporting of contract awards to Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs). The Executive Order requires all agencies to promote the participation of HBCUs and MIs in Federal procurement and requires periodic reporting to the President on the agencies' progress in complying with the laws and requirements addressed in the Executive Order. The solicitation provisions will permit agency officials to report accurate information regarding contract awards to HBCUs and MIs.

### B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.05 hours* per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents *9,328;* responses per respondent, *1.2;* total annual responses, *11,194;* preparation hours per response, *.05;* and total response burden hours, *560.*

Dated: March 21, 1997.

**Sharon A. Kiser,**

*FAR Secretariat.*

[FR Doc. 97–7986 Filed 3–28–97; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0147]**

## Clearance Request Entitled Pollution Prevention and Right-to-Know Information

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0147).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an exension of a currently approved information collection requirement concerning Pollution Prevention and Right-to-Know Information. A request for public comments concerning this burden estimate was published at 62 FR 1737, January 13, 1997. No comments were received.

**DATES:** *Comment Due Date:* April 30, 1997.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 18th and F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0147 in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

E.O. 12856 of August 3, 1993, ''Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements,'' requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 and the Emergency Planning Community Right-to-Know Act of 1986. The E.O. requires that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with these reporting requirements.

**B. Annual Reporting Burden**

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents *2,550;* responses per respondent, *7.6;* total annual responses, *19,500;* preparation hours per response, *.75;* and total response burden hours, *14,500.*

Dated: March 25, 1997.

**Sharon A. Kiser,**

*FAR Secretariat.*

[FR Doc. 97–7984 Filed 3–28–97; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Policy Board Advisory Committee

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Policy Board Advisory Committee will meet in closed sessions from 5–8:30 pm, 27 March 1997 and from 8 am until 3 pm, 28 March 1997 in the Pentagon, Washington, DC. This notice is less than fifteen days prior to the meeting due to difficulties in coordinating the schedules of the members and obtaining administrative clearance of the agenda.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: March 25, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–8044 Filed 3–28–97; 8:45 am]

BILLING CODE 5000–04–M

## Department of the Air Force

### Proposed Collection; Comment Request

**AGENCY:** Headquarters Air Force Recruiting Service.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by May 30, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOC, 550 D Street West, Suite 1, Randolph AFB TX 78150–4527.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call HQ AFRS/RSOC, Officer Accessions Branch, at (210) 652–4334.

*Title, Associated Form, and OMB Number:* Health Profession Accession Forms, AETC Forms 1322, 1402, and 1437, OMB Number 0701–0078.

*Needs and Uses:* The information collection requirement is necessary for use by field recruiters in the processing of health profession applicants applying for a commission in the United States Air Force.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 6,300.

*Number of Respondents:* 3,600.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 1 Hour and 45 Minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are civilian candidates applying for a commission in the United States Air Force as healthcare officers. These forms provide pertinent information to facilitate selection of candidates for commission.

**Carolyn A. Lunsford,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 97–7989 Filed 3–28–97; 8:45 am]

BILLING CODE 3910–01–P

### Proposed Collection; Comment Request

**AGENCY:** Headquarters Air Force Recruiting Service.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by May 30, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOP, 550 D Street West, Suite 1, Randolph AFB TX 78150–4527.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Headquarters Air Force Recruiting Service (HQ AFRS/RSOP), Enlisted Accessions Branch, at (210) 652–6188.

*Title, Associated Form, and OMB Number:* Non Prior Service and Prior Service Accessions, AETC Forms 1319, 1325, and 1419, OMB Number 0701–0079.

*Needs and Uses:* The information collection requirement is necessary for use by recruiters to determine applicant

qualifications when conducting an interview. Information from the interview will determine if additional documents on law violations, citizenship verification, and education are needed. Applicants who have reached a certain age, marital status or classification are required to submit financial information.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 31,899.

*Number of Respondents:* 108,500.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 49 Minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are civilian non prior and prior service personnel applying for enlistment into the Air Force as enlisted members. The completed forms are used by the recruiter to establish eligibility status of applicants and determine what additional forms are needed to obtain the required information. If the forms are not included in the case file, individuals reviewing the file cannot be readily assured of the qualifications of the applicant.

**Carolyn A. Lunsford,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 97–7990 Filed 3–28–97; 8:45 am]

BILLING CODE 3910–01–P

## Proposed Collection; Comment Request

**AGENCY:** Headquarters Air Force Recruiting Service.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by May 30, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOCL, 550 D Street West, Suite 1, Randolph AFB TX 78150–4527.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call HQ AFRS/RSOCL at (210) 652–2245.

**TITLE, ASSOCIATED FORM, AND OMB NUMBER:** Officer Training School Accessions, AETC Forms 1422 and 1413, OMB Number 0701–0080.

*Needs and uses:* The information collection requirement is necessary for use by field recruiters in the processing of Officer Training School applications for commissioning in the United States Air Force.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 2,500.

*Number of Respondents:* 2,000.

*Responses Per Respondent:* 1

*Average Burden Per Response:* 1 Hour and 15 Minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are civilian candidates applying for a commission in the United States Air Force as Line Officers. These forms provide pertinent information to facilitate selection of candidates for a commission.

**Carolyn A. Lunsford,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 97–7991 Filed 3–28–97; 8:45 am]

BILLING CODE 3910–01–P

## Department of the Army

## Draft Environmental Impact Statement (DEIS) for the Proposed Upgrade of Training Areas and Facilities, Camp Atterbury, Indiana by the Indiana Army National Guard (INARNG)

**AGENCY:** Department of the Army, National Guard Bureau.

**ACTION:** Notice of availability.

**SUMMARY:** The purpose of this project is to maximize training opportunities for military units that use Camp Atterbury. Military units need to be able to maintain a high level of training and state of readiness to support national defense and state missions in times of natural disaster, civil unrest, and other emergencies. Adequate training opportunities, with up-to-date equipment, must be available to allow them to train for their assigned missions.

The INARNG proposes to upgrade training areas and facilities at Camp Atterbury, Indiana. The proposed action includes the construction of a Multi-Purpose Training Range (MPTR) and two maneuver corridors. The MPTR will be located in the southwest sector of the installation and will be used for training by armor, attack helicopters, Infantry Fighting Vehicles, and dismounted infantry units. The MPTR would include a support area, firing area and a target area. The firing area would include stationary, moving and defilade firing positions. The target area would contain stationary and moving targets. Firing points would be oriented to provide northeasterly trajectories into the existing impact area. The MPTR itself would occupy approximately 80 hectares (200 acres) and, including the safety fan, the area involved would total about 4550 hectares (11,250 acres). This action also proposes the development of two maneuver corridors for use by tracked vehicles. These corridors would be in a north-south orientation along the east and west borders of Camp Atterbury, and would include approximately 975 hectares (2400 acres).

Two alternatives in addition to the proposed action were considered, an alternative with less development (Alternative 2B), and the no action alternative. Alternative 2B involves the MPTR being located in the northwest sector of Atterbury, with firing points oriented to provide southeasterly trajectories into the impact area and would involve the development of only the eastern maneuver corridor. The no action alternative considers the continued use of Camp Atterbury without the proposed upgrade.

**COMMENTS:** The DEIS will be available for public review for 45 days from the date the Notice of Availability is published in the **Federal Register** by the Environmental Protection Agency.

**PUBLIC MEETING:** The Indiana Army National Guard will conduct a formal public meeting to discuss concerns and receive comments on the DEIS. The specific location, date and time will be announced through area newspapers. Comments received at the public meeting and by mail will be compiled and reviewed. Responses to all relevant environmental comments will be prepared. Responses to comments and/or any new pertinent information will be incorporated into the Final EIS.

**ADDRESSES:** Copies of the DEIS will be made available to the general public through advertisements and Legal

Notices in area newspapers. Additionally, copies of the DEIS will be placed in community public libraries and the Camp Atterbury Headquarters Building. Copies will also be sent to Federal, state, regional and local agencies and interested organizations. Please address written comments to Mr. Wayne Tolbert, 800 Oak Ridge Turnpike, P.O. Box 2502, Oak Ridge, TN 37831.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Jack Fowler, EIS Project Officer, Indiana National Guard, Camp Atterbury National Guard Training Site, Edinburgh, IN 46124; telephone (812) 526–1169. Copies of the DEIS may be requested by contacting Mr. Wayne Tolbert at (423) 481–9703.

Dated: March 25, 1997.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I, L&E).*

[FR Doc. 97–8054 Filed 3–28–97; 8:45 am]

BILLING CODE 3710–08–M

## FY96–97 Climate Change Fuel Cell Program Environmental Assessment

**AGENCY:** U.S. Army Armament Research Development & Engineering Center (ARDEC).

**ACTION:** Notice of availability (request for comments).

**SUMMARY:** An Environmental Assessment (EA) has been prepared to discuss the significant impacts of the FY96–97 Congressional Climate Change Fuel Cell Program. ARDEC was selected by the Deputy Under Secretary of Defense for Environmental Security to manage this FY96–97 Climate Change Fuel Cell Program. ARDEC is publishing the EA for review and comment. Copies of the EA are available by contacting Mr. Robert Scola at the address listed below. Under this Program, Fuel Cells are to be located throughout the United States including selected Department of Defense (DOD) installations, both CONUS or OCONUS. A DOD installation is to form a partnership with a private party and submit an application for a rebate for their cell purchase. The selection of the installations is to be completed by a selection board which will consider the attributes of each installation's application and the benefits which a Fuel Cell will provide. The actual selection of the DOD installations will be completed in the future and therefore are unknown as of the time of the EA preparation.

**DATES:** Comments must be received on the EA no later than April 30, 1997.

**ADDRESSES:** Comments may be mailed to U.S. Army, Armament Research Development & Engineering Center, Industrial Ecology Center, AMSTA–AR–ET (ATTN: Mr. Garry O. Kosteck P.E.), Building 172, Picatinny Arsenal, NJ 07806–5000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Tolliver at (201) 724–4084 or Mr. Robert Zanowicz at (201) 724–5744.

**SUPPLEMENTARY INFORMATION:**

### Introduction

Currently, the only commercial available fuel cell is a Phosphoric Acid Fuel Cell (PAFC) and it is most likely that this unit is to be installed at all the selected DOD installations. As of the date of this document's preparation, over 70 PAFCs have been installed and are operating throughout the world.

### Background

Since the selected DOD installations will most likely choose the same PAFC, it has been decided to prepare a programmatic EA rather than individual ones for each installation to discuss the similar issues of installing and operating a Fuel Cell. The Council of Environmental Quality's regulations(s) permit environmental documentation to be written in a non-specific manner when the action is essentially the same but at different locations. This is the situation here and this EA is being prepared to allow it to be ''tiered'' to local conditions. Selected installations shall be required to incorporate the material of this document for any local environmental documentation to eliminate any repetitious issues and to focus upon local issues not discussed herein. The selected DOD installations shall be required to submit a certification letter indicating that local environmental issues such as historical buildings, wetlands, etc. have been identified, reviewed and mitigated where necessary.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 97–8019 Filed 3–28–97; 8:45 am]

BILLING CODE 3710–08–M

## Program for Qualifying Department of Defense Ground Passenger Carriers

**AGENCY:** Military Traffic Management Command.

**ACTION:** Notice (request for comments).

**SUMMARY:** The Military Bus Agreement (MBA) Program is being amended to improve the standards for qualifying carriers transporting Department of Defense (DOD) passengers by bus, van and limousine service. The improvements are prepared under a new basic Agreement. The changes affect all current and future ground passenger carriers transporting for the DOD. A copy of the Agreement between the Military Traffic Management Command (MTMC) and ground passenger carriers is available upon request.

**DATES:** Comments must be submitted on or before May 30, 1997.

**ADDRESSES:** Request a copy of the Agreement or mail comments to: Headquarters, Military Traffic Management Command, ATTN: MTOP–QQ, Room 630, 5611 Columbia Pike, Falls Church, VA 22041–5050.

**FOR FURTHER INFORMATION CONTACT:** Leesha Saunders, MTOP–QQ, telephone (703) 681–6393.

**SUPPLEMENTARY INFORMATION:** MTMC is the agency established within the DOD for the procurement of land transportation from commercial carriers for DOD passengers, their families and impedimenta, in domestic movements procured by the MTMC and DOD Transportation Offices. The MBA is the standards of service carriers must comply with for MTMC approval, including Federal Motor Carrier Safety Regulations, MTMC and joint service command passenger requirements. In light of current deregulation and changing federal regulations, MTMC is modifying passenger policies in order to improve the current qualification program. Under the new Agreement carriers must show compliance with federal, state and DOD passenger safety requirements. All bus, van and limousine carriers currently approved by MTMC will be required to re-sign the new MBA and provide proof of insurance, company drug testing, financial and additional information newly essential under the amended Agreement.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 97–8018 Filed 3–28–97; 8:45 am]

BILLING CODE 3710–08–M

# Corps of Engineers

## Environmental Impact Statement, Black Hawk, Colorado

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Cancellation of Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Corps is issuing this notice to inform the public that an Environmental Impact Statement (EIS) will not be prepared for the proposed

water supply project in Black Hawk, Colorado. A Notice of Intent to Prepare an EIS was published in the **Federal Register** on December 28, 1994. Recently the City has proposed to pursue an alternative that will allow them to develop a new water supply system that does not require a Federal permit. Therefore, an EIS is not required.

**FOR FURTHER INFORMATION CONTACT:** Questions about the cancellation of the EIS should be directed to: Ms. Candace Thomas, Chief, Environmental Analysis Branch, Planning Division, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978; phone (402) 221–4598; fax (402) 221–4886.

**SUPPLEMENTARY INFORMATION:** Since the implementation of Limited Stakes Gaming in November 1990, the City of Black Hawk has experienced substantial growth and increased demands for water. The limited amount of water available at the existing diversion points and in North Clear Creek is a major constraint to projected growth. The City notified the Corps that it intended to apply for a Section 404 permit for construction of a new water supply system in waters of the United States. The requirement for a Corps 404 permit triggered compliance with the National Environmental Policy Act (NEPA). NEPA requires that whenever a major Federal action would result in significant impacts to the human environment that an EIS be prepared. A Draft EIS was in the process of being prepared by the Corps. During the NEPA process several alternatives were evaluated. Recently the City has discovered an alternative that will allow them to develop a new water supply system that does not require a Section 404 permit. Because the 404 process was the only Federal nexus, there is now no requirement for NEPA compliance. Therefore, the EIS process has been terminated. The current plan involves the withdrawal of water from Clear Creek at the Hidden Valley exit on Interstate 70 east of Idaho Springs, Colorado. An infiltration gallery, pump station, and pipeline can be constructed without a permit from the Corps.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 97–8020 Filed 3–28–97; 8:45 am]

**BILLING CODE 3710–62–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. CP97–300–000, CP97–301–000, and CP97–302–000]**

## Dauphin Island Gathering Partners; Notice of Application

March 25, 1997.

Take notice that on March 21, 1997, Dauphin Island Gathering Partners (Dauphin Island), c/o OEDC, Inc. 1400 Woodloch Forest Drive, Suite 200, The Woodlands, Texas 77380, filed in Docket Nos. CP97–300–000 an application, pursuant to Section 7(c) of the Natural Gas Act and Section 157 of the Commission's Regulations, for a certificate of public convenience and necessity to (1) construct and operate an offshore 24-inch, 63-mile natural gas pipeline and related facilities extending from the existing Dauphin Island gathering system at Alabama State Tract 73 to Main Pass Gas Gathering System at Main Pass Block 225 and (2) to operate as a jurisdictional facility on a temporary basis, with pregranted abandonment, an existing pipeline facility required to transport the gas onshore. Dauphin Island also filed in Docket No. CP97–301–000 for blanket authority pursuant to Part 284 of the Commission's Regulations to transport gas on an open-access basis and for approval of its *pro forma* tariff, including the proposal to charge negotiated rates. Also, Dauphin Island also requests in Docket No. CP97–302–000 a blanket certificate pursuant to Section 157, Subpart F of the Commission's Regulations to engage in certain routine activities. Finally, Dauphin Island requests that the Commission confirm that issuance of the requested authorizations and services will not subject the existing facilities of Dauphin Island to the Commission's jurisdiction,[1] all as more fully set forth in the applications, which are on file with the Commission and open for public inspection.

Dauphin Island indicates that the maximum capacity of the proposed facilities will be 200,000 dt equivalent on natural gas per day. It is noted that the proposed facilities will parallel the western leg of the existing Dauphin Island gathering system for approximately 30 miles. It is stated that the proposed facilities will gather gas along its length from production already discovered but not currently developed and from exploratory efforts in the area. Dauphin Island notes that the facilities are designed to gather gas that currently cannot be produced due to capacity constraints downstream of the Main Pass system and significant newly discovered production which can be attached to the Main Pass system. Dauphin Island states that it intends to construct in the future a second phase of the project, which would include 13 miles of 24-inch pipeline extending from the northern terminus of the proposed facilities onshore. It is indicated that Dauphin Island is not applying for authority to construct and operate the facilities at this time, but intends to file within the next 12 months when it has sufficient time to complete the requisite environmental studies, obtained commitments from producers in the area, and arranged to purchase pipe.

Because Dauphin Island is not ready to build the second phase of its project, Dauphin Island requests a limited term certificate with pregranted abandonment to use a portion of its existing gathering system which extends downstream from Alabama State Tract 73 for interstate transmission of up to 200,000 dt equivalent of natural gas per day to onshore interconnections for a period of up to twelve months after the proposed facilities are placed in service.

Dauphin Island estimates a construction cost of the proposed facilities of $54,116,620, which would be financed from cash on hand from the various partners of Dauphin Island.

Dauphin Island requests that it be issued a blanket certificate pursuant to Section 284.221 of the Commission's Regulations. Dauphin Island proposes to provide transportation service under three firm rate schedules, including (1) FT–1 firm service, (2) FT–2 firm service available to shippers who commit all of the gas from specified OCS or state blocks and (3) FT–3 firm service representing overflow volumes from the Main Pass System, and IT–1 interruptible service.

Dauphin Island requests authorization to permit it to charge negotiated rates. It is indicated that in the Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996), the Commission stated that negotiated rates would be approved in certain circumstances, and that Dauphin Island meets those circumstances. Dauphin Island states in its tariff the charges

[1] Dauphin Island previously filed in Docket No. CP97–119–000 a petition seeking that the Commission declare that its proposed facilities are gathering facilities exempt from Commission jurisdiction pursuant to Section 1(b) of the Natural Gas Act. Dauphin Island seeks the requested authorization only if the Commission finds that any of the requested facilities are subject to the Commission's jurisdiction.

applicable to negotiated rates under Rate Schedules FT–2 and FT–3, and that capacity would be available at a cost-based recourse rate under Rate Schedules FT–1 and IT–1. It is indicated that for rates negotiated with customers following Commission authorization to charge such rates, Dauphin Island will file conforming tariff sheets indicating that the rate for the service will be either the rates stated on its existing rate schedule or a rate mutually agreed upon by the pipeline and customer. It is also indicated that, when a rate is negotiated, Dauphin Island will file a numbered tariff sheet stating the exact legal name of the customer and the negotiated rate for the service. It is stated that permitting Dauphin Island to negotiate rates with customers at mutually agreed levels will promote competition, and permit them to tailor contracts to meet the specific needs of each shipper.

It is stated that the tariff filed by Dauphin Island is substantially similar to those recently approved by the Commission in Garden Banks Gas Pipeline, L.L.C., Docket No. CP96–307–000 and Shell Gas Pipeline Company, Docket No. CP96–159–000, except for service under Rate Schedule FT–3, and except for the following differences: in the Dauphin Island tariff, service is provided on a dekatherm rather than volumetric basis; the Dauphin Island tariff includes an overrun service; secondary receipt points are not available to shippers under Dauphin Island Rate Schedules FT–2 and FT–3; in Dauphin Island's tariff, all delivery points are available to all shippers based upon confirmation by the downstream pipeline; a charge of $3.50 per barrel will be charged by Dauphin Island for recovery of liquid hydrocarbons; at the request of the shipper, Dauphin Island may enter into contracts for various services with third parties and charge the cost to shipper as an ''Other Charge'' under the rate schedule; under Dauphin Island's tariff, a capacity release can be released only into Rate Schedule FT–1; and Dauphin Island may process shipper's gas if the shipper does not process; additionally, the term: equivalent quantities'', some quality specifications, nomination procedures, the effect of force majeure on payment of reservation rates, and the resolution of monthly imbalances have been changed.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 4, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Dauphin Island to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–8008 Filed 3–28–97; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER97–2099–000]**

## Duke Power Company; Notice of Filing

March 25, 1997.

Take notice that on March 14, 1997, Duke Power Company (Duke), tendered for filing a Network Integration Transmission Service Agreement and a Network Operating Agreement (NOA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and the City of Seneca, South Carolina and Southern Company Services, Inc, acting as agent for the City of Seneca, South Carolina, (collectively, Transmission Customer). Duke states that the NITSA and NOA set out the transmission arrangements under which Duke will provide the Transmission Customer Network Integration Transmission Service under Duke's Pro Forma Open Access Transmission Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 4, 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 proceedings. 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. 97–7994 Filed 3–28–97; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER97–2095–000]**

## Duke Power Company; Notice of Filing

March 25, 1997.

Take notice that on March 14, 1997, Duke Power Company (Duke), will terminate the service that it currently provides to the City of Seneca/Seneca Light & Water Plant, Seneca, South Carolina, (Seneca) under Federal Energy Regulatory Commission (FERC) Rate Schedule No. 10 (effective date August 19, 1993), the Electric Power Contract between Duke and the Commissioners of Public Works of the City of Seneca and the City of Seneca, dated April 28, 1971, and the Delivery Point Agreements for Delivery Point #1 (effective date May 22, 1991) and Delivery Point #2 (effective date April 24, 1991) (Exhibits A to the Electric Power Contract) (FERC Rate Schedule No. 263).

Duke is terminating service to Seneca's two delivery points at Seneca's request. Seneca has notified Duke that, commencing May 15, 1997, it will purchase power from a supplier other than Duke. While service is to terminate effective May 14, 1997, the Electric Power Contract shall remain in effect to the extent necessary to incorporate and satisfy the stranded cost amendment that Duke is concurrently filing in a separate docket in accordance with Section 205 of the Federal Power Act, 16 USC 824D (1994), Order No. 888, *Promoting Wholesale competition Through Open Access Non-Discriminatory Transmission Services*

*by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities.* FERC Stats. & Regs. [Regulations Preambles 1991–96] ¶ 31,036 (1996), and Section 35.26(c)(1)(v)(A) of the Commission's Regulations, Recovery of Stranded Costs by Public Utilities, 61 Fed. Reg. 21,692 (1996) (to be codified at 18 CFR 35.26).

From the date that service termination becomes effective, Duke's obligation to serve Seneca's two delivery points shall cease. If Seneca desires in the future to purchase power from Duke, the parties will negotiate their respective obligations at that time.

This notice of termination has been served upon Seneca, the South Carolina Public Service Commission, and the North Carolina Utilities 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 Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 4, 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. 97–7995 Filed 3–28–97; 8:45 am]

BILLING CODE 6717–01–M

## Notice of Non-Project Use of Project Lands and Waters

March 25, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

*a. Type of Application:* Non-Project Use of Project Lands and Waters.

*b. Project Name:* Catawba-Wateree Project.

*c. Project No.:* FERC Project No. 2232–336.

*d. Date Filed:* January 7, 1997.

*e. Applicant:* Duke Power Company.

*f. Location:* Mecklenburg, North Carolina, Davidson Pond on Lake Norman, Town of Davidson.

*g. Filed pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

*h. Applicant Contact:* Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

*i. FERC Contact:* Brian Romanek, (202) 219–3076.

*j. Comment Date:* April 21, 1997.

*k. Description of the filing:* Application to grant a permit to the Town of Davidson (Town) to excavate a 0.16 acre area in Davidson Pond. The proposed excavation will reestablish the pond's shoreline and reshape the pond bottom to improve the appearance of and safety in the area. Also, the excavation work is intended to reduce the proliferation of mosquitoes and enhance fishing and boating opportunities. In conjunction with the excavation work, the pond would be drained and regraded. A gabion wall would be installed on the southeast end of the pond and 14,000 cubic yards of excavated material would be transported to a location owned by the Town.

*l. This notice also consists of the following standard paragraphs:* B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–8006 Filed 3–28–97; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP96–178–003]**

## Maritimes & Northeast Pipeline, L.L.C.; Notice of Amendment

March 25, 1997.

Take notice that on February 24, 1997, Maritimes & Northeast Pipeline, L.L.C. (Maritimes), c/o M&N Management Company, 1284 Soldiers Field Road, Boston, MA 02135, a Delaware limited liability company, filed in Docket No. CP96–178–003 an amendment to its Application for Phase I of its project (Phase I Amendment) pursuant to Section 7(c) of the Natural Gas Act. The Phase I amendment reflects the effect of the Joint Facilities Application of Maritimes and Portland Natural Gas Transmission System (PNGTS), initially filed with the Commission on February 10, 1997, and completed on March 18, 1997 in Docket No. CP97–238–000 (Joint Facilities Application) [1], on Maritimes' February 8, 1996, Phase I Application, in Docket No. CP96–178–000.

The completion of the Joint Facilities Application, originally filed February 10, 1997, was preceded by two public conferences at the Commission and four letters from the Office of Pipeline Regulation (OPR) requesting the information required to complete the filing. However, certain information which is needed to complete the processing of the Joint Facilities Application remains to be filed.[2] Complete and accurate filing of that information on the schedule stated in the joint applicants' March 18, 1997, filing is essential for the expeditious processing of the Phase I applications.

The Joint Facilities Application requests authorization to construct and operate approximately 99.8 miles of jointly-owned 30-inch pipeline and appurtenant facilities to accommodate natural gas volumes that would otherwise be transported through the same area by separate pipeline facilities. The Joint Facilities Application

[1] See Notice of Application for Docket No. CP97–238–000 issued on March 21, 1997.

[2] See the March 21, 1997, OPR Director's letter to the Joint applicants.

proposes joint facilities from Dracut, Massachusetts to Westbrook, Maine.

The Phase I Amendment addresses the effects of the Joint Facilities Application on the cost of facilities and rates, the tariff, and the pipeline route set forth in the Phase I Application. The Phase I Amendment adopts the 64.8-mile Dracut to Wells, Maine segment of the Joint Facilities, including one lateral (the Newington Lateral) and three meter stations as the proposed Phase I Facilities.[3] The Phase I Amendment also postpones the proposed in-service date of Phase I from November 1, 1997, to November 1, 1998.

Maritimes states that its revised cost, based on an allocation of its share of the Joint Facilities, is about $79.5 million. Originally, Maritimes had proposed a 24-inch pipeline from Dracut to Wells at a cost of $82 million and its own 30-inch pipeline from Dracut to Wells at a cost of $103.7 million (see Docket No. CP96–178–002).

The rates proposed by Maritimes have been revised to reflect Maritimes' estimate of the allocated cost of the Joint Facilities. Maritimes says that the rates are about the same level as proposed in the Phase I Application and approved in the July 31, 1996 Preliminary Determination (PD) in this docket. The methodology used to design the rates has been revised to reflect a levelization period of 9 years rather than 7 years and to eliminate the allocation of costs to interruptible transportation. In the PD Maritimes' 365-day firm rate was approved as a recourse rate equal to $18.25 per MMBtu, with $1 million allocated to interruptible transportation.

Now the proposed 365-day firm transportation rate is $18.2873 per MMBtu.[4] Maritimes also says that in compliance with the PD it will record the various elements of its negotiated rates in the format prescribed by the Commission. Maritimes also states that minor tariff changes may be needed to coordinate matters such as measurement or quality specifications with PNGTS. To the extent necessary, such changes would be filed with the Commission. On September 30, 1996, Maritimes filed revised tariff sheets in compliance with the various directives of the July 31, 1996, PD. That filing was not noticed at that time, but parties to this proceeding may comment on it in conjunction with their comments on the amendment in Docket No. CP96–178–003.

Maritimes requests that the Commission issue a PD on the Phase I Amendment by May 31, 1997, and a certificate for Phase I at the same time the Joint Facilities are approved.[5]

Any person desiring to be heard or to make any protest with reference to said Amendment, or the September 30, 1996, tariff compliance filing, should, on or before April 15, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest/comment in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Amendment if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the Amendment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Maritimes to appear or be represented at the hearing. Anyone who has already filed a motion to intervene in Docket Nos. CP96–178–000 or CP96–178–002 need not file a motion to intervene again with the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–8070 Filed 3–28–97; 8:45 am]

**BILLING CODE 6717–01–M**

[3] The Joint Facilities Application lists certain above ground appurtenant facilities to be built by the joint applicants, while the Phase I Amendment lists similar above ground appurtenant facilities to be built by Maritimes.

[4] Rates based on the capital costs of $103.7 million were never filed.

[5] A data response filed by Maritimes on March 20, 1997, asks for final action by August 1, 1997, but this contradicts the request in the Joint Facilities Application that the Commission issue a final certificate for the Joint Facilities by August 31, 1997.

**[Docket No. CP96–809–002]**

## Maritime & Northeast Pipeline, L.L.C.; Notice of Amendment

March 25, 1997.

Take notice that on February 24, 1997, Maritimes & Northeast Pipeline, L.L.C. (Maritimes), c/o M&N Management Company, 1284 Soldiers Field Road, Boston, MA 02135, a Delaware limited liability company, filed in Docket No. CP96–809–002,[1] an Amendment to its Application for Phase II of its project (Phase II Amendment) pursuant to Section 7(c) of the Natural Gas Act. This amendment reflects the effect of the Joint Facilities Application of Maritimes and Portland Natural Gas Transmission System (PNGTS), initially filed with the Commission on February 10, 1997, and completed on March 18, 1997, in Docket No. CP97–238–000 (Joint Facilities Application),[2] on Maritimes' September 23, 1996, Phase II Application, in Docket No. CP96–809–000.

The completion of the Joint Facilities Application, originally filed February 10, 1997, was preceded by two public conference at the Commission and four letters from the Office of Pipeline Regulation (OPR) requesting the information required to complete the filing. However, certain information which is needed to complete the processing of the Joint Facilities Application remains to be filed.[3] Complete and accurate filing of that information on the schedule stated in the joint applicants' March 18, 1997, filing is essential for the expeditious processing of the Phase II applications.

The Joint Facilities Application requests authorization to construct and operate approximately 99.8 miles of jointly-owned 30-inch pipeline and appurtenant facilities to accommodate natural gas volumes that would otherwise be transported through the same area by separate pipeline facilities. The Joint Facilities Application proposes joint facilities from Dracut, Massachusetts to Westbrook, Maine.

The Phase II Amendment addresses the effects of the Joint Facilities

[1] A supplemental filing which contained a revised Maritimes *pro forma* tariff for 1998 service and 1999 service was filed on November 1, 1996, and docketed as Docket No. CP96–809–001. This supplement reflects the requirements of Order No. 587 (Gas Industry Standards Board), and conforms the Phase II tariff to tariff changes required by the July 31, 1996. Preliminary Deterination for Phase I. It was not noticed at that time, but parties to this proceeding may comment on it in conjunction with their comments on the amendment in Docket No. CP96–809–002.

[2] See Notice of Application for Docket No. CP97–238–000 issued on March 21, 1997.

[3] See the March 21, 1997, OPR Director's letter to the joint applicants.

Application on the cost of facilities and rates, the tariff, and the pipeline route set forth in the Phase II Application. The Phase II Amendment adopts the 35-mile Wells to Westbrook, Maine segment of the Joint Facilities, including two laterals (the Westbrook Lateral and the Haverhill Lateral) and two meter stations as the proposed Phase II Facilities. The 24-inch pipeline previously proposed in the Phase II Application from Westbrook, Maine to the U.S.-Canada border for service starting in 1999 is unchanged by the Phase II Amendment. Also unchanged is Maritimes' proposal for a 1998 Phase II interim service which will include service to the Westbrook Lateral and the Cousins Island Lateral.

Maritimes states that its revised estimated cost is about $387 million. Originally, its Phase II cost estimate was $404 million. The cost estimate revisions are based on an allocation of its share of the Joint Facilities costs, and the revised estimated cost of its own facilities from Westbrook to the U.S.-Canada border. The revised estimate for the Westbrook to Canada segment is based on updated facilities cost information (primarily lower estimates of labor expenses), more environmental information and analysis, and pipeline route changes. The cost for the 1998 facilities decreased from $63 million to $61.8 million, while the cost for the 1999 facilities decreased from $340.9 million to $325.5 million.

The rates proposed by Maritimes have been revised to reflect Maritimes' new cost estimates. The initial rate for Maritimes' 365-day firm transportation for Phase II service from Canada starting in 1999 is now $15.0858 per MMBtu; previously it was $15.7551 per MMBtu.[4] The calculation of the revised rates and charges is included in Exhibit P to the Phase II Amendment.

Maritimes states that minor tariff changes may be needed to coordinate matters such as measurement or quality specifications with PNGTS. To the extent necessary, such changes would be filed with the Commission. Other than the changes to the proposed rates, the proposed tariff, including rate schedules, and general terms and conditions remains unchanged from the supplemental tariff filing in Docket No. CP96–809–001.

Maritimes requests that the Commission issue a Preliminary Determination on Phase II by May 31, 1997, and a final certificate for Phase II by December 17, 1997.[5]

Any person desiring to be heard or to make any protest with reference to said Amendment, or the supplemental tariff filing in Docket No. CP96–809–001, should, on or before April 15, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Amendment if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the Amendment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Maritimes to appear or be represented at the hearing. Anyone who has already filed a motion to intervene in Docket No. CP96–809–000 need not file a motion to intervene again with the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–8072 Filed 3–28–97; 8:45 am]

BILLING CODE 6717–01–M

[4] Maritimes proposes that the 1998 interim Phase II service will be at negotiated rates.

[5] The data response filed by Maritimes on March 20, 1997, citing the December 17, 1997, date is taken to be a further amendment of Maritimes' February 24, 1997, filing wherein August 31, 1997, was cited as the date that a final certificate was required.

**[Docket No. RP96–290–000]**

## Michigan Gas Storage Company; Notice of Informal Settlement Conference

March 25, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on April 3, 1997. The conference will begin at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in a conference room to be designated. The purpose of the conference is to explore the possibility of settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 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 Russell Mamone at (202) 208–0744 or Anja Clark at (202) 208–2034.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–8010 Filed 3–28–97; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP96–249–004]**

## Portland Natural Gas Transmission System; Notice of Amendment

March 25, 1997.

Take notice that on March 18, 1997, Portland Natural Gas Transmission System (PNGTS), 300 Friberg Parkway, Westborough, Massachusetts 01581–5039, filed in Docket No. CP96–249–004 an amendment pursuant to Section 7(c) of the Natural Gas Act. This amendment reflects the effect of the Joint Facilities Application of Maritimes & Northeast Pipeline, L.L.C. (Maritimes) and PNGTS, initially filed with the Commission on February 10, 1997, and completed on March 18, 1997 in Docket No. CP97–238–000 (Joint Facilities Application)[1] on PNGTS's March 14, 1996, Application for a Certificate of Public Convenience and Necessity in Docket No. CP96–249–000, as amended in Docket No. CP96–249–003.

Prior to the March 18, 1997 submission in the Joint Facilities Application, two public conferences at the Commission were held and four letters from the Office of Pipeline Regulation (OPR) were issued requesting the information required to

[1] See Notice of Application for Docket No. CP97–238–000 issued on March 21, 1997.

constitute a complete filing. However, certain information which is needed to complete the processing of the Joint Facilities Application remains to be filed.[2] Complete and accurate filing of that information on the schedule stated in the joint applicants' March 18, 1997, filing is essential for the expeditious processing of the PNGTS project applications.

The Joint Facilities Application filed by Maritimes and PNGTS requests authorization to construct and operate approximately 99.8 miles of jointly-owned 30-inch O.D. pipeline and appurtenant facilities to accommodate natural gas volumes that would otherwise be transported through the same area by separate pipeline facilities. The Joint Facilities Application proposes joint facilities from Dracut, Massachusetts to Westbrook, Maine.

The instant amendment filed by PNGTS addresses the effects of the Joint Facilities Application on the cost of facilities and rates previously proposed by PNGTS. PNGTS states that it will file amendments to its tariff to reflect the Commission's directives with respect to Gas Industry Standards Board standards two to five months prior to placing its tariff into effect.

Based on its Case No. 2 proposed in Docket No. CP96–249–000, PNGTS states that its revised cost, after allocating its share of the joint facilities, is approximately $302.9 million. The rates proposed by PNGTS have been revised to reflect PNGTS's allocated estimated cost of the joint facilities described in the Joint Facilities Application. PNGTS states that its rates will be levelized for an initial 20-year period and are based on the assumption that 80 percent of the cost of the facilities will be recovered through depreciation during the levelization period. PNGTS states that it will use a straight fixed-variable rate design for its firm service, and rates are based on a winter-day capacity design of 178,000 MMBTu per day. PNGTS does not propose to change the service offerings described in Docket No. CP96–249–003 which included firm transportation service (FT), interruptible transportation service (IT), and the possibility of negotiated rates. PNGTS states that winter period and off-peak services are available under the FT rate schedule.

PNGTS requests a supplemental preliminary determination no later than May 31, 1997, and a final certificate no later than August 31, 1997, in order to meet an in-service date of November 1, 1998.

[2] See the March 21, 1997, OPR Director's letter to the joint applicants.

Any person desiring to be heard or to make any protest with reference to said Amendment should, on or before April 15, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Amendment if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the Amendment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for PNGTS to appear or be represented at the hearing. Anyone who has already filed a motion to intervene in Docket Nos. CP96–249–000 or CP96–249–003 need not file again with the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–8071 Filed 3–28–97; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER97–2031–000, et al.]**

## Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 24, 1997.

Take notice that the following filings have been made with the Commission:

### 1. Cinergy Services, Inc.

[Docket No. ER97–2031–000]

Take notice that on March 11, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated March 1, 1997 between Cinergy, CG&E, PSI and IUC Power Services (IUC).

The Interchange Agreement provides for the following service between Cinergy and IUC:

1. Exhibit A—Power Sales by IUC
2. Exhibit B—Power Sales by Cinergy

Cinergy and IUC have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on IUC Power Services, the Kentucky Public Service Commission, the Michigan Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 2. Ohio Edison Company, Pennsylvania Power Company, Cleveland Electric Illuminating Company, and Toledo Edison Company

[Docket No. EC97–5–000]

Take notice that on March 21, 1997, Ohio Edison Company, Pennsylvania Power Company, Cleveland Electric Illuminating Company and Toledo Edison Company (the Applicants) filed additional information in support of their November 8, 1996, merger application. The supplement is a competitive screen analysis as required by the guidelines in the Commission's merger policy statement, *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement,* Order No. 592, 77 FERC ¶ 61,263 (1996). By letter order dated January 15, 1997, the Commission requested the Applicants to supply this information.

Applicants state that they have served their filing, including an electronic copy of the data used to develop the competitive screen analysis, on all intervenors.

*Comment date:* May 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 3. Western Resources, Inc.

[Docket No. ER97–2032–000]

Take notice that on March 10, 1997, Western Resources, Inc., tendered for filing non-firm transmission agreements between Western Resources and Central Louisiana Electric Company, Inc. and TransCanada Power Corporation. Western Resources states that the purpose of the agreements is to permit

non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective as follows: Central Louisiana Electric Company, Inc., February 12, 1997; and TransCanada Power Corporation, March 3, 1997.

Copies of the filing were served upon Central Louisiana Electric Company, Inc., TransCanada Power Corporation and the Kansas Corporation Commission.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**4. Sierra Pacific Power Company**

[Docket No. ER97–2033–000]

Take notice that on March 10, 1997, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with the following entities for Non Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff):

1. AIG Trading Corporation
2. Aquila Power Corporation
3. TransCanada Energy Ltd.
4. Northern California Power Agency

Sierra filed the executed Service Agreements with the Commission in compliance with Section 14.4 of the Tariff and applicable Commission Regulations. Sierra also submitted revised Sheet No. 148 to the Tariff, which is an updated list of all current subscribers. Sierra requests waiver of the Commission's notice requirements to permit and effective date 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 Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**5. Puget Sound Energy, Inc.**

[Docket No. ER97–2034–000]

Take notice that on March 10, 1997, Puget Sound Energy, Inc. (formerly Puget Sound Power & Light Company, Puget), tendered for filing an agreement amending its wholesale for resale power contract with the Port of Seattle (Purchaser). A copy of the filing was served on Purchaser.

Puget states that the agreement changes the term of the wholesale for resale power contract.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**6. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company Allegheny Power)**

[Docket No. ER97–2035–000]

Take notice that on February 21, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 21 to add two (2) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of February 20, 1997, to EnerZ Corporation and Minnesota Power & Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**7. Northern Indiana Public Service Company**

[Docket No. ER97–2036–000]

Take notice that on February 21, 1997, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and American Electric Power Services Corporation.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to American Electric Power Services Corporation pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission, and as amended in Docket No. OA96–47–000. *Northern Indiana Public Service Company,* 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of January 21, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**8. The Montana Power Company**

[Docket No. ER97–2037–000]

Take notice that on February 26, 1997, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 Non-Firm Point-to-Point Transmission Service Agreements with Citizens Lehman Power Sales (Citizens Lehman) and Los Angeles Department of Water and Power (LADWP) under FERC Electric Tariff, Original Volume No. 5 (Open Access Transmission Tariff). The Citizens Lehman Service Agreement is signed, while the LADWP Service Agreement is filed unsigned.

A copy of the filing was served upon Citizens Lehman and LADWP.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**9. Central Maine Power Company**

[Docket No. ER97–2039–000]

Take notice that on March 6, 1997, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with The Power Company of America, L.P. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**10. Central Maine Power Company**

[Docket No. ER97–2040–000]

Take notice that on March 6, 1997, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service with CNG Power Services Corporation. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**11. Maine Electric Power Company**

[Docket No. ER97–2041–000]

Take notice that on March 6, 1997, Maine Electric Power Company

(MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service with The Power Company of America, L.P. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**12. Maine Electric Power Company**

[Docket No. ER97–2042–000]

Take notice that on March 6, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service with Green Mountain Power Corporation. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 1, as supplemented.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**13. Northeast Utilities Service Company**

[Docket No. ER97–2044–000]

Take notice that on January 14, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with New England Power Company (NEP) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to NEP.

NUSCO requests that the Service Agreement become effective February 1, 1997.

*Comment date:* April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**14. AMVEST Power, Inc.**

[Docket No. ER97–2045–000]

Take notice that on February 26, 1997, AMVEST Power, Inc., tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an application for waivers and blanket approvals under various Regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective April 28, 1997, or the date that the Commission issues an order in this proceeding, whichever is earlier. AMVEST Power, Inc., intends to engage in electric energy and capacity transactions as a marketer.

*Comment date:* April 7, 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. 97–8069 Filed 3–28–97; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. CP97–202–000]**

## USG Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed USG Pipeline Project and Request for Comments on Environmental Issues

March 25, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities, about 14.5 miles of 10-inch-diameter pipeline and appurtenances, proposed in the USG pipeline Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

**Summary of the Proposed Project**

USG Pipeline Company (USGPC) wants to construct facilities in order to transport up to 7,000 Dekatherms per day to United States Gypsum Company (USGC) near Bridgeport, Alabama, where USGC is planning to construct a nonjurisdictional wallboard manufacturing plant. USGPC's facilities would be constructed in Tennessee and Alabama and would consist of:

- About 14.5 miles of 10-inch-diameter pipeline commencing at interconnecting facilities with East Tennessee Natural Gas Company in Marion County, Tennessee, and ending in Jackson County, Alabama;
- A block valve assembly in Marion County, Tennessee, near milepost (MP) 6.85; and
- Launching and receiving facilities in Marion County, Tennessee, at MP 0.0, and Jackson County, Alabama, at MP 14.5, respectively;

USGPC has also identified a alternative pipeline route.

The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, or procedural information, please write to the Secretary of the Commission.

**Land Requirements for Construction**

Construction of the proposed facilities for the preferred route would require about 148.0 acres of mostly agricultural land. Following construction, about 87.9 acres of existing right-of-way (ROW) would continue to be maintained as permanent ROW. If the alternative pipeline route is chosen, construction activities would take place almost entirely on existing railroad ROW.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.

[1] USG Pipeline Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Air quality and noise.
- Hazardous waste.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

**Currently Identified Environmental Issues**

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by USGPC. This preliminary list of issues may be changed based on your comments and our analysis.

- Six federally listed endangered or threatened species may occur in the proposed project area.
- Eight wetlands and seven perennial streams would be affected.
- There are 75 residences located within 50 feet of the construction ROW of the alternative route.

**Public Participation**

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP97–202–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 24, 1997.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for later intervention.

You do not need intervenor status to have your comments considered.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–8007 Filed 3–28–97; 8:45 am]

BILLING CODE 6717–01–M

## Notice of Application Tendered for Filing With the Commission

March 25, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

*a. Type of Application:* Original Minor License.

*b. Project No.:* 1986–005.

*c. Date filed:* February 28, 1997.

*d. Applicant:* Douglas W. Pegar.

*e. Name of Project:* Rock Creek Historic Hydro-electric Power Plant.

*f. Location:* On Rock Creek, a tributary of the Powder River, near Haines in Baker County, Oregon; on lands within the Wallowa-Whitman National Forest.

*g. Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)–825(r).

*h. Applicant Contact:* Douglas W. Pegar, 540 E. 1st Street, Gladstone, OR 97027, (503) 657–1076.

*i. FERC Contact:* Gordon Warren at (202) 219–2836.

*j. Comment Date:* 60 days from the filing date in paragraph c.

*k. Brief Description of Project:* The existing project consists of: (1) a concrete diversion structure on Rock Creek; (2) a 8,500 foot-long wooden timber flume; (3) a forebay pond; (4) a 2,700 foot-long steel penstock; (5) a wooden powerhouse; (6) two turbine generator units, each with a capacity of 400 KW; and (7) other appurtenances.

l. With this notice, we are initiating consultation with the OREGON STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at 800.4.

m. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–8009 Filed 3–28–97; 8:45 am]

BILLING CODE 6717–01–M

## Office of Hearings and Appeals

## Notice of Cases Filed; Week of February 24 Through February 28, 1997

During the Week of February 24 through February 28, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: March 21, 1997.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS, DEPARTMENT OF ENERGY

[Week of February 24 through February 28, 1997]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Feb. 25, 1997 | Chemical Weapons Working Group, Inc., Boulder, Colorado. | VFA–0272 | Appeal of an information request denial. If granted: The December 13, 1996 Freedom of Information Request Denial issued by the DOE Federal Energy Technology Center would be rescinded, and Chemical Weapons Working Group, Inc. would receive access to certain DOE information. |
| Feb. 26, 1997 | Personnel Security Hearing | VSO–0137 | Request for hearing under 10 CFR part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR part 710. |
| Feb. 28, 1997 | Personnel Security Hearing | VSO–0138 | Request for hearing under 10 CFR part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR part 710. |

[FR Doc. 97–8050 Filed 3–28–97; 8:45 am]

BILLING CODE 6450–01–P

## Notice of Cases Filed; Week of March 3 through March 7, 1997

During the Week of March 3 through March 7, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: March 21, 1997.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 3 through March 7, 1997]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Mar. 3, 1997 | Burlin McKinney, Oliver Springs, TN | VFA–0273 | Appeal of an information request denial. If granted: The February 20, 1997, Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and Burlin McKinney would receive access to certain DOE information. |
| Do | Hampton Gas Co., Inc., Hampton, SC | VEE–0041 | Exception to the reporting requirements. If granted: Hampton Gas Co., Inc. would not be required to file Form EIA–782B, Resellers'/Retailer's Monthly Petroleum Product Sales Report. |
| Mar. 4, 1997 | Personnel Security Hearing | VSO–0139 | Request for hearing under 10 CFR part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710. |
| Do | Personnel Security Review | VSA–0106 | Request for review of opinion under 10 CFR part 710. If granted: The Opinion of the Office of Hearings and Appeals, Case No. VSO–0106, would be reviewed at the request of an individual employed by the Department of Energy. |
| Mar. 5, 1997 | Alex German, Brooklyn, NY | VFA–0275 | Appeal of an information request denial. If granted: The Freedom of Information Request Denial issued by Environmental Measurements Laboratory would be rescinded, and Alex German would receive access to certain DOE information. |
| Do | Edris Oil Service, Inc., York, PA | VEE–0042 | Exception to the reporting requirements. If granted: Edris Oil Service, Inc. would not be required to file Form EIA–782B Resellers'/Retailer's Monthly Petroleum Product Sales Report. |
| Do | Personnel Security Hearing | VSO–0140 | Request for hearing under 10 CFR part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710. |
| Do | Richard J. Levernier, Germantown, MD | VFA–0274 | Appeal of an information request denial. If granted: The February 27, 1997, Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and Richard J. Levernier would receive access to certain DOE information. |
| Mar. 7, 1997 | Daniel J. Bruno, Upper Marlboro, MD | VFA–0141 | Appeal of an information request denial. If granted: The February 28, 1997, Freedom of Information Request Denial issued by the Office of the Executive Secretariat would be rescinded, and Daniel J. Bruno would receive access to certain DOE information. |

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of March 3 through March 7, 1997]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Do | Glen Milner, Seattle, WA | VFA–0278 | Appeal of an information request denial. If granted: The February 12, 1997, Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Glen Milner would receive access to certain DOE information. |
| Do | Personnel Security Hearing | VSO–0141 | Request for hearing under 10 CFR part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710. |
| Do | Personnel Security Hearing | VSO–0142 | Request for hearing under 10 CFR part 710. If granted: An individual employed by a contractor of the Department would receive a hearing under 10 CFR Part 710. |
| Do | Terry J. Fox, Lacey, WA | VFA–0276 | Appeal of an information request denial. If granted: The January 21, 1997, Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Terry J. Fox would receive access to certain DOE information. |

FR Doc. 97–8051 Filed 3–28–97; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5804–8]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Public Water Systems Supervision Program.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Public Water Systems Supervision Program, EPA No. 0270.36; OMB No.2040–0090, which expires on 3/31/97. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the existing information collection as described below.

**DATES:** Comments must be submitted on or before May 30, 1997.

**ADDRESSES:** Office of Ground Water and Drinking Water. People interested in getting information or making comments about these ICRs should direct inquiries or comments to the Office of Ground Water and Drinking Water, Mail Code 4601, 401 M Street, SW, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Office of Ground Water and Drinking Water's Public Water Systems Supervision Program Information Collection Request Service Line: 202-260–2050 or through E-mail Donaher.Clare@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are Public Water Systems, primacy agents including regulators in the States, Puerto Rico, the U.S. Trust Territories; Indian Tribes and Alaska Native Villages, and in some instances, U. S. EPA Regional Administrators and staff.

*Title:* Information Collection Request for Public Water Systems Supervision Program, expires March 31, 1997.

*Abstract:* This ICR contains record keeping and reporting requirements that are mandatory for compliance with 40 CFR Parts 141 and 142. Sections 1401 and 1412 of the Safe Drinking Water Act (SDWA), as amended, require EPA to establish National Primary Drinking Water Regulations (NPDWRs) that ensure the safety of drinking water. These regulations guarantee that exposure to contaminants—microbial, organic and inorganic chemicals, and radionuclides in finished drinking water is below the level established by human health risk assessments. The Act further requires EPA to ensure compliance with and enforce these regulations. Section 1445 of SDWA stipulates that every supplier of water shall conduct monitoring, maintain records, and provide such information as is needed for the Agency to carry out its compliance and enforcement responsibilities with respect to SDWA. Implementation of these requirements is principally a responsibility of the States, particularly the 49 States that have assumed primary enforcement responsibility (primacy) for public water systems under SDWA Section 1413. As part of the Public Water Systems Supervision Program, the Office of Ground Water and Drinking Water's Federal Reporting Data System (FRDS) and the newly-instituted Safe Drinking Water Information System (SDWIS) collect data from the States on public water systems regulated by EPA. Data include the public water system inventory, violations, and Federal and State enforcement actions. Without comprehensive, up-to-date information on drinking water contamination, the Agency would not be able to ensure ''a supply of drinking water which dependably complies with such maximum contaminant levels'' (SDWA, Section 1401 (1) (d)).

An Agency may not conduct or sponsor and a person is not required to respond to a collection of information if it does not display 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 EPA solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and, (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* In the ICR for 1994–1996, the total burden associated with this ICR was estimated to be approximately 11 million hours per year and the total cost was estimated to be $365 million per year. We expect that the burden for the continuing ICR for 1997–1999 will be in the same range as the three previous years. EPA intends to examine how SDWIS could assist in reducing the burden on the States for reporting requirements and will be working with selected State officials as we work on this renewal. Any recommendations from the drinking water community and the general public on this issue will be given consideration by the Agency.

Dated: March 25, 1997.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 97–8090 Filed 3–28–97; 8:45 am]

BILLING CODE 6560–50–P

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**[FRL–5805–1]**

## Transfer Of Confidential Business Information To Contractors

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of transfer of data and request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) will transfer Confidential Business Information (CBI) to its contractor, Science Applications International Corporation (SAIC), its subsidiary GSC, and its subcontractors: Marasco Newton Group, Ltd. (MNG), and Computer Sciences Corporation (CSC). These data pertain to the quantities of hazardous waste generated or received, the disposition of those wastes, and where applicable, waste minimization efforts undertaken and reduction achieved. These data have been or will be submitted to EPA pursuant to the Biennial Reporting requirements of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. Some of the information may have a claim of business confidentiality. SAIC, its subsidiary GSC, and its subcontractors are assisting EPA in establishing national data bases on hazardous waste generation and management.

**DATE:** Transfer of confidential data submitted to EPA will occur no sooner than April 10, 1997.

**ADDRESSEE:** Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be identified as ''Transfer of Confidential Data.''

**FOR FURTHER INFORMATION CONTACT:** Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703–308–7909.

**SUPPLEMENTARY INFORMATION:**

### 1. Transfer of Confidential Business Information

The U.S. Environmental Protection Agency is using biennial report data to establish a national data base on hazardous waste generation, management, and minimization. These data will be used to characterize the demographics of and trends in hazardous waste generation, management and minimization. Under EPA Contract No. 68–W1–0055, SAIC, Inc., its subsidiary GSC, and its subcontractors will assist the Information Management Branch, Communications, Information, and Resources Management Division, Office of Solid Waste, in establishing the national data base and preparing the national report based on those analyses. Some of the information being transferred may be claimed as Confidential Business Information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that SAIC, Inc., its subsidiary GSC, and its subcontractors require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactory under the above noted contract.

EPA is issuing this notice to inform all submitters of CBI on the 1989, 1991, 1993, 1995 and 1997 Hazardous Waste Report Forms (EPA Form 8700–13 A/B), or State developed biennial report forms, that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, SAIC will return all material to EPA.

SAIC, Inc., its subsidiary GSC, and its subcontractors have been authorized to have access to RCRA CBI under the EPA ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.'' EPA will approve the security plans of the contractors to ensure that their facilities comply with security procedures outlined in the security manual prior to RCRA CBI being transmitted to the contractors. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: March 18, 1997.

**Matthew Hale,**

*Acting Director, Office of Solid Waste.*

[FR Doc. 97–8085 Filed 3–28–97; 8:45 am]

BILLING CODE 6560–50–P

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**[FRL–5804–6]**

## Annual Conference on Analysis of Pollutants in the Environment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of conference.

**SUMMARY:** The Office of Science and Technology and the Water Environment Federation will co-sponsor the ''20th Annual Conference on Analysis of Pollutants in the Environment'' to discuss all aspects of environmental measurement. The conference is open to the public.

**DATES:** The conference will be held on May 7–8, 1997. On May 7, 1997, the conference will begin at 8:30 am and last until 5:30 pm. On May 8, 1997, the conference will begin at 9 am and adjourn at 5 pm.

**ADDRESSES:** The conference will be held at the Omni Waterside Hotel, 77 Waterside Drive, Norfolk, Virginia 23510.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding the conference program, contact Marion Thompson by phone at (202) 260–7117 or facsimile at (202) 260–7185. For information on registration, hotel, and transportation, contact the Water Environment Federation at (800) 666–0206.

**SUPPLEMENTARY INFORMATION:** EPA's 20th Annual Conference on Analysis of Pollutants in the Environment is designed to bring together representatives of regulated industries, commercial environmental laboratories, state and Federal regulators, and environmental consultants and contractors to discuss all aspects of environmental measurement with a particular focus on analytical methods and related issues.

Hotel reservations must be made on or before Friday, April 4, 1997. Hotel reservations can be made by contacting the Omni Waterside Hotel at (804) 622–6664. Ask for Reservations, and identify the group as the Environmental Protection Agency. Reservation requests received after this date will be accepted on a space available and a rate-available basis.

The draft program for the conference follows:

**Wednesday, May 7**

8:30 am William Telliard, USEPA, Welcome
8:45 am TBD, Keynote Address

**Program Policy**

9:15 am James Hanlon, USEPA, Harmonization of Methods Across EPA's Water Programs
9:45 am William Telliard, USEPA, Updates on Proposal and/or Promulgation of Streamlining and on Methods for Oil and Grease, Trace Metals, Dioxins/Furans, Cyanides, and Other Substances of Regulatory Concern
10:15 am Break

**Cryptosporidium**

10:30 am Frank Schaefer, USEPA, Methods for Determination of Parasites at Levels Necessary to Protect Public Health
11:00 am Ephraim King, USEPA, Implementation of the Information Collection Rule (ICR)
11:30 am Lunch
1:00 pm Jennifer Clancy, CEC, Performance Characteristics of an Improved Method for Determination of Cryptosporidium in Water Using Vortex-flow and Capsule Filtration Combined with Immuno-magnetic Separation
1:30 pm Ricardo DeLeon, Metropolitan Water District of Southern California, Novel Techniques for Detection of Cryptosporidium

**Drinking Water**

2:00 pm Mark Keating, North Carolina Cooperative Extension Service, Public Participation in Drinking Water Protection: Results from an EPA Environmental Justice Initiative in Northampton and Bertie Counties, North Carolina
2:30 pm Dick Reding, USEPA, Recent Technological Advances in Drinking Water Methods
3:00 pm Break
3:15 pm TBD

**Organics**

3:45 pm M. Coreen Hamilton, Brian Fowler, and Dale Hoover, Axys Corporation, Implementation of Method 1668 for Determination of Toxic PCBs in Fish Tissue
4:15 pm Al Uhler and G.S. Durrell, Battelle Ocean Sciences, and Mary Sue Brancato, Parametrix, Inc., Determination of Butyltin Compounds in Seawater at the 1 Part-per-trillion Level
4:45 pm Tamra Schumacher, Lancaster Laboratories, Fast Pre-screening of Environmental Samples Using Solid-phase Micro-extraction (SPME)

**Thursday, May 8**

**Trace Metals and Metals Speciation**

9:00 am John Donat, Old Dominion University, Determination of Free Copper Cu2+ and Copper-organic Complexes in Marine and Other Natural Waters
9:30 am Nicholas Bloom, Frontier Geosciences, Speciation and Analysis of Mercury in Natural Waters
10:00 am Break
10:15 am Gregory Cutter, Old Dominion University, Bioavailability and Toxicity of Selenium: The Need for Chemical Speciation Data
10:45 am Ken Robillard, Eastman Kodak, Determination of Silver Species at Sub-part-per-billion Levels in Natural Waters and Effluents

**Conventionals**

11:15 am Mike Straka, A Comparison of Streamlined Proposal of WAD Cyanide Method 1677 (1996–1997) and Nationwide Approval of TKN ATPs (1989–1995)
11:45 am Lunch

**Endocrine Disruptors**

1:30 pm TBD, Tufts University School of Medicine, Methods for Determination of Endocrine Disruptors

**Detection and Quantitation**

2:00 pm Robert A. Gibbons, University of Illinois at Chicago: Raymond F. Maddalone, TRW, Inc.; David E. Coleman, Alcoa Research; James K. Rice, James K. Rice Consulting; Babu R. Nott, Electric Power Research Institute; Larry LaFleur, National Council of the Paper Industry for Air and Stream Improvement, Industry Perspective on Detection and Quantitation Limits
2:30 pm Henry D. Kahn, USEPA and Kathleen Stralka, SAIC, Alternate Estimates of Detection and Quantification
3:00 pm Break
3:15 pm Roger Stewart, Virginia DEQ, Analytical Variability Versus Concentration

**Quality Control**

4:00 pm Nicholas Bloom, Frontier Geosciences, EPA–CLP Quality Assurance Protocols: The Wrong Path to High Quality Data
4:15 pm Marcia Kuehl, M.A. Kuehl Company, The Corruption of DQOs: Boilerplate, Statistics, and Reality

Dated: March 20, 1997.

**Tudor T. Davies,**

*Director, Office of Science and Technology.*

[FR Doc. 97–8092 Filed 3–28–97; 8:45 am]

BILLING CODE 6560–50–P

**[FRL–5805–4]**

## Microbial and Disinfectants/Disinfection Byproducts Advisory Committee; Notice of Open Meeting

Under Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that a meeting of the Microbial and Disinfectants/Disinfection Byproducts Advisory Committee will be held on April 16, 1997, from 9:00 a.m. until 5:30 p.m. and on April 17, 1997, from 9:00 a.m. until 4:00 p.m. at the Sheraton City Center Hotel, 1143 New Hampshire Ave. Northwest., Washington, DC 20037. The Committee was established earlier this year (on February 21, 1997, at 62 FR 8012) to assist the Environmental Protection Agency (EPA) in the development of regulations, guidance and policies to address microorganisms and disinfectants/disinfection byproducts in drinking water.

The purpose of the meeting is to discuss issues related to the development of an Interim Enhanced Surface Water Treatment Rule (IESWTR) and a Stage 1 Disinfectants/Disinfection Byproducts (D/DBP) rule. The agenda for the meeting will include presentation and discussion of information and data related to microbial and disinfection byproducts issues developed by the Committee's technical working group. The agenda will also include discussion and evaluation of options to be considered for inclusion in EPA's Notice of Data Availability for the IESWTR and Stage 1 D/DBP rule, with particular focus on turbidity; predisinfection and a microbial backstop; and Maximum Contaminant Levels and enhanced coagulation, as needed. In addition, the Committee may begin consideration of other issues, including but not limited to what to do about recycling of filter backwash (including filter-to-waste and other options); a physical removal credit for Cryptosporidium for conventional treatment; and sanitary surveys.

The meeting will be open to the public. Members of the public may attend the meeting, make oral statements at the meeting to the extent time permits and/or file written statements with the Committee for its consideration.

Members of the public who would like more information or who would like to present an oral statement or submit a written statement are requested to contact the Committee's Designated Federal Officer, Steve Potts, at the Office of Ground Water and Drinking Water, U.S. EPA, Mail Code 4607, 401 M Street, SW., Washington, DC 20460. Mr. Potts

may also be reached by telephone at (202) 260–5015 or contacted by e-mail at Potts.Steve@EPAMAIL.EPA.GOV.

Dated: March 26, 1997.

**William R. Diamond,**

*Acting Director, Office of Ground Water and Drinking Water.*

[FR Doc. 97–8106 Filed 3–28–97; 8:45 am]

BILLING CODE 6560–50–P

**[FRL–5804–7]**

## Notice of Public Meetings—Updated Schedule; National Guidance on Source Water Protection

On March 12, 1997 (Volume 62, number 48), the Environmental Protection Agency (EPA) published a schedule for Regional source water protection stakeholder meetings being held around the country. The purpose of these public meetings is to discuss EPA's draft source water assessment and protection guidance and to encourage stakeholder involvement in the development of strong State source water assessment and protection programs. This notice provides an update to that published schedule. The changes are as follows: (1) There is not a meeting in Raleigh, NC on May 6, 1997, rather the meeting in Raleigh is May 28 and 29, 1997; (2) There is a meeting in Columbus, OH on April 14, 1997; (3) The meeting in Las Vegas, NV has been rescheduled for May 16, 1997; (4) A new meeting has been scheduled in Huntington, WV on May 15, 1997; (5) The meeting in Fond Du Lac, WI is on May 13, 1997; (6) The meeting in Alaska is in Fairbanks on April 21, 1997; and (7) The meeting in Boise, ID is on May 2, 1997.

The Final Meeting Schedule is 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. |
| 3, 4 and 5 | Huntington, WV. | May 15, 1997. |
| 5 | Lansing, MI | April 1, 1997. |
| | Springfield, IL | April 11, 1997. |
| | Columbus, OH | April 14, 1997. |
| | St. Cloud, MN | April 22, 1997. |
| | Indianapolis, IN. | April 28, 1997. |
| | Fond Du Lac, WI. | May 13, 1997. |
| 6 | Dallas, TX | April 2 & 3, 1997. |
| 7 | Lenexa, KS | May 14, 1997. |
| 8 | Denver, CO | April 22 & 23, 1997. |
| 9 | Las Vegas, NV. | May 16, 1997. |
| | Los Angeles, CA. | May 21, 1997. |
| 10 | Salem, OR | April 30, 1997. |
| | Fairbanks, AK | April 21, 1997. |
| | Boise, ID | May 2, 1997. |
| | Lacey, WA | May 6, 1997. |

Please call the Safe Drinking Water Hotline 1–800–426–4791 (9 a.m.–5:30 p.m. Monday–Friday) for detailed information on meeting times and locations, to pre-register (space will be limited) and for any additional schedule changes.

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 a.m.–5:00 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 13, 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 24, 1997.

**Robert W. Barles,**

*Chief, Program Support Branch, Office of Ground Water and Drinking Water.*

[FR Doc. 97–8091 Filed 3–28–97; 8:45 am]

BILLING CODE 6560–50–P

**[OPP–30431; FRL–5590–9]**

## Eden BioScience Corp; Application to Register a Pesticide Product

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of an application to register the pesticide product GG-1000, containing technical grade active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments must be submitted by April 30, 1997.

**ADDRESSES:** By mail, submit written comments identified by the document control number [OPP–30431] and the (File Symbol 69834–R) 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: 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 in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30431]. 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 submission can be found below in 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. 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 holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Diana Horne, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703–308–8367); e-mail: horne.diana@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA received an application from Eden BioScience Corporation, 5795 NE Minder Road, Poulsbo, WA 98370, to register the pesticide product GG-1000,

a biological fungicide (EPA File Symbol 69834–R) for formulation use only, containing the technical grade active ingredients *Trichoderma hamatum, Bacillus megaterium, Rhodotorula glutinis, and Penicillium oxalicum* active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30431] (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.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.

## List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 4, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 97–8082 Filed 3–28–97; 8:45 am]

BILLING CODE 6560–50–F

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**[OPPTS–59283B; FRL–5595–4]**

## Certain Chemical Approval of Modifications to Test Marketing Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of modifications of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME–90–11. The test marketing conditions are described below.

**EFFECTIVE DATE:** March 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** Darlene Jones, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, D.C. 20460, (202 260–2279). e-mail: jones.darlene.@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modifications of the test marketing period, production volume, and number of customers for TME–90–11. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME applications and modification requests, and for the modified time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

**TME–90–11**

*Notice of Approval of Original Application:* July 13, 1990 (55 FR 22827).

*Production Volume:* 15,000 kilograms per year.

*Number of Customers:* Confidential

*Modified Test Marketing Period:* 36 months.

*Commencing On:* First day of manufacture.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

## List of Subjects

Environmental protection, Test marketing exemptions.

Dated: March 20, 1997.

**Flora Chow,**

*Acting Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.*

[FR Doc. 97–8083 Filed 3–28–97; 8:45 am]

BILLING CODE 6560–50–F

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**[OPPTS–59301C; FRL–5595–5]**

## Certain Chemical Approval of Modifications to Test Marketing Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of modifications of the test marketing period for a test marketing

exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME–91–25. The test marketing conditions are described below.

**EFFECTIVE DATE:** March 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** Darlene Jones, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, D.C. 20460, (202 260–2279). e-mail: jones.darlene.@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modifications of the test marketing period, production volume, and number of customers for TME–91–25. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME applications and modification requests, and for the modified time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

**TME–91–25**

*Notice of Approval of Original Application:* October 3, 1991 (56 FR 50121).

*Production Volume:* 25,000 kilograms per year.

*Number of Customers:* Confidential.

*Modified Test Marketing Period:* Confidential.

*Commencing On:* First day of manufacture.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

**List of Subjects**

Environmental protection, Test marketing exemptions.

Dated: March 20, 1997.

**Flora Chow,**

*Acting Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.*

[FR Doc. 97–8084 Filed 3–28–97; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

March 24, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

**Federal Communications Commission.**

*OMB Control No.:* 3060–0056.

*Expiration Date:* 03/31/2000.

*Title:* Registration of Telephone and Data Terminal Equipment.

*Form No.:* FCC Form 730.

*Estimated Annual Burden:* 2400 respondents; 24 hours per response (avg.); 57,600 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $2700.

*Description:* Telephone and data equipment located on customer premises must be registered with the Commission. Part 68 of FCC's rules and regulations establishes nationwide technical standards for telephone and data equipment designed for connection to the network. Part 68 also sets for the terms and conditions for connection and for the registration of customer provided terminal equipment. See Part 68, Subparts A-F. The purpose of Part 68 is to protect the network from certain types of harm and interference to other subscribers. FCC Form 730 is used to obtain registration of telephone equipment pursuant to Part 68 of the Commission's Rules. In addition to filing the form, applicants are required to submit exhibits and other informational showings as specified by Part 68. For example, Part 68, Subpart C contains the procedures for registering equipment and lists many of the exhibits and showings that must be filed with the application form. The exhibits and showings are described in Section 68.200(a) through (k). These requirements are also specified in the application form and the application guide. Information submitted is used by the Common Carrier Bureau staff and FCC Laboratory for evaluation of equipment to determine whether such equipment meets the criteria set forth in Part 68 of the Commission's Rules. This is necessary in order to prevent improperly designed equipment from causing harm to the nation's telephone network. FCC Form 730 has been revised. The March 1997 edition of FCC Form 730 form may be obtained either: by calling the Forms Distribution Center at 1–800–418–3676 to order the form; by picking up a copy of the form from the Forms Self Serve Center in Room L–17 at 1919 M Street, Washington, DC 20554; or, by using the Commission's Fax on Demand system. Copies may be ordered via fax 24 hours a day by calling 202–418–0177 from the handset of any fax machine. The document retrieval number is 000730. Follow the system voice prompts and enter the document retrieval number when requested.

*OMB Control No.:* 3060–0410.

*Expiration Date:* 3/31/2000.

*Title:* Forecast of Investment Usage Report and Actual Usage of Investment Report.

*Form No.:* FCC Reports 495A and 495B.

*Estimated Annual Burden:* 300 respondents; 40 hours per response (avg.); 12,000 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Description:* Section 220 of the Communications Act of 1934, as amended, 47 U.S.C. 220, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. Section 219(b) of the Communications Act of 1934, as amended, 47 U.S.C. 219(b), authorizes

the Commission by general or special orders to require any carrier subject to this Act to file monthly reports concerning any matters with respect to which the Commission is authorized or required by law to act. The Forecast of Investment Usage Report and Actual Usage of Investment Report implement the FCC's *Joint Cost Order*, CC Docket No. 86–111, 2 FCC Rcd 1298 (1987), which requires that certain telephone plant investments used for both regulated and nonregulated purposes be allocated on the basis of forecasted regulated and nonregulated use. The detection and correction of forecasting errors requires reporting of both forecasted and actual investment usage data. The Forecast of Investment Usage Report is used by carriers to submit the forecasts of investments used. The Actual Usage of Investment Report is used to submit the actual investments used. These reports are part of the Automated Reporting Management Information System (ARMIS). The information contained in these two reports provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities to ensure that the regulated operations of the carriers do not subsidize the nonregulated operations of those same carriers. These reports have been updated to include the OMB control number and expiration date. Copies of the reports may be obtained by contacting Barbara Van Hagen at 202–418–0849.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to the Records Management Branch, Washington, D.C. 20554.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–8111 Filed 3–28–97; 8:45 am]

BILLING CODE 6712–01–F

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:16 a.m. on Tuesday, March 25, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider certain supervisory and personnel matters.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Mr. Kenneth Ryder, acting in place and stead of Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: March 26, 1997.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 97–8165 Filed 3–27–97; 10:27 am]

BILLING CODE 6714–01–M

### Sunshine Act Meeting; Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:01 a.m. on Tuesday, March 25, 1997, the Corporation's Board of Directors determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Mr. Kenneth Ryder, acting in the place and stead of Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), concurred in by Director Joseph H. Neely (Appointive), Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum and resolution regarding a proposed rule on deposit insurance simplification; and that no notice earlier than March 20, 1997, of this change in the subject matter of the meeting was practicable.

The Board also determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum and resolution regarding a statement of policy on interagency coordination of bank holding company inspections and subsidiary bank examinations; and that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: March 26, 1997.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 97–8237 Filed 3–27–97; 3:08 pm]

BILLING CODE 6714–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1154–DR]**

### Idaho; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Idaho, (FEMA–1154-DR), dated January 4, 1997, and related determinations.

**EFFECTIVE DATE:** March 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Idaho, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 4, 1997:

Camas County for Hazard Mitigation and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 97–8099 Filed 3–28–97; 8:45 am]

BILLING CODE 6718–02–P

**[FEMA–1163–DR]**

### Kentucky; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the

Commonwealth of Kentucky, (FEMA–1163–DR), dated March 4, 1997, and related determinations.

**EFFECTIVE DATE:** March 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 4, 1997:

The counties of Ballard, Carlisle, Estill, Fulton, Grayson, Hart, Hickman, Marshall, Monroe, Simpson, Todd, and Warren for Individual Assistance, Hazard Mitigation and Categories A and B under the Public Assistance program.

The counties of Breathitt, Clark, Edmonson, Knott, Lee, Leslie, Logan, Magoffin, Muhlenberg, Perry, Taylor, and Trigg for Hazard Mitigation and Categories A and B under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Dennis H. Kwiatkowski,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 97–8097 Filed 3–28–97; 8:45 am]

BILLING CODE 6718–02–P

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**[FEMA–1160–DR]**

## Oregon; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1160–DR), dated January 23, 1997, and related determinations.

**EFFECTIVE DATE:** March 20, 1997

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Oregon, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 23, 1997:

Umatilla County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 97–8098 Filed 3–28–97; 8:45 am]

BILLING CODE 6718–02–P

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## Open Meeting, Board of Visitors for the National Fire Academy

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

**NAME:** Board of Visitors for the National Fire Academy.

**DATES OF MEETING:** May 29–31, 1997.

**PLACE:** Building J, Room 130, National Emergency Training Center, Emmitsburg, Maryland.

**TIME:** May 29, 1997, 8:30 a.m.–5 p.m.; May 30, 1997, 8:30 a.m.–9 p.m.; May 31, 1997, 8:30 a.m.–5 p.m.

**PROPOSED AGENDA:** May 29–31, 1997 Review National Fire Academy Program Activities.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before May 2, 1997.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: March 17, 1997.

**Carrye B. Brown,**

*U.S. Fire Administrator.*

[FR Doc. 97–8100 Filed 3–28–97; 8:45 am]

BILLING CODE 6718–01–M

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# FEDERAL MARITIME COMMISSION

## Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capital Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 202/010776–103.

*Title:* Asia North America Eastbound Rate Agreement.

*Parties:*

American President Lines, Ltd.
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

*Synopsis:* The proposed Agreement modifies Article 8.6 to provide that two Agreement members that recently affiliated through common ownership will have one vote on agreement matters and be considered as one member for purposes of voting majority and quorum requirements. Article 14.1(a) of the Agreement is also modified to permit the crediting of cargo moving in the Japan/USA trade toward quantity commitments in an ANERA service contract. This authority applies only to certain limited commodities. The parties have requested a shortened review period.

*Agreement No.:* 224–010974–014.

*Title:* Port of Oakland and International Transportation Service, Inc.

*Parties:*

Port of Oakland
International Transportation Service, Inc.

*Synopsis:* The proposed Agreement extends the term of the Agreement to December 31, 1997.

*Agreement No.:* 224–200982–001.

*Title:* Jacksonville Port Authority/Green Cove Maritime, Inc. Terminal Agreement

*Parties:*

Jacksonville Port Authority (''Port'')
Green Cove Maritime, Inc. (''Green Cove'')

*Synopsis:* The proposed agreement modification increases rates the Port charges Green Cove for facilities and services, incorporates potable water charges, and makes other administrative and organizational changes to the agreement.

Dated: March 25, 1997.

By order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 97–8043 Filed 3–28–97; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Agency information collection activities: Proposed collection; comment request

**AGENCY**: Board of Governors of the Federal Reserve System

**ACTION**: Notice

**BACKGROUND**:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES**: Comments must be submitted on or before May 30, 1997.

**ADDRESSES**: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT**: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, the following report:

*1. Report title*: Report of Repurchase Agreements (RPs) on U.S. Government and Federal Agency Securities with Specified Holders

*Agency form number*: FR 2415

*OMB control number*: 7100-0074

*Frequency*: weekly, quarterly, or annually

*Reporters*: U.S.-chartered commercial banks, U.S. branches and agencies of foreign banks, and thrift institutions

*Annual reporting hours*: 4,037

*Estimated average hours per response*: 0.5

*Number of respondents*: 120 weekly, 208 quarterly, and 1,002 annually

Small businesses are not affected.

*General description of report*: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

*Abstract*: Since 1980, the Federal Reserve has collected two reports providing detailed data on nonreservable borrowings (primarily federal funds and repurchase agreement (RP) transactions) from large commercial banks for construction of the RP components of the monetary aggregates and for other analytical purposes. Over time, three other sample reports have been added to this reporting framework to provide RP data from other depository institutions for the construction of the monetary aggregates. The Federal Reserve proposes a complete overhaul of this reporting framework, resulting in a simplified reporting system and significant reductions in item coverage. The revised framework would be implemented as of the end of June 1997.

Under the proposed revised reporting system, the Federal Reserve would collect a single report containing a single item: RPs in denominations of $100,000 or more, in immediately-available funds, on U.S. government and federal agency securities, transacted with specified holders. Respondents would submit the report weekly, quarterly, or annually based on their RP activity. The Federal Reserve estimates that revised reporting system will reduce annual respondent burden by 16,890 hours and annual respondent costs by approximately $338 thousand.

The revised report will replace the following system of existing reports: the Report of Selected Borrowings, the Daily Telephone Report of Selected Borrowings, the Weekly Report of Repurchase Agreements (FR 2415, FR 2415a, FR 2415t, respectively; OMB No. 7100-0074); and the Quarterly and Annual Reports of Repurchase Agreements (RPs) on U.S. Government and Federal Agency Securities with Specified Holders (FR 2090a and FR 2090a: OMB No. 7100-0205).

Board of Governors of the Federal Reserve System, March 25, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–8056 Filed 3–28–97; 8:45AM]

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 24, 1997.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Seacoast Banking Corporation of Florida*, Stuart, Florida; to merge with Port St. Lucie National Bank Holding Corporation, Port St. Lucie, Florida, and thereby indirectly acquire Port St. Lucie National Bank, Port St. Lucie, Florida.

In connection with this application, Applicant also has applied to acquire Spirit Mortgage Company, Port St. Lucie, Florida, and thereby engage in making, acquiring, or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. The proposed activity will be conducted throughout the State of Florida.

**B. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

*1. Adams Bancshares, Inc., Employee Stock Ownership Plan*, Adams, Minnesota; to become a bank holding company by acquiring 30.02 percent of the voting shares of Adams Bancshares, Inc., Adams, Minnesota, and thereby indirectly acquire Farmers State Bank of Adams, Adams, Minnesota.

Board of Governors of the Federal Reserve System, March 25, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–8001 Filed 3–28–97; 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 April 14, 1997.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

*1. Vermont Financial Services Corp.*, Brattleboro, Vermont; to merge with Eastern Bancorp, Inc., Dover, New Hampshire, and thereby engage in operating a savings association, Vermont Federal Bank, FSB, Williston, Vermont, pursuant to § 225.25(b)(19) of the Board's Regulation Y. In connection with this application, Vermont Financial Services Corp., will be the survivor as a result of this merger.

Board of Governors of the Federal Reserve System, March 25, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–8002 Filed 3-28-97; 8:45 am]

BILLING CODE 6210-01-F

## Government in the Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 62 FR 14431, March 26, 1997.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 11:00 a.m., Monday, March 31, 1997.

**CHANGES IN THE MEETING:** One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added: Federal Reserve System compensation policy matters. (This item was originally announced for a closed meeting on March 26, 1997.)

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 26, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–8156 Filed 3–26–97; 4:30 pm]

BILLING CODE 6210–01–P

# FEDERAL TRADE COMMISSION

## Delegation of Authority To Disclose Certain Materials to Other Government Agencies

**AGENCY:** Federal Trade Commission.

**ACTION:** Delegation of Authority.

Notice is hereby given, pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, that the Commission has delegated to the Directors of the Bureaus of Competition and Consumer Protection the authority to disclose, to federal, state, local and foreign government agencies: (1) materials from submitters who consent to disclosure; and (2) complaints received from consumers who did not request confidentiality when disclosure of such complaints is needed to obtain information in a Commission investigation or is made in connection with the enforcement of a statute, rule or order by the receiving agency. If the Commission would not (without the submitter's consent) freely disclose a

consumer complaint because it contained personal information, but would act to protect the information from disclosure in litigation or otherwise, then the Bureau Director must obtain assurances that the receiving agency will act to protect the information as well.

The Bureau Directors' authority under this delegation may be redelegated. Prior to disclosing consumer complaints to foreign governments under the foregoing delegation, the Bureau Director shall, unless the disclosure is needed to obtain information in a pending Commission investigation, transmit a proposed letter providing for such disclosure to the Secretary and the Secretary shall notify the Commission of the proposed disclosure. If no Commissioner objects to the proposed disclosure within three days following the Commission's receipt of such notification, the Secretary shall inform the Bureau Director that he or she may proceed with the disclosure.

Effective Date: March 14, 1997.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97–8063 Filed 3–28–97; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Antiterrorism and Effective Death Penalty Act of 1996; Delegation of Authority

Notice is hereby given that I have delegated to the Director, Centers for Disease Control and Prevention, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Section 511—Enhanced Penalties and Biological Agents (42 U.S.C. 262), of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to the Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control and Prevention or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: March 18, 1997.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 97–7988 Filed 3–28–97; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

**Docket No. 97N–0117**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information on a medicated feed mill license application form (form FDA 3448). FDA is also announcing that this collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing and that OMB has approved the information collection through June 30, 1997, under OMB control number 0910–0337.

**DATES:** Submit written comments on the collection of information by May 30, 1997.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

### Medicated Feed Mill License Application, Form FDA 3448 (OMB Control Number 0910–0337)

The Animal Drug Availability Act (the ADAA) of 1996 (Pub. L. 104–250), which amended section 512(a) and (m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(a) and (m)), mandates that FDA replace the system for the approval of specific medicated feeds with a general licensing system. The ADAA reduced the paperwork necessary to gain approval to manufacture medicated feeds. Before passage of the ADAA, medicated feed manufacturers were required to obtain approved Medicated Feed Applications (MFA's) in order to manufacture certain types of medicated feeds. A separate approved MFA was required for each and every applicable medicated feed.

Now, under section 512(a) and (m) of the act as amended by the ADAA, each feed manufacturing facility need submit only one feed mill license application to FDA for the manufacture of medicated feeds. In order to be licensed in accordance with the criteria of section 512(m)(1), a feed manufacturer must, among other things, provide a full statement of the business name, address, and registration number of the feed manufacturing facility and the name and signature of the responsible individual for that facility. To implement these requirements, FDA's medicated feed mill license application

form will request the following information of each applicant: (1) Manufacturing site legal business name; (2) Address; (3) Phone number; (4) FAX number; (5) Type of application; (6) FDA registration number; and (7) Date and signature.

The information on the form will be used to issue medicated feed mill licenses. The information requested on the form is specifically mandated by the ADAA, except for the telephone and fax numbers. These numbers are needed so that FDA can contact the firm quickly when necessary. The additional burden of supplying this information is minimal. The likely respondents are feed manufacturing facilities.

FDA intends as soon as possible to issue a proposed rule that incorporates the statutory feed mill licensing provisions. FDA does not anticipate that the proposed collection of information set forth in the proposed rule will differ from the proposed collection of information set forth above.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN: FIRST YEAR

| Federal Food, Drug, and Cosmetic Act | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 512(m)(1) | 2,000 | 1 | 2,000 | 0.25 | 500 |

There are no capital costs or operating and maintenance costs associated with this collection of information.

ESTIMATED ANNUAL REPORTING BURDEN: EACH SUCCEEDING YEAR

| Federal Food, Drug, and Cosmetic Act | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 512(m)(1) | 100 | 1 | 100 | 0.25 | 25 |

There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates 2,000 respondents within the first year based on the number of current MFA holders (approximately 2,000). Furthermore, FDA estimates 100 respondents for each succeeding year based on the average number of new firms that began to manufacture medicated feed in past years.

Dated: March 25, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97–8047 Filed 3–28–97; 8:45 am]

BILLING CODE 4160–01–F

## Health Care Financing Administration

**[ORD–097–N]**

## New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: January 1997 and Supplement to December 1996 Listing

**AGENCY:** Health Care Financing Administration (HCFA).

**ACTION:** Notice.

**SUMMARY:** This notice identifies proposals that were submitted under the authority of section 1115 of the Social Security Act during the month of January 1997. No proposals were approved, disapproved, or withdrawn during this time period. The notice also identifies pending proposals for the month of January 1997. In addition, it also identifies an additional proposal received in December 1996 that we inadvertently omitted in the December listing. (This notice can be accessed on the Internet at HTTP://WWW.HCFA.GOV/ORD/ORDHP1.HTML.)

**COMMENTS:** We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

**ADDRESSES:** *Mail correspondence to:* Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

**FOR FURTHER INFORMATION CONTACT:** Susan Anderson, (410) 786–3996.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

### II. Supplement to December 1996 Listing of New Proposals

In the December 1996 listing published in the **Federal Register** (62 FR 8451), under Section II. Other Section 1115 Demonstration Proposals, we inadvertently omitted the following new proposal:

*Demonstration Title/State:* South Dakota Quality Initiative—South Dakota.

*Description:* The South Dakota Quality Initiative project is designed to test the effectiveness and efficiency of replacing the existing mandated nursing home survey and certification process under the Omnibus Budget Reconciliation Act 1987 with a new system for quality measurement and improvement for nursing facilities participating in Medicare and Medicaid. Participation by nursing facilities will be voluntary.

*Date Received:* December 12, 1996.

*State Contact:* Joan Bachman, Administrator, Office of Health Care Facilities Licensure and Certification, South Dakota Department of Health, 615 East 4th Street, C/O 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–3356.

*Federal Project Officer:* Kay Lewandowski, Health Care Financing Administration, Office of Research and Demonstration, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

## III. Listing of New, Pending, Approved, Disapproved, and Withdrawn Proposals for the Month of January 1997

### *A. Comprehensive Health Reform Care Programs*

1. New Proposals

No new proposals were received during the month of January.

2. Pending Proposals

*Demonstration Title/State:* Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

*Description:* Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to individuals with incomes up to 100 percent of the Federal poverty level.

*Date Received:* March 17, 1995.

*State Contact:* Jack Kelly, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, AZ 85034, (602) 417–4680.

*Federal Project Officer:* Joan Peterson, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* The Georgia Behavioral Health Plan—Georgia.

*Description:* Georgia proposes to provide behavioral health services under a managed care system through a section 1115 demonstration. The plan would be implemented by regional boards that would contract with third party administrators to develop a network of behavioral health providers. The currently eligible Medicaid population would be enrolled in the program and would have access to a full range of behavioral health services. Once the program realizes savings, the State proposes to expand coverage to individuals who are not otherwise eligible for Medicaid.

*Date Received:* September 1, 1995.

*State Contact:* Margaret Taylor, Coordinator for Strategic Planning, Department of Medical Assistance, 1 Peachtree Street, NW, Suite 27–100, Atlanta, GA 30303–3159, (404) 657–2012.

*Federal Project Officer:* Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

*Demonstration Title/State:* Community Care of Kansas—Kansas.

*Description:* Kansas proposes to implement a ''managed cooperation demonstration project'' in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll persons currently eligible in the Aid to Families with Dependent Children (AFDC) and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

*Date Received:* March 23, 1995.

*State Contact:* Karl Hockenbarger, Kansas Department of Social and Rehabilitation Services, 915 Southwest Harrison Street, Topeka, KS 66612, (913) 296–4719.

*Federal Project Officer:* Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* Louisiana Health Access—Louisiana.

*Description:* Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand Medicaid eligibility to persons with incomes up to 250 percent of the Federal poverty level; those with incomes above 133 percent of the Federal poverty level would pay all or a portion of premiums.

*Date Received:* January 3, 1995.

*State Contact:* Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, P.O. Box 2870, Baton Rouge, LA 70821–2871, (504) 342–2964.

*Federal Project Officer:* Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* Missouri.

*Description:* Missouri proposes to require Medicaid beneficiaries to enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

*Date Received:* June 30, 1994.

*State Contact:* Jackie Jung, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, MO 65102–6500, (314) 751–5178.

*Federal Project Officer:* Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* Community Care Systems—New Hampshire.

*Description:* The State submitted a revised proposal for ''Community Care Systems.'' This system will provide capitated, managed acute care services not included in the health plan service package. The State proposed to implement this program in three phases: Phase 1 will enroll AFDC and AFDC-related children and families; Phase 2 will enroll the elderly population; and Phase 3 will enroll disabled adults and disabled children. The current waiver request is for Phase 1 only.

*Date Received:* June 5, 1996.

*State Contact:* Terry Morton, Planning and Policy Development, State of New Hampshire, Department of Health and Human Services, 6 Hazen Drive, Concord, NH 03301–6505, (603) 271–4688.

*Federal Project Officer:* Cindy Shirk, Health Care Financing Administration, Office of Research and Demonstrations, Office of State Health Reform Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* The Partnership Plan—New York.

*Description:* New York proposes to move most of the currently eligible Medicaid population and Home Relief

(General Assistance) populations from a primarily fee-for-service system to a managed care environment. The State also proposes to establish special needs plans to serve individuals with HIV/AIDS and certain children with mental illnesses.

*Date Received:* March 17, 1995.

*State Contact:* Ellen Anderson, Deputy Commissioner, Division of Health and Long Term Care, 40 North Pearl Street, Albany, NY 12243, (518) 474–5737.

*Federal Project Officer:* Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* State of Texas Access Reform (STAR)—Texas.

*Description:* Texas is proposing a section 1115 demonstration that will restructure the Medicaid program using competitive managed care principles. A focal point of the proposal is to utilize local governmental entities (referred to as Intergovernmental Initiatives (IGIs)) and to make the IGI responsible for designing and administering a managed care system in its region. Approximately 876,636 new beneficiaries would be served during the 5-year demonstration in addition to the current Medicaid population. Texas proposes to implement the program in June 1996.

*Date Received:* September 6, 1995.

*State Contact:* Kay Ghahrermani, State Medicaid Office, P. O. Box 13247, Austin, TX 78711, (512) 424–6543.

*Federal Project Officer:* Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* Section 1115 Demonstration Waiver for Medicaid Expansion—Utah.

*Description:* Utah proposes to expand eligibility for Medicaid to all individuals with incomes up to 100 percent of the Federal poverty level (subject to limited cost sharing) and to enroll all Medicaid beneficiaries in managed care plans. The State also proposes to streamline eligibility and administrative processes and to develop a subsidized small employer health insurance plan.

*Date Received:* July 5, 1995.

*State Contact:* Michael Deily, Acting Division Director, Utah Department of Health, Division of Health Care Financing, 288 North 1460 West, P.O. Box 142901, Salt Lake City, UT 84114–2901, (801) 538–6406.

*Federal Project Officer:* Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* State of Washington Medicaid Section 1115(a) Waiver Request—Washington.

*Description:* Under ''The State of Washington Medicaid Section 1115(a) Waiver Request,'' the State is requesting waivers of the 75/25 and lock-in requirements. The State's intent is for the demonstration to subsume the current 1915(b) Healthy Options Program. The State is planning innovations with encounter data, Medicaid HEDIS, and quality measures for the disabled population.

*Date Received:* October 2, 1996.

*State Contact:* Fred Fisher, Medical Assistance Administration, Department of Social and Health Services, P.O. Box 45500, Olympia, Washington 98504–5500, (360) 586–6513.

*Federal Project Officer:* Nancy Goetschius, Health Care Financing Administration, Office of Research & Demonstration, Office of State Health Reform Demonstrations. Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals

No conceptual proposals were approved during the month of January.

4. Approved Proposals

No proposals were approved during the month of January.

5. Disapproved Proposals

No proposals were disapproved during the month of January.

6. Withdrawn Proposals

No proposals were withdrawn during the month of January.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

The following proposal was received during the month of January.

*Demonstration Title/State:* Minnesota Long-Term Care Facility Waiver—Minnesota.

*Description:* The State of Minnesota has submitted a waiver application to provide Medicare waivers to conduct a demonstration related to the Medicare skilled nursing facility (SNF) benefit. This demonstration would involve: (1) the elimination of the 3-day hospital stay before Medicare pays for nursing home stays; (2) a change in coverage policy relating to respiratory therapy to allow for Medicare reimbursement for respiratory therapists in SNFs or in a home; (3) elimination of the minimum data set assessment for nursing home residents expected to stay in nursing facilities for fewer than 30 days; and (4) a change in coverage policy relating to waiving the requirements according to which certified aides are authorized to feed long-term care facility residents.

*Date Received:* January 6, 1997.

*State Contact:* Stephanie L. Schwartz, Minnesota Department of Human Services, 444 Lafayette North, St. Paul, Minnesota 55155, (612) 297–7198.

*Federal Project Officer:* Sam Brown, Health Care Financing Administration, Office of Research and Demonstrations, Office of Beneficiary and Program, R&D, Mail Stop C3–21–06, 75500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending Proposals

*Demonstration Title/State:* Alternatives in Medicaid Home Care Demonstration—Colorado.

*Description:* Colorado proposes to conduct a pilot project that eliminates the restriction on provision of Medicaid home health services in locations other than the beneficiary's place of residence. The proposal would also permit nursing aides to perform functions that historically have been provided only by skilled nursing staff. Medicaid beneficiaries participating in the project will be adults (including both frail elderly clients and younger clients with disabilities) who can live independently and self-direct their own care. The project would provide for delegation of specific functions from nurses to certified nurses aides, pay nurses for shorter supervision and monitoring visits, and allow higher payments to aides performing delegated nursing tasks. Currently, home health agency nursing and nurse aide services are paid on a per visit basis. Each visit is approximately 2–4 hours in duration, and recipients must require skilled, hands-on care.

*Date Received:* June 3, 1995.

*State Contact:* Dann Milne, Director, Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

*Federal Project Officer:* Phyllis Nagy, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration/Title:* Integrated Care and Financing Project Demonstration—Colorado.

*Description:* Colorado proposes to conduct an Integrated Care and Financing Project demonstration. Specifically, the Colorado Department of Health Care Policy and Financing proposes to add institutional and

community-based long-term care services to a health maintenance organization (HMO) and make the HMO responsible for providing comprehensive medical and supportive services through one capitated rate. The project would include all Medicaid eligibility groups, including individuals with dual eligibility.

*Date Received:* September 28, 1995.

*State Contact:* Dann Milne, Office of Long-Term Care System Development, State of Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

*Federal Project Officer:* Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* Georgia's Children's Benefit Plan—Georgia.

*Description:* Georgia submitted a section 1115 proposal entitled ''Georgia Children's Benefit Plan'' to provide preventive and primary care services to children ages 1 through 5 years living in families with incomes between 133 percent and 185 percent of the Federal poverty level. The duration of the project is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

*Date Received:* December 12, 1994.

*State Contact:* Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street Northwest, Atlanta, GA 30303–3159, (404) 651–5785.

*Federal Project Officer:* Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* Family Planning Services Section 1115 Waiver Request—Michigan.

*Description:* Michigan seeks to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level, and to provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

*Date Received:* March 27, 1995.

*State Contact:* Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, MI 48909, (517) 335–5117.

*Federal Project Officer:* Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* Family Planning Proposal—New Mexico.

*Description:* New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

*Date Received:* November 1, 1994.

*State Contact:* Bruce Weydemeyer, Director, Division of Medical Assistance, P.O. Box 2348, Santa Fe, NM 87504–2348, (505) 827–3106.

*Federal Project Officer:* Rosemarie Hakim, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* Continuing Care Networks (CCN) Demonstration—Monroe County, New York.

*Description:* The CCN project is designed to test the efficiency and effectiveness of financing and delivery systems which integrate primary, acute and long term care services under combined Medicare and Medicaid capitation payments. Participants will be both Medicare only, and dually eligible Medicare/Medicaid beneficiaries, who are 65 or older. Enrollment will be voluntary for all participants.

*Date Received:* July 1, 1996.

*State Contact:* C. Christopher Rush, Assistant Bureau Director, Bureau of Long Term Care, Division of Health and Long Term Care, New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243–0001, (518) 473–5507.

*Federal Project Officer:* Kay Lewandowski, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–23–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

*Description:* Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

*Date Received:* April 5, 1994.

*State Contact:* Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, RI 02920, (401) 464–3234.

*Federal Project Officer:* Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* Family Planning Services Eligibility Requirements Waiver—South Carolina

*Description:* South Carolina proposes to extend Medicaid coverage for family planning services for 22 additional months to postpartum women with monthly incomes under 185 percent of the Federal poverty level. The objectives of the demonstration are to increase the number of reproductive age women receiving either Title XIX or Title X funded family planning services following the completion of a pregnancy, increase the period between pregnancies among mothers eligible for maternity services under the expanded eligibility provisions of Medicaid, and estimate the overall savings in Medicaid spending attributable to providing family planning services to women for 2 years postpartum. The duration of the proposed project would be 5 years.

*Date Received:* May 4, 1995.

*State Contact:* Eugene A. Laurent, Executive Director, State Health and Human Services Finance Commission, P.O. Box 8206, Columbia, SC 29202–8206, (803) 253–6100.

*Federal Project Officer:* Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* South Dakota Quality Initiative —South Dakota.

*Description:* The South Dakota Quality Initiative project is designed to test the effectiveness and efficiency of replacing the existing mandated nursing home survey and certification process under the Omnibus Budget Reconciliation Act of 1987 with a new system for quality measurement and improvement for nursing facilities participating in Medicare and Medicaid. Participation by nursing facilities will be voluntary.

*Date Received:* December 12, 1996.

*State Contact:* Joan Bachman, Administrator, Office of Health Care Facilities Licensure and Certification, South Dakota Department of Health, 615 East 4th Street, C/O 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–3356.

*Federal Project Officer:* Kay Lewandowski, Health Care Financing Administration, Office of Research and Demonstration, Mail Stop C3–21–06,

7500 Security Boulevard, Baltimore, Maryland 21244–1850.

*Demonstration Title/State:* Wisconsin.

*Description:* Wisconsin proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid beneficiaries.

*Date Received:* March 9, 1994.

*State Contact:* Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, WI 53707, (608) 266–0613.

*Federal Project Officer:* J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

*Demonstration Title/State:* Wisconsin Partnership Program—Wisconsin.

*Description:* Wisconsin has submitted Medicare section 222 demonstration and Medicaid section 1115 waiver requests to implement the ''Wisconsin Partnership Program'' in specific counties of the State. This program will test two innovative models of care, one for frail elderly and one for persons with disabilities, utilizing a multi-disciplinary team to manage care. The team is to include the beneficiary, a nurse practitioner, the beneficiary's choice of primary care physician, and a social worker or independent living coordinator. Consumer choice of care, settings and the manner of service delivery is a key component of the program. The demonstration will test the use of consumer-defined quality indicators to measure and improve the quality of service provided to people who are elderly and people with disabilities.

*Date Received:* February 28, 1996.

*State Contact:* Mary Rowin, State of Wisconsin, Department of Health and Social Services, 1 West Wilson Street, P.O. Box 7850, Madison, WI 53707, (608) 261–8885.

*Federal Contact:* William Clark, Health Care Financing Administration, Office of Research and Demonstrations, Office of Beneficiary and Program Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved, Disapproved, and Withdrawn Proposals

There were no proposals approved, disapproved, or withdrawn during the month of January.

## IV. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: February 28, 1997.

**Barbara Cooper,**

*Acting Director, Office of Research and Demonstrations.*

[FR Doc. 97–7987 Filed 3–28–97; 8:45 am]

BILLING CODE 4120–01–P

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## Indian Health Service

## Proposed Collection; Comment Request; Evaluation of the IHS-Supported Alcohol and Substance Abuse Treatment Programs for American Indian/Alaska Native Women

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Indian Health Service (IHS) is publishing a summary of a proposed project to be submitted to the Office of Management and Budget (OMB) for review and approval.

### Proposed Collection

*Title:* Evaluation of the IHS-Supported Alcohol and Substance Abuse Treatment Program for American Indian/Alaska Native (AI/AN) women. *Type of Information Collection Request:* New. *Need and Use of the Information Collection:* Section 703, ''Indian Women Treatment Programs'' of Public Law 102–573, the *Indian Health Care Amendments of 1992,* (the act) authorize the IHS to develop and implement a comprehensive alcohol and substance abuse (A/SA) program that specifically addresses the cultural, historical, social, and child care needs of AI/AN women. Section 801 of these Amendments requires a report on the progress made in meeting the objectives of the Act, a review of programs established or assisted pursuant to the Act, and an assessment of such programs. Support Services International, Inc, (SSI) an Indian-owned consulting firm, will develop the data collection instruments and conduct the study. The information collected will be used to assess and improve the effectiveness of the IHS-supported A/SA treatment program.

Data will be collected from a sample of AI/AN women who use the services provided by the IHS-supported A/SA treatment programs, and from a sample of treatment program staff. Findings from the study will be used to determine: (1) what works, what does not work, and why; (2) what resources are required for successful A/SA treatment for AI/AN women; (3) what factors help or hinder women from maintaining sobriety; (4) how many women achieve success (3-, 6-, and 12-months after admission into A/SA treatment); (5) what are the characteristics, life conditions, and service needs of the women who use the treatment programs, (6) what are the common strengths and problems of the treatment programs, and what are recommendations for improvement. The study is expected to be completed in FY 1998. *Affected Public:* Individuals.

See Table 1 below for Types of Data Collection Instruments, Estimated Number of Respondents, Number of Responses per Respondent, Average Burden Hour per Response, and Total Annual Burden Hour.

TABLE 1.

| Data collection instrument | Estimated number of respondents | Responses per respondent | Average burden hour per response* | Total annual burden hours |
|---|---|---|---|---|
| Project director | 24 | 1 | 0.75 hr (45 minutes) | 18.0 |
| Project staff | 216 | 1 | 0.50 hr (30 minutes) | 108.0 |
| Client intake | 550 | 1 | 0.50 hr (30 minutes) | 275.0 |
| Client history | 550 | 1 | 1.00 hr (60 minutes) | 550.0 |
| Client discharge | 523 | 1 | 0.50 hr (30 minutes) | 261.5 |
| Client 3-month follow-up | 467 | 1 | 0.42 hr (25 minutes) | 196.1 |
| Client 6-month follow-up | 440 | 1 | 0.50 hr (30 minutes) | 220.0 |
| Client 12-month follow-up | 412 | 1 | 0.42 hr (25 minutes) | 173.4 |

TABLE 1.—Continued

| Data collection instrument | Estimated number of respondents | Responses per respondent | Average burden hour per response* | Total annual burden hours |
|---|---|---|---|---|
| Total | 790 | | | 1,802.0 |

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report for this information collection.

**Request for Comments**

Your written comments and/or suggestions are invited on one or more of the following points: (a) whether the information collection activity is necessary to carry out an agency function and whether the IHS processes the information collected in a useful and timely fashion; (b) the accuracy of the public burden estimate (this is the amount of time needed for individual respondents to provide the requested information) and the methodology and assumptions used to determine the estimate; (c) ways to enhance the quality, utility, and clarity of the information being collected; and (d) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Send Comments and Requests for Further Information:* Send your written comments and requests for more information on the proposed project or to obtain a copy of the data collection plans and instructions to: Mr. Lance Hodahkwen, Sr., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, or call non-toll free (301) 443–0461 fax (301) 443–1522, or send your E-mail requests, comments, and return address to: Ihodahkw@smtp.ihs.gov.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect of received on or before May 30, 1997.

Dated: February 10, 1997.

**Michael H. Trujillo,**

*Assistant Surgeon General Director.*

[FR Doc. 97–7974 Filed 3–28–97; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications.

**SUMMARY:** The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**Permit No. 796284**

*Applicant:* Christopher Rogers, Sacramento, California.

The applicant requests an amendment of his permit to take (harass by survey) the California freshwater shrimp (*Syncaris pacifica*) in Marin, Napa, Sonoma, Mendocino, Lake, and Humboldt Counties, California in conjunction with presence or absence surveys for the purpose of enhancing its survival.

**Permit No. 826370**

*Applicant:* Dr. Thomas Dowling, Tempe, Arizona.

The applicant requests a permit to take (harass by capture and release; collect tissue samples) the White River spinedace (*Lepidomeda albibvallis*) at the Kirch Wildlife Management Area, Nevada in conjunction with genetic research for the purpose of enhancing its survival.

**Permit No. 797999**

*Applicant:* Merkel and Associates, Inc., San Diego, California.

The applicant requests an amendment of his permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with presence or absence surveys in vernal pools in San Diego, Orange, Riverside, and Los Angeles Counties, California for the purpose of enhancing its survival.

**Permit No. 781084**

*Applicant:* Anita Hayworth, Encinitas, California.

The applicant requests an amendment of her permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Riverside fairy shrimp (*Streptocephalus woottoni*) and San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing their survival.

**Permit No. 826197**

*Applicant:* Terrance Healy, Redding, California.

The applicant requests a permit to take (harass by survey) the Shasta (=placid) crayfish (*Pacifastacus fortis*) while conducting presence and absence surveys, and controlling co-occurring crustaceans in Shasta County, California for the purpose of enhancing its survival.

**Permit No. 826198**

*Applicant:* Neil Manji, Redding California.

The applicant requests a permit to take (harass by survey) the Shasta (=placid) crayfish (*Pacifastacus fortis*) while conducting presence and absence surveys, and controlling co-occurring crustaceans in Shasta County, California for the purpose of enhancing its survival.

**Permit No. 826602**

*Applicant:* John Axtel, Minden, Nevada.

The applicant requests a permit to purchase, in interstate commerce, several pairs of captive-bred masked bobwhite quail (*Colinus virginianus*) from Jim Young of Fairhope, Alaska for the purpose of enhancing its propagation and survival.

**Permit No. 777965**

*Applicant:* LSA Associates, Inc., Irvine, California.

The applicant requests an amendment to his permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in southern California in conjunction with presence or absence surveys for the purpose of enhancing its survival.

**Permit No. 826506**

*Applicant:* EA Engineering, Science & Technology, Inc., Lafayette, California.

The applicant requests a permit to take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in San Bernardino County, California in

conjunction with population studies for the purpose of enhancing its survival.

**Permit No. 826200**

*Applicant:* California Department of Parks and Recreation, Pescadero, California.

The applicant requests a permit to take (harass by survey) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in San Mateo County, California in conjunction with population monitoring studies for the purpose of enhancing its survival.

**Permit No. 826515**

*Applicant:* Maile Neele, Riverside, California.

The applicant requests a permit to remove and reduce to possession specimens of *Astragalus albens, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* ssp. *goodmaniana* from Federal lands in San Bernardino County, California in conjunction with genetic research for the purpose of enhancing their propagation and survival.

**Permit No. 826511**

*Applicant:* Barry Roth, San Francisco, California.

The applicant requests a permit to take (harass by survey, capture and release) the Morro shoulderband snail (= banded dune) (*Helminthoglyptoa walkeriana*) in San Luis Obispo County, California in conjunction with presence and absence surveys and ecological studies for the purpose of enhancing its survival.

**Permit No. 790136**

*Applicant:* Daniel E. Varland, Hoquiam, Washington.

The applicant requests an amendment to his permit to extend the time period allotted to take (capture, band, and release) the peregrine falcon (*Falco peregrinus*) to include May 15 to August 10, in the area south of the east-west line delineated by the mouth of Conner Creek, Washington in conjunction with scientific research for the purpose of enhancing its survival.

**Permit No. 811615**

*Applicant:* Cynthia Jones, Huntington Beach, California.

The applicant requests an amendment of her permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and Riverside fairy shrimp (*Streptocephalus woottoni*) and to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusullis*) throughout the range of these species in California in conjunction with presence or absence surveys and population monitoring for the purpose of enhancing their survival.

**Permit No. 826513**

*Applicant:* U.S. Geological Survey, San Simeon, California

The applicant requests a permit to take (capture, mark, release) the blunt-nosed leopard lizard (*Gambelia silus*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) and take (capture, mark, radio-tag, and release) the giant kangaroo rat (*Dipodomys ingens*) in Kern, San Luis Obispo, and Tulare Counties, California in conjunction with ecological research for the purpose of enhancing their survival.

**Permit No. 826600**

*Applicant:* Michael G. Hadfield, Honolulu, Hawaii.

The applicant requests a permit to take (capture, measure, mark collect tissue samples, relocate, release, and captive breed the Oahu tree snails (*Achatinella* spp.) in Oahu County, Hawaii in conjunction with ecological and life history studies for the purpose of enhancing their survival. Most of these activities (capture, measure, mark, collect tissue samples, release, and captive breed Oahu tree snails) have been previously authorized under subpermit HADFMG–6.

**Permit No. 797234**

*Applicant:* LSA, Riverside, California.

The applicant requests an amendment to his permit to take (harass by survey) the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), giant kangaroo rat (*Dipodomys ingens*), and Fresno kangaroo rat (*Dipodomys nitratoides exilis*) in the San Joaquin Valley, California in conjunction with presence and absence surveys for the purpose of enhancing their survival.

**Permit No. 799486**

*Applicant:* Janet A. Randall, San Francisco, California

The applicant requests a permit to take (harass by disturbance) the giant kangaroo rat (*Dipodomys ingens*) in Merced, Fresno, Monterey, San Luis Obispo, Kings, Kern, and Santa Barbara Counties, California in conjunction with behavioral studies and scientific research for the purpose of enhancing its survival.

**Permit No. 783010**

*Applicant:* California Department of Transportation, Santa Ana, California.

The applicant requests an amendment of their permit to extend the area authorized to take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) to include San Diego, Los Angeles, Riverside, San Bernardino, and Orange Counties, California in conjunction with population monitoring for the purpose of enhancing their survival.

**DATES:** Written comments on these permit applications must be received by April 30, 1997.

**ADDRESS:** Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; FAX: 503–231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above; telephone: 503–231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: March 20, 1997.

**Thomas J. Dwyer,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–8039 Filed 3–28–97; 8:45 am]

BILLING CODE 4310–55–P

## Klamath River Basin Fisheries Task Force; Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 1), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Fishery Resources Restoration Act (16

U.S.C. 460ss *et seq.*). The meeting is open to the public.

**DATES:** The Klamath River Basin Fisheries Task Force will meet from 8 a.m. to 4:30 p.m. on Wednesday, April 23, 1997 and from 8 a.m. to 4:30 p.m. on Thursday, April 24, 1997.

**PLACE:** The meeting will be held at the Red Lion Inn, 1929 Fourth Street, Eureka, California 95501.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

**SUPPLEMENTARY INFORMATION:** The principal agenda items at this meeting will be: The Klamath River Basin Fisheries Task Force will identify problems and issues associated with a flow study for the Klamath River Basin, decide on policy questions, and clarify flow study objectives.

For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: March 25, 1997.

**Thomas J. Dwyer,**

*Acting Regional Director.*

[FR Doc. 97–8024 Filed 3–28–97; 8:45 am]

BILLING CODE 4310–55–P

## Bureau of Land Management

**[AK–962–1410–00–P; AA–6648–K]**

## Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Aleknagik Natives Limited, for approximately 1,089.89 acres. The lands involved are in the vicinity of Aleknagik, Alaska, within T. 9 S., R. 57 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Bristol Bay Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until April 30, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**Terrie D. Evarts,**

*Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.*

[FR Doc. 97–8021 Filed 3–28–97; 8:45 am]

BILLING CODE 4310–JA–P

**[AK–930–1111–00–24 1A]**

## Notice of Intent To Prepare an Integrated Activity Plan (IAP)/ Environmental Impact Statement (EIS) on Management of the Northeastern Portion of the National Petroleum Reserve-Alaska (NPR–A); Request for Information, and Call for Nominations and Comments: Extension of Comment Period

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Request for information, and call for nominations and comments; extension of comment period.

**SUMMARY:** A notice of intent to prepare the IAP/EIS, requesting information and nominations of tracts for oil and gas leasing, and public comments, was published in the **Federal Register** on February 13, 1997 (62 FR 6797), with a 30-day comment period expiring March 31, 1997. The comment period is being extended to accommodate a scoping meeting that had to be rescheduled because of the illness of a principal participant.

**DATES:** Information, nominations, and comments must be postmarked or submitted via the internet by April 4, 1997.

**ADDRESSES:** Comments should be sent to: State Director, Alaska (930), Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599; or submitted by electronic mail to ''jducker@ak.blm.gov'' or ''clwilson@ak.blm.gov.''

**FOR FURTHER INFORMATION CONTACT:** Jim Ducker at (907) 271–3369 or Curt Wilson at (907) 271–5546.

**Tom Fry,**

*Deputy Director, Bureau of Land Management.*

[FR Doc. 97–8186 Filed 3–28–97; 8:45 am]

BILLING CODE 4310–70–M

**[NV–930–1430–01; N–59594]**

## Notice of Realty Action: Non-Competitive Sale of Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Non-competitive sale of public lands in Clark County, Nevada.

**SUMMARY:** The following described public land in Las Vegas, Clark County, Nevada have been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) and Public Law 101–67, the Apex Project, Nevada Land Transfer and Authorization Act of 1989.

**Mount Diablo Meridian, Nevada**

*T. 19 S., R. 63 E., M.D.M.*

Sec. 8: E½SE¼SE¼, SW¼SE¼SE¼, S½NW¼SE¼SE¼, S½NE¼NW¼SE¼SE¼.

Sec. 9: S½S½SW¼NW¼SW¼, W½SW¼SW¼.

Containing 57.15 acres, more or less.

This parcel of land, situated in Clark County is being offered as a non-competitive sale to Clark County as part of the Apex Heavy Industrial Use Park.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals, and will be subject to a easement of the south 50 feet of the southeast quarter(¼) of the southeast quarter(¼) of section 8, Township 19 South, Range 63 East, and the south 50 feet of the West Half(½) of the southwest quarter(¼) of the southwest quarter(¼) of Section 9, Township 19 South, Range 63 East for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County.

1. Those rights for fiber-optics line purposes which have been granted to Williams Telecommunications Group-West by Permit No. N–43923 under the Act of October 21, 1976 (090 Stat 2776; 43 U.S.C. 1761).

2. Those rights for federal highway purposes which have been granted to Nevada Department of Transportation by Permit No. CC–018337 under the Act of November 21, 1926(042 Stat 216).

3. Those rights for federal highway purposes which have been granted to Nevada Department of Transportation by Permit No. NEV–057852 under the Act of August 9, 1921(072 Stat 0916; 23 U.S.C.317(A)).

Upon publication of this notice in the **Federal Register**, the above described land will continue to be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first. The comment period is not extended. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the original date of publication, of this notice in the **Federal Register**, April 26, 1996.

Dated: March 21, 1997.

**Michael F. Dwyer,**

*District Manager, Las Vegas, NV.*

[FR Doc. 97–8038 Filed 3–28–97; 8:45 am]

BILLING CODE 4310–HC–P

## Office of Surface Mining Reclamation and Enforcement

## Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

**DATES:** Comments must be submitted on or before April 30, 1997, to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to approve a new collection of information entitled, ''Technical Training Program Course Effectiveness Evaluation.'' OSM is requesting a 3-year term of approval for this information collection activity.

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. If approved OMB will provide a control number for this collection of information.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on December 26, 1996 (61 FR 68052). No comments were received. This notice provides the public with an additional 30 days in which to comment.

The following information is provided for the information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

*Title:* Technical Training Program Course Effectiveness Evaluation.

*OMB Control Number:* None.

*Summary:* Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

*Bureau Form Number:* None.

*Frequency of Collection:* On Occasion.

*Description of Respondents:* State regulatory authority and Tribal employees and their supervisors.

*Total Annual Responses:* 650.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

**ADDRESSES:** Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Dated: March 24, 1997.

**Arthur W. Abbs,**

*Chief, Division of Regulatory Support.*

[FR Doc. 97–8102 Filed 3–28–97; 8:45 am]

BILLING CODE 4310–05–M

## AGENCY FOR INTERNATIONAL DEVELOPMENT

## Proposed Collection: Comment Request

**SUMMARY:** U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (b) the accuracy of the 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.

**DATES:** Send comments on or before April 18, 1997.

**ADDRESS INFORMATION TO:** Mary Ann Ball, Bureau of Management, Office of Administration Services, Information Support Services Division, U.S. Agency for International Development, Room 1113–F, SA–16, Washington, DC 20523, (703) 736–4743 or via e-mail MBall@USAID.Gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Number:* OMB 0412–0514.

*Form Number:* None.

*Title:* AID Regulation 1—Rules and Procedures Applicable to Commodity Transactions.

*Type of Submission:* Renew.

*Purpose:* USAID finances transactions under Commodity Imports Programs and needs to assure that the transaction complies with applicable statutory and

regulatory requirements. In order to assure compliances and request refund when appropriate, information is required from host country importers, suppliers receiving from host country importers, suppliers receiving U.S.A.I.D. funds and banks making payments for U.S.A.I.D.

*Annual Reporting Burden:*
*Respondents:* 358,
*Annual responses:* 1918,
*Total Annual hours responses:* 5120.

Dated: March 17, 1997.

**Willette L. Smith,**

*Acting Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.*

[FR Doc. 97–8036 Filed 3–28–97; 8:45 am]

BILLING CODE 6116–01–M

## Proposed Collection: Comment Request

**SUMMARY:** U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility: (b) the accuracy of the 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.

**DATES:** Send comments on or before May 9, 1997.

**ADDRESS INFORMATION TO:** Mary Ann Ball, Bureau of Management, Office of Administration Services, Information Support Services Division, U.S. Agency for International Development, Room 1113–F, SA–16, Washington, DC 20523, (703) 736–4743 or via e-mail MBall@USAID.Gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Number:* OMB 0412–0538.
*Form Number:* AID 1381–4.
*Title:* Participant Data Form (PDF).
*Type of Submission:* Reinstatement.
*Purpose:* The Participant Data Form supplies data to the Participant Training Information System (PTIS). The PTIS, in the near future, will be replaced by the Management Information system (MIS). The PTIS is the Agency's computer-based repository of official data on all USAID-sponsored participants. The Participants Data Form is completed by contractors, grantees and host government entities for all U.S.A.I.D. sponsored participants in training in the U.S. The Participant Data Form notifies U.S.A.I.D. of the participants arrival. It is used to enroll the participant in the health plan and to advise U.S.A.I.D. of all changes regarding the participant's program. Finally, it is used to inform U.S.A.I.D. that the program has ended and the participant has returned home.

*Annual Reporting Burden:*
*Respondents:* 300,
*Annual responses:* 300,
*Total Annual hours responses:* 7661.

Dated: March 18, 1997.

**Willette L. Smith,**

*Acting Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.*

[FR Doc. 97–8037 Filed 3–28–97; 8:45 am]

BILLING CODE 6116–01–M

## DEPARTMENT OF JUSTICE

## Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 21, 1997, the United States lodged a proposed Consent Decree in *State of Washington* versus *United States*, No. C94–5326 (W.D. Wash.), with the United States District Court for the Western District of Washington. The Consent Decree resolves civil claims filed by the United States against PACCAR, Inc. (''PACCAR'') under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (''CERCLA''), as amended, 42 U.S.C. Secs. 9606 & 9607, to compel PACCAR to undertake cleanup activities at the Wyckoff/Eagle Harbor Superfund Site (''the Site''), located at Bainbridge Island, Kitsap County, Washington, and to recover from PACCAR costs incurred by the United States in response to releases of hazardous substances at the Site. The Consent Decree also resolves PACCAR's contribution claims against the United States under Sections 107 and 113 of CERCLA, 42 U.S.C. Sec. 9613, relating to the Site.

Extensive areas of the harbor's bedlands, as well as areas of the harbor's uplands, are contaminated with a variety of hazardous substances associated with the past operations of a shipyard and a wood treating facility at the harbor. Under the Consent Decree, PACCAR will implement the major components of EPA's selected remedy for the West Harbor Operable Unit (''WHOU'') of the Site. The estimated value of PACCAR's cleanup work is $4.8 million. The Decree also requires PACCAR to pay $100,000 towards costs EPA expects to incur overseeing work performed by PACCAR, and to pay 45% of any cost overruns, and 45% of any unanticipated additional response actions required to achieve the goals of the environmental cleanup of the WHOU.

The Consent Decree requires the United States, on behalf of the United States Navy, Army, Coast Guard, Coast & Geodetic Survey and Maritime Administration, to pay $4.8 million towards EPA's eventual cleanup of the East Harbor Operable Unit of the Site (''EHOU''), and $100,000 towards expected EPA WHOU oversight costs. The United States, on behalf of these federal agencies, has also agreed to pay 40% of any cost overruns, and 40% of any unanticipated additional response actions required to achieve the goals of the environmental cleanup of the WHOU.

The Consent Decree resolves PACCAR's liability to the United States under Sections 106 and 107 of CERCLA, and the United States' liability to PACCAR under Sections 107 and 113 of CERCLA, for all costs either party has incurred or may incur in response to releases of hazardous substances at the Site. The Consent Decree does not address the United States' pending claims against the State of Washington under Sections 106 and 107 of CERCLA relating to the Site, or the State's claims against the United States for contribution under Sections 107 and 113 of CERCLA relating to the Site.

In order to allow the Department of Justice to evaluate public comments in time to avoid delaying the clean up work required by the Consent Decree, the Department must receive all comments by April 22, 1997. Accordingly, the Department of Justice will receive, until and including that date, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530, and should refer to *State of Washington* versus *United States*, DOJ Ref. #90–7–1–525b.

The proposed Consent Decree may be examined at the office of the United States Attorney, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington 98104; the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98105; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington D.C. 20005, (202) 624–0892. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $19.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, United States Department of Justice.*

[FR Doc. 97–8213 Filed 3–28–97; 8:45 am]

BILLING CODE 4410–15–M

## Drug Enforcement Administration

### Agency Information Collection Activities: Emergency Extension of a Currently Approved Collection; Comment Request

**ACTION:** Notice of information collection under review; Annual Requirement for Manufacturers of Listed Chemicals.

The Department of Justice, Drug Enforcement Administration has submitted the following information collection request for an emergency extension to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. This information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this information collection has been requested from OMB by April 4, 1997. If granted, the emergency extension is only valid until June 30, 1997. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. We are requesting written comments and suggestions from the public and affected agencies concerning this collection of information. Comments are encouraged and will be accepted until May 30, 1997. Your comments should address one or more of the following four points:

1. Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of burden of the 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.

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 Mr. James A. Pacella, 202–307–7297, Chief, Policy Unit, Liaison & Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. If you have additional comments, suggestions, or need a copy of the information collection instrument with instructions, or additional information, please contact Mr. James A. Pacella.

Additionally, 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, Washington Center, 1001 G Street, NW, Washington, DC 20530. Additional comments may be submitted to DOJ via facsimile at 202–514–1590.

Overview of this information collection:

1. Type of Information Collection: Extension of a currently approved collection.

2. Title of the Form/Collection: Annual Reporting Requirement for Manufacturers of Listed Chemicals.

3. Agency form number: None; Applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. Other: None. Section 310(b) of the Controlled Substances Act (21 U.S.C. 830(b)) was amended by Public Law 103–200 (The Domestic Chemical Diversion Control Act of 1993 (DCDCA)) to add a requirement that ''A regulated person that manufactures a listed chemical shall report annually to the Attorney General, in such form and manner and containing such specific data as the Attorney General shall prescribe by regulation, information concerning listed chemicals manufactured by the person.''

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 100 respondents at 1 response per year at 4 hours per response.

6. An estimate of the total public burden (in hours) associated with the collection: 400 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 25, 1997.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 97–7993 Filed 3–28–97; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Office of the Chief Financial Officer

### 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 preclearance 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 Office of the Chief Financial Officer is soliciting comments concerning the proposed extension of Department of Labor regulations implementing various provisions of the Debt Collection Act of 1982, including Disclosure of Information to Credit Reporting Agencies; Administrative Offset; Interest, Penalties and Administrative Costs.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before May 30, 1997.

The Department of Labor 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 or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSEE:** Mark Wolkow, Department of Labor, Room S–4502 Frances Perkins Building, 200 Constitution Ave. NW., Washington, DC 20210; (202) 219–8184 x123 (phone); (202) 219–4975 (fax); mwolkow@dol.gov (email).

**SUPPLEMENTARY INFORMATION:**

*I. Background*

The Debt Collection Act of 1982 and the Federal Claims Collection Standards, as implemented in the Department by 29 CFR part 20, require Federal agencies to afford debtors the opportunity to exercise certain rights before the agency reports a debt to a credit bureau or makes an administrative offset. In the exercise of these rights, the debtor may be asked to provide a written explanation of the basis for disputing the amount or existence of a debt alleged owed the agency. A debtor may also be required to provide asset, income, liability, or other information necessary for the agency to determine the debtor's ability to repay the debt, including any interest, penalties and administrative costs assessed.

Information provided by the debtor will be evaluated by the agency official responsible for collection of the debt in order to reconsider his/her initial decision with regard to the existence or amount of the debt. Information concerning the debtor's assets, income, liabilities, etc., will be used by the agency official responsible for collection of the debt to determine whether the agency's action with regard to administrative offset or the assessment of interest, administrative costs or penalties would create undue financial hardship for the debtor, or to determine whether the agency should accept the debtor's proposed repayment schedule.

If a debtor disputes or asks for reconsideration of the agency's determination concerning the debt, the debtor will be required to provide the information or documentation necessary to state his/her case. Presumably, the agency's initial determination would not change without the submission of new information.

Information concerning the debtor's assets, income, liabilities, etc., would typically not be available to the agency unless submitted by the debtor.

*II. Current Actions*

Failure of the agency to request the information described would either violate the debtor's rights under the Debt Collection Act of 1982 or limit the agency's ability to collect outstanding debts.

If a debtor wishes to appeal an agency action based on undue financial hardship, he/she may be asked to submit information on his/her assets, income, liabilities, or other information considered necessary by the agency officials for evaluating the appeal. Use of the information will be explained to the debtor when it is requested; consent to use the information for the specific purpose will be implied from the debtor's submission of the information.

*III. Type of Review:* Extension without change.

*IV. Agency:* Office of the Chief Financial Officer.

*V. Title:* Disclosure of Information to Credit Reporting Agencies; Administrative Offset; Interest penalties and Administrative Costs.

*VI. OMB Number:* 1225–0030.

*VII. Agency Number:* N/A.

*VIII. Affected Public:* Individuals or households; businesses or other for-profit; not-for-profit institutions; small business or organizations; farms; Federal employees.

*IX. Cite/Reference/Form/etc:* It is estimated that 10% of the individuals and organizations indebted to the Department will contest the proposed collection action and will request an administrative review and/or appeal an action based on undue financial hardship. In some case the debtor will make one request, but not the other. However, in most cases, it is expected that the debtor will request both actions—first, administrative review of the determination of indebtedness, and second, relief because of undue financial hardship.

Annual burden was estimated based on a review of debtor responses to similar requests for information. Debtors typically respond in 1–2 page letters, supplemented by copies of documents. Letters are most often typewritten. Annual burden is based on a 1¾ hour time allotment to prepare and type a letter. Debtors will not be asked to respond on a form.

*X. Estimated Total Burden Hours:* 12,250.

*XI. Estimated Total Burden Cost:*

*Estimated annual cost to the Federal Government:* $734,650.

*Estimated annual cost to the respondents:* $239,890.

Comment submitted in response to this comment request will be summarized and/or included in the request for Office of management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 25, 1997.

**Michael N. Griffin,**

*Acting Deputy Chief Financial Officer.*

[FR Doc. 97–8025 Filed 3–28–97; 8:45 am]

BILLING CODE 4510–23–M

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## Office of the Secretary

### Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Corporation; Address and Change of Date of Hearing on Submission #9602

**AGENCY:** Office of the Secretary, Labor.

**ACITON:** Notice.

**SUMMARY:** On March 13, 1997, the Department provided notice in the **Federal Register** of a hearing, open to the public, on Submission #9602. The notice stated that the hearing would be held in Tucson, Arizona, on April 17, 1997, at a location to be announced.

The purpose of this notice is to provide the address for the hearing on Submission #9602 and to announce a change of date.

**DATES:** The hearing on Submission #9602 will be held on April 18, 1997, commencing at 9 a.m.

**ADDRESSES:** The hearing will be held at the Mayor and City Council Chambers located at City Hall, 255 West Alameda, Tucson Arizona 85701. Tel: 520–791–4213.

**FOR FURTHER INFORMATION CONTACT:** Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution

Avenue, NW., Room C–4327, Washington, DC 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Please refer to the notice published in the **Federal Register** on March 13, 1997 (62 FR 11924) for supplementary information.

Signed at Washington, DC., on March 26, 1997.

**Irasema T. Garza,**

*Secretary, National Administrative Office.*

[FR Doc. 97–8067 Filed 3–28–97; 8:45 am]

BILLING CODE 4510–28–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 March, 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–33,006; East Point Seafood Co., South Bend, WA*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*TA–W–33,224; Personal Products Co/ Johnson & Johnson, Milltown, NJ*

*TA–W–33,130; Zenith Electronics Corp. of Texas, McAllen, TX*

*TA–W–33,287; D.D. Jones Transfer & Warehouse Co., Inc., Harrisburg, PA*

*TA–W–33,065; Richland Development (Penzoil Co), Houston, TX*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–33,000 & A, B, C; Pratt & Whitney, North Haven, CT, Middletown, CT, & Rocky Hill, CT*

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA–W–33,107; Systems and Electronics, Inc., West Plains, MO*

Worker layoffs at the subject firm were attributable to a cessation of production that was caused by technical problems. Other employment declines were the result of a work stoppage.

*TA–W–33,150; Cinch Connector, Div. of Labinal Components & Systems, Inc., Lombard, IL*

*TA–W–33,125; New River Castings Co., Radford, VA*

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–33,186; Mail-Well I Corp., dba Quality Park Products, St. Paul, MN*

*TA–W–33,222; Coltec Industries, Inc., Div. of FMD Electronics Operations, Roscoe, IL*

Layoffs at the subject firm were caused by the consolidation operations transfering the production of the subject plant to another domestic facility.

*TA–W–33,053; Mid-America Dairymen, Inc., Sabetha, KS*

Subject plant closure was due to the reduction of relevant products available in the area the company relocated; work previously performed at the subject plant and consolidated operations.

*TA–W–33,063; Ball Corp., Columbus, IN*

*TA–W–33,029; Willamette Industries, Inc., Plywood Div., Dallas, OR*

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–33,068; Smith and Wesson, Springfield, MA*

U.S. imports of handguns declined significantly in the Jan-Sept period of 1996 compared with the same period of 1995.

### 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–33,219; Tectronics, Inc, Berlin, CT: February 5, 1996.*

*TA–W–33,181; ADA Garment Finishers, Inc., El Paso, TX: January 23, 1996.*

*TA–W–33,111; Davol, Inc., Cranston, RI: January 3, 1996.*

*TA–W–33,074; R & W Apparel, Scottsboro, AL: December 18, 1995.*

*TA–W–33,131; Carolina Knits, Inc., Statesville, NC: January 8, 1996.*

*TA–W–33,176; Binks Sames Corp., Franklin Park, IL: January 26, 1996*

*TA–W–33,020; Weldotron Corp., Piscataway, NJ: December 10, 1996.*

*TA–W–33,246; Schindler Elevator Corp., Randolph, NJ: February 10, 1996.*

*TA–W–33,011; Joe Manufacturing, San Francisco CA: November 18, 1995.*

*TA–W–33,179; Joyce Sportswear Co., Gary, IN: January 30, 1996.*

*TA–W–33,047; Lance Garment Corp., Red Bay, AL: December 12, 1995.*

*TA–W–33,083, A & B; Sparkle Sportswear, Inc., Rahway, NJ, New York, NY, and Pulaski, VA: December 4, 1995.*

*TA–W–33,194; Hasbro Corporate Offices, Pawtucket, RI, A; Hasbro, Inc., Pawtucket, RI, B; Rhole Island Manufacturing (RIM), Central Falls, RI, C; Hasbro Manufacturing Services, Easley, SC, D; Hasbro Manufacturing Services, Northvale, NJ, E; Hasbro Toy Group, Cincinnati, OH, F; Hasbro Games Group—Milton Bradley Co, East Longmeadow, MA, G; Hasbro Games Group—Parker Brothers, Beverly, MA, H; Hasbro Games Group—MB Wood Products, Fairfax, VT, I; Hasbro Manufacturing Services, Arcade, NY: February 1, 1997.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. 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 March, 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 subdivision 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–01484; Camp, Inc., Div. of Trulife, Jackson, MI*
*NAFTA–TAA–01474; Mail-Well I Corp., dba Quality Park Products, St. Paul, MN*
*NAFTA–TAA–01501; Coltec Industries, Inc., Div. of FMD Electronics Operations, Roscoe, IL*
*NAFTA–TAA–01320; Joe Manufacturing, San Francisco, CA*
*NAFTA–TAA–01492; Juki Union Special, Inc., Wayne, NJ*
*NAFTA–TAA–01426; Systems & Electronics, Inc., West Plains, MO*
*NAFTA–TAA–01533; D.D. Jones Transfer and Warehouse Co., Inc., Harrisburg, PA*
*NAFTA–TAA–01477; ITT Cannon Commercial Div., Santa Ana, CA*

**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–01473; Joyce Sportswear Co., Gary, IN: January 30, 1996.*
*NAFTA–TAA–01445; Federal Mogul Corp., Leiters Ford Plant, Leiters Ford, IN: January 21, 1996.*
*NAFTA–TAA–01466; ADA Garment Finishers, Inc., El Paso, TX: January 23, 1996.*
*NAFTA–TAA–01444; Commemorative Brands, Inc., L.G. Balfour Co., North Attleboro, MA: January 22, 1996.*
*NAFTA–TAA–01436; Bins Sames Corp., Franklin Park, IL: January 14, 1997.*
*NAFTA–TAA–01463; Maidenform, Inc., Jacksonville, FL: December 20, 1995.*
*NAFTA–TAA–1349; Killark Electric Manufacturing Co., a Subsidiary of Hubbell, Inc., St. Louis, MO: November 14, 1995. NAFTA–TAA–01524; Schindler Elevator Corp., Randolph, NJ: February 10, 1996.*
*NAFTA–TAA–01455; J & J Group, Inc., Formerly Known as Connie Sportswear, Franklin, WV: January 23, 1996.*
*NAFTA–TAA–01451; Westinghouse Electric Corp., Pensacola, FL: January 27, 1996.*
*NAFTA–TAA–01479; General Motors, Goleta, CA: February 3, 1997.NAFTA–TAA–01345; Louisiana Pacific, Ketchikan Pulp Co., Ketchikan, AK: November 1, 1995.*
*NAFTA–TAA–01476; Sun Apparel, Inc., Concepcion Plant, El Paso, TX: January 6, 1996.*

I hereby certify that the aforementioned determinations were issued during the month of March, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 21, 1997.

**Linda G. Poole,**

*Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–8031 Filed 3–28–97; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–32,588; TA–W–32,588A; TA–W–32,588B; TA–W–32,588C; TA–W–32,588D; and TA–W–32,588E]**

## Burlington Industries, Inc., Knitted Fabrics Division, North Carolina and New York; Notice of Revised Determination on Reopening

On March 10, 1997, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination issued on August 27, 1996, because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The workers produced knitted fabric. The denial notice was published in the **Federal Register** on September 25, 1996 (61 FR 50332).

A late response to the customer survey conducted by the Department revealed that a customer of the subject firm increased import purchases of knitted fabric during the time period relevant to the investigation.

*Conclusion*

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with knitted fabric produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of Burlington Industries Inc., Knitted Fabrics Division, Greensboro, North Carolina (TA–W–32,588), Wake Forest, North Carolina (TA–W–32,588A), Denton, North Carolina (TA–W–32,588B), Rocky Mount, North Carolina (TA–W–32,588C), Cramerton, North Carolina (TA–W–32,588D) and New York, New York (TA–W–32,588E) who became totally or partially separated from employment on or after July 19, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 12th day of March 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–8034 Filed 3–28–97; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–33,144]**

## Howard Industries, div. of NTT Inc., Milford, Illinois; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 13, 1997 in response to a worker petition which was filed on February 13, 1997 on behalf of workers at Howard Industries, division of NTT, Inc., Milford, Illinois.

An active certification covering the petitioning group of workers remains in effect (TA–W–31,376). Consequently,

further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 18th day of March, 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–8029 Filed 3–28–97; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–33, 085, 085A, 085B, and 085C]**

## Montana Power Company; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 7, 1997, applicable to workers of Montana Power Company located in Butte, Montana. The notice was published in the **Federal Register** on March 12, 1997 (62 FR 11473).

At the request of petitioners and the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at the subject firm's Missoula, Great Falls and Havre locations in Montana. The workers at these locations are engaged in employment related to the production of electrical power.

The intent of the Department's certification is to include all workers of Montana Power Company who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of Montana Power Company located in Missoula, Great Falls and Havre, Montana.

The amended notice applicable to TA–W–33,085 is hereby issued as follows:

''All workers of Montana Power Comapany, Butte, Montana (TA–W–33,085) Missoula, Montana TA–W–33,085A), Great Falls, Montana (TA–W–33,085B) and Havre, Montana (TA–W–33,085C), who became totally or partially separated from employment on or after December 27, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 14th day of March 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–8026 Filed 3–28–97; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–33,185]**

## Montana Power Co., Missoula, Montana, Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 10, 1997 in response to a worker petition which was filed January 21, 1997 on behalf of workers at Montana Power Company located in Missoula, Montana (TA–W–33,185).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–33,085A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC., this 14th day of March 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–8032 Filed 3–28–97; 8:45 am]

BILLING CODE 4510–30–M

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## 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 separation 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 April 10, 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 April 10, 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 March 1997.

**Russell T. Kile,**

*Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.*

### Appendix

PETITIONS INSTITUTED ON 03/10/97

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 33,259 | Owens Brockway (Wrks) | Waco, TX | 02/22/97 | Glass Containers. |
| 33,260 | Allied Signal, Inc (Comp) | Greenville, OH | 02/28/97 | Air Filters, Transmission Filters. |
| 33,261 | Texas Instrument (Comp) | Temple, TX | 02/18/97 | IBM Compatible Notebook Computers. |
| 33,262 | CMT Industries, Inc (Comp) | El Paso, TX | 01/13/97 | Ladies Blazers. |
| 33,263 | Roseburg Forest Product (LSW) | Roseburg, OR | 02/17/97 | Wood Fiber—Veneer. |
| 33,264 | Jefferson Smurfit Corp (UPIU) | Monroe, MI | 02/20/97 | Industrial Packaging. |
| 33,265 | Beacon Shoe Co., Inc (Comp) | Jonesburg, MO | 01/17/97 | Ladies' Footwear. |
| 33,266 | Economy Color Card Co (UPWIU) | Roselle, NJ | 02/19/97 | Sample Cards. |

PETITIONS INSTITUTED ON 03/10/97—Continued

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 33,267 | FMC Corp (IAMAW) | Middleport, NY | 02/24/97 | Furadan. |
| 33,268 | International Wire Corp (Comp) | Eucyrus, OH | 02/26/97 | Electrical Wiring Harnesses. |
| 33,269 | Sun Apparel, Inc (Comp) | Concepcion, TX | 02/25/97 | Jeans, Jackets, Shirts, Shorts. |
| 33,270 | Binney and Smith, Inc (Wrks) | Winfield, KS | 02/06/97 | Crayons and Markers. |
| 33,271 | Complex Tooling & Molding (Comp) | South Boulder, CO | 02/20/97 | Plastic Parts. |
| 33,272 | Clinton Mills (Wrks) | Clinton, SC | 02/15/97 | Textile Products for Home. |
| 33,273 | Consolidated Contractors (UNITE) | Buffalo, NY | 02/12/97 | Sleeve Heads, Shoulder Pads. |
| 33,274 | Perfection Pad Comp. (UNITE) | Buffalo, NY | 02/12/97 | Sleeve Heads, Shoulder Pads. |
| 33,275 | Kings Creek Manufacturing (Comp) | Ferguson, NC | 02/19/97 | Ladies' Bath Robes & Beach Cover-ups. |
| 33,276 | Square D (IBEW) | Milwaukee, WI | 02/18/97 | Low/Medium Voltage Transformers. |
| 33,277 | Lucas Aftermarket (Wrks) | Troy, MI | 02/20/97 | Alternators, Generators & Starters. |
| 33,278 | Johnson and Johnson Med. (Wrks) | Arlington, TX | 02/21/97 | Surgical Gloves. |
| 33,279 | Johnson Controls (Wrks) | Ann Arbor, MI | 02/18/97 | Motorized Seat Tracks. |
| 33,280 | Guilford of Maine (Wrks) | Newport, ME | 02/13/97 | Fabric. |
| 33,281 | Sillcocks Plastics Int'l (Wrks) | Berkeley Heights, NJ | 02/11/97 | Custom Printing of Credit Cards. |
| 33,282 | Dutch Mill, Inc (Wrks) | Lebanon, PA | 02/19/97 | Sew Blouses. |
| 33,283 | Rodtri Co (Wrks) | Alberta, VA | 02/21/97 | Sportswear Contractor. |
| 33,284 | S. Schwab Co., Inc (Wrks) | Cumberland, MD | 01/15/97 | Infant's Wear. |
| 33,285 | Campbell Plastics Div (IUE) | Schenectady, NY | 02/07/97 | Automotive Bodyside Molding. |
| 33,286 | Stevens International (Comp) | Hamilton, OH | 02/26/97 | Printing Equipment. |
| 33,287 | DD Jones Warehouse (Wrks) | Harrisburg, PA | 02/18/97 | Distribute & Repair Electronics. |
| 33,288 | Moresource-Magnetic (Wrks) | Fredericktown, MO | 02/26/97 | Novelty Refrigerator Magnets. |
| 33,289 | CDR Ridway (Wrks) | Ridgway, PA | 02/19/97 | Inks. |
| 33,290 | Elk Spinners (Wrks) | Hope Mills, NC | 02/19/97 | Polyester Yarn. |
| 33,291 | Wotco Corp/Oleo (Wrks) | Newark, NJ | 02/13/97 | Fatty Acids. |

[FR Doc. 97–8028 Filed 3–28–97; 8:45 am]

BILLING CODE 4510–30–M

**[NAFTA–001443]**

## Allied Signal Inc., Truck Brake Systems Co., Charlotte, North Carolina, Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. 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 of 1974, as amended (19 USC 2331), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for NAFTA–TAA.

In order to make an affirmative determination and issue a certification of eligibility to apply for NAFTA–TAA, the group eligibility requirements in either paragraph (a)(1)(A) or (a)(1)(B) of Section 250 of the Trade Act must be met. It is determined in this case that the requirements of (a)(1)(B) of Section 250 have been met—a shift in production from the workers' firm to Mexico or Canada of articles like or directly competitive with those produced by the subject firm.

The investigation was initiated on January 21, 1997 in response to a petition filed by International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 2081, on behalf of workers at Allied Signal Inc., Truck Brake Systems Company, Charlotte, North Carolina. Workers are engaged in the production of truck brake products.

Investigation findings revealed that a shift in production of truck brake products to Acuna, Mexico has occurred and is continuing.

### Conclusion

After careful review of the facts obtained in the investigation, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers at Allied Signal, Truck Brake Systems Company, Charlotte, North Carolina who became totally or partially separated from employment on or after January 21, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of February, 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–8027 Filed 3–28–97; 8:45 am]

BILLING CODE 4510–30–M

## Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the

subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Program Manager of OTAA not later than April 10, 1007.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than April 10, 1997.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 18th day of March, 1997.

**Russell Kile,**

*Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.*

## Appendix

| Subject firm | Location | Date received at Governor's office | Petition number | Articles produced |
|---|---|---|---|---|
| Anchor Glass Container | Houston, TX | 3/03/97 | NAFTA–1,536 | glass container. |
| Rodtri Company | Alberta, VA | 2/26/97 | NAFTA–1,537 | Children's sportswear. |
| Schwerman Trucking | El Paso, TX | 3/03/97 | NAFTA–1,538 | Truck driving service. |
| Moresource macnetic Collectibles | Fredericktown, MO | 3/03/97 | NAFTA–1,539 | Refrigerator magnets. |
| Beacon Shoe | Jonesburg, MO | 3/03/97 | NAFTA–1,540 | Ladies footwear. |
| Roseburg Forest Products | Dixonville, OR | 2/27/97 | NAFTA–1,541 | Veneer. |
| Fresenius | Ogden, UT | 3/04/97 | NAFTA–1,542 | Medical supplies. |
| Anchor Glass Containers | Connellsville, PA | 3/04/97 | NAFTA–1,543 | Glass containers. |
| Spenco Manufacturing | Glenville, WV | 2/13/97 | NAFTA–1,544 | Car seat pads, carry pads. |
| Owens-Illinois Closure | Erie, PA | 3/06/97 | NAFTA–1,545 | Metal cans and lids. |
| Louis Gallet | Uniontown, PA | 3/06/97 | NAFTA–1,546 | Sweaters. |
| Unifour Finisher | Hickory, NC | 3/06/97 | NAFTA–1,547 | Textiles, finishing fabric. |
| Inland Paperboard and Packaging | Erie, PA | 3/06/97 | NAFTA–1,548 | Corrugated boxes. |
| International Wire | Bucyrus, OH | 2/28/97 | NAFTA–1,549 | Wire. |
| Allied Signal | Greenville, OH | 2/28/97 | NAFTA–1,550 | Air filter. |
| Micom Communication | Simi Valley, CA | 2/11/97 | NAFTA–1,551 | Data communication devices. |
| LaDonna Sportswear | Warren, AR | 3/11/97 | NAFTA–1,552 | Shirts, slacks, and shorts. |
| Associated Milk Producers | Corpus Christi, TX | 3/10/97 | NAFTA–1,553 | Milk. |
| Deluxe Corp | New Berlin, WI | 3/10/97 | NAFTA–1,554 | Check printing. |
| Atlantic Power Systems | Fayetteville, NC | 3/05/97 | NAFTA–1,555 | Distribution transformers. |
| Siebe | Brownsville, TX | 3/10/97 | NAFTA–1,556 | Temperature pressure controls. |
| Lexington Fabrics | Hamilton, AL | 3/07/97 | NAFTA–1,557 | Apparel, t-shirt. |
| Flexible Corporation | Delaware, OH | 3/11/97 | NAFTA–1,558 | Bus, transit. |

[FR Doc. 97–8030 Filed 3–28–97; 8:45am]

BILLING CODE 4510–30–M

**[NAFTA–01412, NAFTA–01412A, NAFTA–01412B, and NAFTA–1412C]**

### Montana Power Company (Butte, Missoula, and Great Falls, Montana); Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on February 7, 1997, applicable to all workers of Montana Power Company located in Butte, Montana. The notice was published in the **Federal Register** on March 12, 1997 (62 FR 11473).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at the subject firm's Missoula, Great Falls and Havre locations in Montana. The workers at these locations are engaged in employment related to the production of electrical power.

The intent of the Department's certification is to include all workers of Montana Power Company who were affected by increased imports from Mexico or Canada. Accordingly, the Department is amending the worker certification to include the workers of Montana Power Company located in Missoula, Great Falls and Havre, Montana.

The amended notice applicable to NAFTA—01412 is hereby issued as follows:

All workers of Montana Power Company, Butte, Montana (NAFTA–01412), Missoula, Montana (NAFTA–1412A), Great Falls, Montana (NAFTA–01412B) and Havre, Montana (NAFTA–1412C), who became totally or partially separated from employment on or after December 27, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC., this 14th day of March 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–8033 Filed 3–28–97; 8:45 am]

BILLING CODE 4510–30–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (97– ) 035]**

### NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Behavioral and Biomedical Research; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity

Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Behavioral and Biomedical Research.

**DATES:** April 17, 1997, 8:30 a.m. to 5:30 p.m.; and April 18, 1997, 8 a.m. to 12:30 p.m.

**ADDRESSES:** NASA Headquarters, Room 7H46, 300 E Street SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Diana P. Hoyt, Code UP, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1893.

**SUPPLEMENTARY INFORMATION:** The meeting will be closed to the public on Thursday, April 17, 1997, from 5 p.m. to 5:30 p.m. in accordance with 5 U.S.C. 522b (c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the Office of Life and Microgravity Sciences and Applications Status
—Status of NASA–NIH Activities
—NSBR Institute and Center for Fluid/Combustion Research Status
—Research Accommodation (Ground/Space)
—Planning Nutrition for Metabolism and Pharmacology Research
—Radiation Biology
—Commercial Programs
—NASA–Mir Research
—Global Health Strategic Planning
—Astro and Space Biology Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 24, 1997.

**Leslie M. Nolan,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 97–8095 Filed 3–28–97; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency information collection activities: Submission for OMB review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice, which are used in the National Historical Publications and Records Commission grant program. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before April 30, 1997 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on January 24, 1997 (62 FR 3718). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

*Title:* NHPRC Budget Form and Instructions.

*OMB number:* 3095–0004.

*Agency form number:* NA Form 17001.

*Type of review:* Regular.

*Affected public:* Nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state-recognized Native American tribes or groups, and individuals who apply for NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.

*Estimated number of respondents:* 174.

*Estimated time per response:* 3 hours.

*Frequency of response:* On occasion (when respondent wishes to apply for NHPRC grant). Respondents generally submit no more than 1 applications per year.

*Estimated total annual burden hours:* 552.

*Abstract:* The information collection is prescribed by 36 CFR 1206.58. The collection is prepared by prospective grantees. The budget form is used by the NHPRC staff, reviewers, the Commission to determine whether proposed project is methodologically sound and suitable for support and as a basis for determining the amount of support to be provided.

Dated: March 26, 1997.

**L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 97–8107 Filed 3–28–97; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Biological Sciences; 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 Panel in Biological Sciences (1754).

*Date and Time:* April 14–16, 1997, 8:00 a.m.–5:00 p.m.

*Place:* NSF at 4201 Wilson Blvd., Arlington, Virginia 22230, Rm. 310.

*Type of Meeting:* Closed.

*Contact Person:* Karl A. Koehler, Program Director, Barry R. Masters, Program Director, Biological Instrumentation and Instrument Development, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1472.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals for acquisition of Biological Instrumentation and Instrument Development for the Major Research Instrument (MRI) program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 24, 1997.

**Linda Allen-Benton,**

*Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.*

[FR Doc. 97–7969 Filed 3–28–97; 8:45 am]

BILLING CODE 7555–01–M

## Office of Polar Programs, Arctic Social Science Program; 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 and Committee Code:* Special Emphasis Panel in Polar Programs (1209).

*Date and Time:* April 18, 1997; 8:00 a.m. to 5:00 p.m.

*Place:* Room 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Carol Seyfrit, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1029.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Arctic Social Science proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individual 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 24, 1997.

**Linda Allen-Benton,**

*Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.*

[FR Doc. 97–7968 Filed 3–28–97; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL WOMEN'S BUSINESS COUNCIL

### Sunshine Act meeting

**AGENCY:** National Women's Business Council.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Women's Business Ownership Act, Public Law 100–403 as amended, the National Women's Business Council (NWBC) announces a forthcoming Council meeting and joint meeting of the NWBC and Interagency Committee on Women's Business Enterprise. These meetings will cover action items to be taken by the National Women's Business Council in Fiscal Year 1997 including but not limited to increasing procurement opportunities and access to capital for women business owners.

**DATES:** April 8, 1997, from 10:00 am to 5:00 pm.

**ADDRESSES:** U.S. Department of Treasury, Secretary's Conference Room, Room #3327, Washington, DC 20515.

**STATUS:** Open to the public.

**CONTACT:** For further information contact Amy Millman, Executive Director, or Gilda Presley, Administrative Officer, National Women's Business Council, 409 Third Street, SW., Suite 5850, Washington, DC 20024, (202) 205–3850.

**Gilda Presley,**

*Administrative Officer, National Women's Business Council.*

[FR Doc. 97–8199 Filed 3–27–97; 2:17 pm]

BILLING CODE 6820–AB–M

## NUCLEAR REGULATORY COMMISSION

**[IA 97–001]**

### Darryl D. McNeil; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

**I**

Darryl D. McNeil was employed by SBI as a Security Lieutenant at Florida Power Corporation's (FPC) Crystal River site. SBI is a contractor to FPC and provides security services for the site. FPC holds License No. DPR–72 for Crystal River Unit 3, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on January 28, 1977. The license authorizes FPC to operate Crystal River Unit 3 in accordance with the conditions specified therein.

**II**

10 CFR 73.55(d) requires, in part, that nuclear power plant licensees control all points of personnel access into a protected area. 10 CFR 73.55(d)(5) requires that a numbered picture badge identification system be used for all individuals who are authorized access to protected areas without escort. The objective of the regulation is to provide high assurance that only individuals who require access and have been found to be trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public are allowed to enter the protected area. The Crystal River Unit 3 Operating License Section 2.D, Physical Security, requires FPC to maintain in effect all provisions of the Commission-approved Physical Security Plan. FPC's Physical Security Plan, Revision 6–9, Section 5.4.3 states: ''When badges/key cards are allowed to leave the Protected Area, they will be under the observation and control of Security Force personnel. * * * Lost and missing badges/key cards are immediately removed from the Security Computer as soon as Security Supervision is made aware of the loss. Prior to removal from the Security Computer, an investigation is conducted to determine any unauthorized use.''

On February 9, 1996, a Quality Assurance employee at Crystal River Unit 3 left the site while wearing his security badge. During the period of March 6, 1996, through December 13, 1996, the Nuclear Regulatory Commission (NRC) Office of Investigations (OI) conducted an investigation of the circumstances surrounding the loss of control of the security badge at the Crystal River site. From its investigation, the NRC concludes that contract security employees intentionally and deliberately conspired to cover up the loss of the security badge. Specifically, the evidence revealed that, prior to the return of the employee to the site, two security officers became aware that this event had occurred, and notified their supervisor, Darryl D. McNeil, of the event. Although Mr. McNeil admitted to the OI investigator that he was aware of the requirements to deactivate a missing badge in the security access computer, and to initiate an investigation upon being informed of the mistake, he did not comply with these requirements. Instead, he permitted the security officers: (1) to retrieve the individual's badge when he returned to the site later that day; (2) to card the badge out as if it had been processed properly upon the individual's exit from the plant; and (3) to return the badge to the badge rack.

On January 16, 1997, the NRC sent a certified letter to Mr. McNeil advising him that his actions appeared to have violated 10 CFR 50.5, Deliberate Misconduct, and offering him the opportunity to attend a predecisional enforcement conference. By letter dated February 10, 1997, Mr. McNeil provided a written response to the January 16, 1997, letter in lieu of participation in an enforcement conference. Mr. McNeil's letter indicated that he was aware an employee had left the facility with his badge and that he had been informed that the security officer planned to retrieve the badge and return it to the badge rack. Mr. McNeil stated that in his

judgement, these actions posed no security risk to the plant.

**III**

Based on the above, it appears that Mr. McNeil engaged in deliberate misconduct in that, although he was aware of badge security requirements, he deliberately allowed security officers to improperly retrieve, card out, and return a badge which had been taken off-site to the badge rack, and deliberately failed to remove the employee's badge from the security access computer or initiate an investigation of the incident. These actions were not authorized by plant procedures. Mr. McNeil's deliberate misconduct caused the Licensee to be in violation of Section 5.4.3 of its Physical Security Plan and is, therefore, a violation of 10 CFR 50.5(a)(1). The NRC must be able to rely on licensees, contractors and their employees to fully comply with NRC requirements. This is essential with respect to access authorization programs at nuclear power plants because the NRC relies on members of a nuclear facility's security force to ensure that all individuals who are allowed to access the facility meet high standards of trustworthiness and reliability. Mr. McNeil's deliberate misconduct raises serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with Commission requirements and that the health and safety of the public will be protected if Mr. McNeil were permitted at this time to be involved in NRC-licensed activities. Therefore, public health and safety and the public interest require that Mr. McNeil be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order and, if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. McNeil is required to notify the NRC of his first employment in NRC-licensed activities for one year following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. McNeil's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

**IV**

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5 and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

A. Mr. Darryl D. McNeil is prohibited for one year from the date of this Order from engaging in or exercising control over individuals engaged in NRC-licensed activities. If Mr. McNeil is currently involved in NRC licensed activities, he must immediately cease such activities, inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

B. For a period of one year following the period of prohibition set forth in Paragraph IV.A. above, Mr. Darryl D. McNeil shall, within 20 days of his acceptance of his first employment offer involving NRC-licensed activities as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. The notice shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon demonstration by Mr. McNeil of good cause.

**V**

In accordance with 10 CFR 2.202, Mr. McNeil must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. McNeil or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323 and to Mr. McNeil if the answer or hearing request is by a person other than Mr. McNeil. If a person other than Mr. McNeil requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. McNeil or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. McNeil, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 24th day of March 1997.

**Edward L. Jordan,**

*Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement.*

[FR Doc. 97–8053 Filed 3–28–97; 8:45 am]

BILLING CODE 7590–01–P

## Privacy Act of 1974, as Amended: Establishment of a New System of Records

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Establishment of a new system of records.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to establish a new Privacy Act System of Records, NRC–42, ''Skills Assessment and Employee Profile Records—NRC.''

**EFFECTIVE DATE:** The new system of records will become effective without further notice on May 12, 1997, unless comments received on or before that date cause a contrary decision. If changes are made based on NRC's review of comments received, NRC will publish a new final notice.

**ADDRESSES:** Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays. Copies of comments may be examined, or copied for a fee, at the NRC Public Document Room at 2120 L Street, NW., Lower Level, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jona L. Souder, Freedom of Information/ Local Public Document Room Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7170.

**SUPPLEMENTARY INFORMATION:** NRC is establishing a new System of Records, NRC–42, ''Skills Assessment and Employee Profile Records—NRC,'' for the primary purpose of enabling the Chief Information Officer (CIO) to carry out the duties and responsibilities contained in section 5125(c)(3) of the National Defense Authorization Act for Fiscal Year 1996 which requires the CIO to, among other things, assess the requirements established for agency personnel regarding knowledge and skill in information resources management; assess the extent to which certain positions and personnel meet the requirements; and develop strategies and plans for hiring, training, and professional development in order to rectify any deficiency in meeting the requirements.

The CIO may also use the new system of records to prepare skills profiles of employees reporting to the CIO, to assess the skills of the CIO staff in light of the functions performed by the CIO organization, to develop individual and organizational training and recruitment plans, and to assign personnel.

Other offices may maintain similar kinds of records relative to their specific duties, functions, and responsibilities.

A report on the proposed new system of records is being sent to the Office of Management and Budget (OMB), the Committee on Governmental Affairs of the U.S. Senate, and the Committee on Government Reform and Oversight of the U.S. House of Representatives as required by the Privacy Act and OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals.''

Accordingly, the NRC proposes to add NRC–42 to read as follows:

### NRC–42

**SYSTEM NAME:**

Skills Assessment and Employee Profile Records—NRC.

**SYSTEM LOCATION:**

Primary system—Chief Information Officer, NRC, 11545 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems may exist, in whole or in part, at the NRC's Headquarters, regional, and other offices listed in Addendum I, Parts 1 and 2. This system of records may contain some of the information contained in other systems of records. These other systems may include, but are not limited to:

NRC–11, General Personnel Records (Official Personnel Folder and Related Records)—NRC;

NRC–13, Incentive Awards Files—NRC;

NRC–19, Official Personnel Training Records Files—NRC;

NRC–22, Personnel Performance Appraisals—NRC; and

NRC–27, Recruiting, Examining, and Placement Records—NRC.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current, prospective, and former NRC employees, experts, consultants, contractors, and employees of other Federal agencies and State, local, and foreign governments and private entities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Specific information maintained on individuals includes individual skills assessments that identify the knowledge and skills possessed by the individual and the level of skills possessed, and may include a skills profile containing, but not limited to, their name; date of birth; social security number; service computation date; series and grade; address and phone number; education; training; work and skills experience; special qualifications; licenses and certificates held; honors and awards; career interests, goals and objectives; and availability for travel or geographic relocation. Individual training plans, when developed, may also be maintained in this system.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 104–106, National Defense Authorization Act for Fiscal Year 1996, sec. 5125, Agency Chief Information Officer, February 10, 1996; 5 U.S.C. 3396 (1988); 5 U.S.C. 4103 (1988); 42 U.S.C. 2201 (1988); Executive Order 9397, November 22, 1943; Executive Order 11348, February 20, 1967, as amended by Executive Order 12107, December 28, 1978.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary use of the records will be to assess the knowledge and skills needed to perform the functions assigned to individuals and their organizations. It will specifically be used by the Chief Information Officer (CIO) to carry out the provisions of section 5125(c)(3) of the National Defense Authorization Act for Fiscal Year 1996 which requires the CIO to, among other things, assess the requirements established for agency personnel regarding knowledge and skill in information resources management and the adequacy of the requirements for achieving performance goals established for information resources management; assess the extent to which certain positions and personnel meet the requirements; develop strategies and specific plans for hiring, training, and professional development to rectify deficiencies in meeting the requirements; and report to the head of the agency the progress made in improving information resources management.

Information in the system may be used by the CIO to prepare skills profiles of employees reporting to the CIO, including those in the Office of Information Resources Management; to assess the skills of the CIO staff in light of the functions performed by the CIO organization; to develop an organizational training plan/program; to prepare individual training plans; to

develop recruitment plans; and to assign personnel. Other offices may maintain similar kinds of records relative to their specific duties, functions, and responsibilities.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, which includes disclosure to other NRC employees who have a need for the information in the performance of their duties, NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the information was collected under the following routine uses:

a. To employees and contractors of other Federal, State, local, and foreign agencies or to private entities in connection with joint projects, working groups, or other cooperative efforts in which the NRC is participating.

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Information is maintained in computerized form and in paper copy. Computerized form includes information stored in memory, on disk, and on computer printouts.

**RETRIEVABILITY:**

Information may be retrieved in a number of ways, including but not limited to the individual's name, social security number, position title, office, or skill level; various skills, knowledge, training, education, or work experience; or subject or key words developed for the system.

**SAFEGUARDS:**

Records are maintained in buildings where access is controlled by a security guard force. Records are maintained in areas where access is controlled by keycard and is limited to NRC and contractor personnel and to others who need the records to perform their official duties. Access to computerized records requires use of proper password and user identification codes.

**RETENTION AND DISPOSAL:**

System input records are destroyed after the information is converted to electronic medium and verified in accordance with General Records Schedules 20–2. a and b. System data maintained electronically are currently unscheduled and must be retained until a records disposition schedule for this information is approved by the National Archives and Records Administration. Hard copy records documenting skills requirements, assessments, strategies, and plans for meeting the requirements are currently unscheduled and must be retained until a records disposition schedule for this information is approved by the National Archives and Records Administration.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant to the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Chief, Freedom of Information/Local Public Document Room Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and comply with NRC's Privacy Act regulations regarding verification of identity contained in NRC's Privacy Act regulations, 10 CFR part 9.

**RECORD ACCESS PROCEDURE:**

Same as ''Notification Procedure'' and comply with NRC's Privacy Act regulations regarding verification of identity and record access procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

**CONTESTING RECORD PROCEDURE:**

Same as ''Notification Procedure'' and comply with NRC's Privacy Act regulations regarding verification of identity and contesting record procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

**RECORD SOURCE CATEGORIES:**

Information in this system of records is obtained from a number of sources, including but not limited to the individual to whom it pertains, information derived from that supplied by the individual, other systems of records, supervisors and other NRC officials; contractors, and other agencies or entities.

Dated at Rockville, MD, this 25th day of March, 1997.

For the Nuclear Regulatory Commission.

**Anthony J. Galante,**

*Chief Information Officer.*

[FR Doc. 97–8052 Filed 3–28–97; 8:45 am]

BILLING CODE 7590–01–P

## PRESIDENT'S COMMISSION ON CRITICAL INFRASTRUCTURE PROTECTION

### Public Meeting

**ACTION:** Atlanta PCCIP public meeting.

**TIME AND DATE:** 9:00 a.m.–12:00 p.m., Friday, April 18, 1997.

**PLACE:** Inforum, 250 William Street, Atlanta, GA 30303.

**MATTERS TO BE CONSIDERED:** Advice or comments of any concerned citizen, group or activity on assuring America's critical infrastructures.

**Note:** A sign-language interpreter will be available for the hearing-impaired.

**CONTACT PERSON FOR MORE INFORMATION:** Nelson McCouch, Public Affairs Director, (703) 696–9395, nelson.mccouch@pccip.gov.

**Jim Kurtz,**

*Executive Secretariat, President's Commission on Critical Infrastructure Protection.*

[FR Doc. 97–8057 Filed 3–28–97; 8:45 am]

BILLING CODE 3110–$$–P

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22581; 812–10474]**

### The Advisors' Inner Circle Fund; Notice of Application

March 25, 1997.

**AGENCY:** Securities and Exchange Commission (the ''SEC'').

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (''the Act'').

**APPLICANT:** The Advisors' Inner Circle Fund (the ''Fund''), on behalf of each series thereof, including any series created after the date of the application (a ''Portfolio'' and together, the ''Portfolios'').

**RELEVANT ACT SECTIONS:** Exemptions requested under sections 6(c) and 17(b) from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicant seeks an order to permit redemptions in kind shares of the Portfolios by shareholders who are ''affiliated persons'' of the Portfolios within the meaning of section 2(a)(3)(A) of the Act (''Affiliated Shareholders'').

**FILING DATES:** The application was filed on December 30, 1996. Applicant has agreed to file an additional amendment during the notice period, the substance of which is incorporated herein.

**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 April 21, 1997 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 2 Oliver Street, Boston, MA 02109.

**FOR FURTHER INFORMATION CONTACT** Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Mary Key Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

## Applicants Representations

1. The Fund, an open-end management investment company established as a Massachusetts business trust, currently offers twelve Portfolios. The Fund currently consists of the following Portfolios: Clover Capital Equity Value Fund, Clover Capital Fixed Income Fund, and Clover Capital Small Cap Value Fund, each advised by Clover Capital Management, Inc.; AIG Money Market Fund, advised by AIG Management Capital, Corp.; White Oak Growth Stock Fund and Pin Oak Aggressive Stock Fund, each advised by Oak Associates, Ltd.; HGK Fixed Income Fund, advised by HGK Asset Management, Inc.; FMC Select Fund, advised by First Manhattan Co.; CRA Realty Shares Portfolio, advised by CRA Real Estate Securities L.P.; and Pinnacle Extended Liquidity Portfolio, Pinnacle Short Duration Portfolio, and Pinnacle Intermediate Duration Portfolio, each advised by TCB, L.P.

2. Shares of a Portfolio may be redeemed at the net asset value per share next determined after the transfer agent receives a proper redemption request. The Fund's prospectuses and statements of additional information provide that, in limited circumstances, a Portfolio may satisfy all or part of a redemption request by delivering portfolio securities to a redeeming shareholder if the board of trustees of the Fund (the ''Board'')[1] determines that it is appropriate in order to protect the best interests of the Portfolio and its shareholders.

3. The Fund, on behalf of each Portfolio, has elected to be governed by the provisions of rule 18f–1 under the Act. This election commits each Portfolio, during any 90-day period for any one shareholder, to redeem its shares solely in cash up to the lesser of $250,000 or 1% of the Portfolio's net asset value at the beginning of such period. The Board, including all of the Independent Trustees, has determined that it would be in the best interests of the Portfolios and their shareholders to pay to each Affiliated Shareholder the redemption price for its shares inkind to the extent permitted by the Fund's rule 18f–1 election.

4. Securities distributed to Affiliated Shareholders in connection with redemptions in-kind will be selected and valued under the same procedures used for the selection and valuation of shares distributed to other shareholders (the ''non-affiliated shareholders'') as redemptions in-kind. Thus, all such shares will be valued in the same manner as they would be valued for purposes of computing a Portfolio's net asset value, which is the last quoted sales price, or if there is no reported sale, at the last quoted bid price.

5. Securities to be distributed in-kind will be distributed on a *pro rata* basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities by entities in countries that (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Portfolios, or (ii) permit transfers of ownership of securities to be affected only by transactions conducted on a local stock exchange; and (c) certain portfolio assets (such as forward currency exchange contracts, futures and options contracts, and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership.

6. Cash will be paid for that portion of a Portfolio's assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). A Portfolio also will distribute cash in lieu of any securities held in its investment portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accrual on such securities.

7. Applicant seeks relief to permit Affiliated Shareholders who are ''affiliated persons'' of a Portfolio only within the meaning of section 2(a)(3)(A) of the act (*i.e.*, by virtue of their ownership of 5% or more of the voting securities thereof) to redeem their shares in-kind, subject to the limitations of the Fund's rule 18f-1 election. The relief sought would not extend to shareholders who are ''affiliated persons'' of a Portfolio within the meaning of sections 2(a)(3) (B)–(F) of the Act.

## Legal Analysis

1. Section 17(a)(2) of the Act, in relevant part, makes it unlawful for an affiliated person of a registered investment company or an affiliated person of such a person, acting as principal, to knowingly ''purchase'' from such registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3)(A) of the Act defines ''affiliated person'' to include any person owning 5% or more of the outstanding voting securities of such other person.

2. Section 17(b) provides that the SEC may, by order upon application, grant exemptions from the prohibitions of section 17(a) with respect to any particular transaction if the terms of the proposed transaction are fair and reasonable and do not involve overreaching; if the proposed transaction is consistent with the policy of each registered investment company involved; and the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides, in part, that the SEC, by order upon application, may conditionally or unconditionally exempt any person, security or transaction from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and

[1] Five of the Fund's seven trustees are no ''interested persons'' as defined in section 2(a)(19) of the Act (the ''Independent Trustees'').

consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicant submits that is has satisfied the requirements of sections 6(c) and 17(b). Applicant believes that the use of an objective, verifiable standard for the selection and valuation of any securities to be distributed in connection with a redemption in-kind will ensure that all such redemptions will be on terms that are reasonable and fair to the Portfolios, their shareholders and the Affiliated Shareholders, and will not involve overreaching on the part of any person. Similarly, the proposed transactions are consistent with the investment policies of the Portfolios, which expressly disclose the Portfolios' ability to redeem shares in-kind. Finally, applicant believes that the terms of the proposed transactions are reasonable and fair to all parties and are consistent with the protection of investors and the provisions, policies and purposes of the Act.

Affiliate Shareholders who wish to redeem shares in-kind would receive the same in-kind distribution of portfolio securities and cash on the same basis as any other shareholder wishing to redeem shares, and would not receive any advantage not available to any other shareholder requesting a comparable redemption if the proposed in-kind redemptions are permitted.

## Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The securities distributed to both Affiliated Shareholders and non-affiliated shareholders pursuant to a redemption in-kind (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid are traded on a public securities market or for which quoted bid and asked prices are available.

2. The In-Kind Securities will be distributed by the Portfolio on a *pro rata* basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Portfolios, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; and (c) certain portfolio assets (such as forward foreign currency exchange contracts, futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Portfolio's assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Portfolio will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The Board of Trustees of the Applicant, including a majority of the Trustees who are not ''interested persons'' (as defined in Section 2(a)(19) of the Act) of the Fund, will determine no less frequently than annually: (a) whether the In-Kind Securities, if any, have been distributed in accordance with condition 1; and (b) whether the distribution of any such In-Kind Securities is consistent with the policies of the relevant Portfolio as reflected in the prospectus of that Portfolio. In addition, the Board of Trustees shall make and approve such changes as the Board deems necessary in its procedures for monitoring Applicant's compliance with the terms and conditions of this application.

4. The Portfolios will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of each such redemption setting forth the identity of the Affiliated Shareholder, a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–8073 Filed 3–28–97; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–22580; 812–10496]**

## Dreyfus/Laurel Funds Trust, et al.; Notice of Application

March 24, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** Dreyfus/Laurel Funds Trust (the ''Trust'') and Dreyfus Growth and Value Funds, Inc. (the ''Company'').

**RELEVANT ACT SECTION:** Order requested pursuant to section 17(b) of the Act granting an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order under section 17(b) granting an exemption from section 17(a) of the Act to permit a series of the Company to acquire all of the assets and assume all of the stated liabilities of a series of the Trust.

**FILING DATES:** The application was filed on January 14, 1997 and amended on March 19, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 16, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 200 Park Avenue, New York, NY 10166.

**FOR FURTHER INFORMATION CONTACT:** Lisa McCrea, Staff Attorney (202) 942–0562, or Mercer E. Bullard, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

## Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company. The Dreyfus Aggressive Growth Fund (the ''Acquiring Fund'') is one of ten series of the Company. The Trust, a Massachusetts business trust, is registered under the Act as an open-end

management investment company. The Dreyfus Special Growth Fund (the ''Acquired Fund'') is one of three series of the Trust. Dreyfus acts as investment adviser to both the Acquiring and Acquired Funds. Dreyfus is a wholly-owned subsidiary of Mellon Bank, which is a wholly-owned subsidiary of Mellon Bank Corporation (''Mellon'').

2. The Acquiring Fund shares are sold primarily to retail investors by the distributor of the Fund, Premier Mutual Fund Services, Inc. (''Premier''), and through securities dealers, banks or other financial institutions that have entered into a selling agreement with Premier. The Acquiring Fund imposes no front-end or deferred sales charges or distribution fees. The Acquiring Fund's shares are sold subject to shareholder services plan (the ''Shareholder Services Plan''), whereby the Acquiring Fund pays Premier for the provision of certain services to Acquiring Fund shareholders a fee at the annual rate of 0.25 or 1% of the value of the Acquiring Fund's average daily net assets.[1] Shares of the Acquiring Fund acquired by purchase or exchange after February 28, 1997 and redeemed or exchanged less than 15 days after they are acquired will be subject to a redemption fee of 1.0% of the net asset value of the shares redeemed or exchanged.

3. The Acquired Fund issues two classes of shares, Investor shares and Class R shares. Investor shares are sold primarily to retail investors by banks, securities brokers or dealers, other financial institutions, and Premier, the distributor of the Acquired Fund's shares. Class R shares are sold primarily to bank trust departments and other financial service providers acting on behalf of customers having a qualified trust or investment account or relationship at such institution or to customers who have received and hold shares of the Acquired Fund distributed to them by virtue of such account or relationship. Mellon owns with power to vote approximately 99% of the outstanding Class R shares of the Acquired Fund, which constitute approximately 7% of the shares of the Acquired Fund. The Acquired Fund imposes no sales charges in connection with the purchase or redemption of either class of its shares, but Investor shares are subject to a distribution fee under a distribution plan adopted pursuant to rule 12b–1 under the Act.

4. The investment objective of the Acquiring Fund is capital appreciation. The Acquiring Fund seeks to obtain this objective by investing at least 65% of its assets in a portfolio of publicly-trade equities of domestic and foreign issuers that are categorized as growth companies by Dreyfus. The investment objective of the Acquired Fund is to seek above-average capital growth without regard to income. The Acquired Fund seeks to obtain this objective by focusing on companies, small or large, with above-average growth opportunities. In obtaining this objective, the Acquired Fund will invest in issuers with unique or proprietary products or services leading to a rapidly growing market share.

5. The Company, on behalf of the Acquiring Fund, and the Trust, on behalf of the Acquired Fund, entered into an Agreement and Plan of Reorganization dated as of December 31, 1996 (the ''Agreement''), to effectuate a proposed reorganization (the ''Reorganization''). The Acquiring Fund proposes to acquire all the assets of the Acquired Fund in exchange for shares of the Acquiring Fund with an aggregate net asset value equal to that of the assets transferred minus the liabilities of the Acquired Fund that will be assumed by the Acquiring Fund. The Acquired Fund will endeavor to discharge all of its known liabilities and obligations prior to a closing presently expected to occur on or about April 18, 1997 (the ''Closing Date''). The Acquiring Fund will assume all liabilities, debts, obligations, expenses, costs, charges and reserves of the Acquired Fund reflected on the unaudited statement of assets and liabilities of the Acquired Fund as of the close of regular trading on the New York Stock Exchange (''NYSE'') as of the Closing Date.

6. The number of full and fractional shares of the Acquiring Fund to be issued to shareholders of the Acquired Fund will be determined on the basis of the relative net asset values of the Acquired Fund computed as of the close of regular trading on the NYSE on the Closing Date (the ''Valuation Time''). As soon after the Closing Date as conveniently practicable, the Acquired Fund will distribute in kind *pro rata* to its shareholders of record determined as of the Valuation Time, in liquidation of the Acquired Fund, the shares of the Acquiring Fund received by it pursuant to the Reorganization. Such distribution will be accomplished by the establishment of an account in the name of each shareholder of the Acquired Fund on the share records of the Acquiring Fund's transfer agent and transferring to each such account a number of shares of the Acquiring Fund representing the respective *pro rata* number of full and fractional shares of the Acquiring Fund due to such shareholder of the Acquired Fund. After such distribution and the winding up of its affairs, the Acquired Fund will be terminated. Shares of the Acquiring Fund received by shareholders of the Acquired Fund pursuant to the Reorganization will not be subject to the Acquiring Fund's redemption fee.

7. On or before the Closing Date, the Acquired Fund will have declared a dividend and/or other distributions that, together with all previous dividends and other distributions, shall have the effect of distributing to the Acquired Fund's shareholders all taxable income for all taxable years ending on or prior to the Closing Date and for its current taxable year through the Closing Date (computed without regard to any deduction for dividends paid) and all of its net capital gain realized in all such taxable years (after reduction for any capital loss carryforward).

8. On November 6, 1996, the board of directors of the Company, and on October 24, 1996 and December 11, 1996, the board of trustees of the Trust (collectively, the ''Boards''), including members of the Boards who are not interested persons, unanimously approved the Agreement. The Boards considered the advisability of the Reorganization and found that it was in the best interests of the relevant Fund and that the interests of the existing shareholders of each relevant Fund would not be diluted as a result of the Reorganization.

9. In assessing the Reorganization and the terms of the Agreement, the factors considered by the Boards included: (a) The relative past growth in assets and investment performance of the Funds; (b) the future prospects of the Funds, both under circumstances where they are not reorganized and where they are reorganized; (c) the compatibility of the investment objectives, policies and restrictions of the Acquiring Fund and the Acquired Fund; (d) the effect of the Reorganization on the expense ratios of each Fund based on a comparison of the expense ratios of the Acquiring Fund with those of the Acquired Fund on a ''pro forma'' basis; (e) the costs of the Reorganization to the Funds; (f) whether any future cost savings could be achieved by combining the Funds; (g) the tax-free nature of the Reorganization; and (h) alternatives to the Reorganization.

10. The Funds will bear the expenses of the Reorganization pro rata according to the aggregate net assets in each Fund on the Closing Date. Each Board considered the fact that the Funds will bear all of the direct expenses of the Reorganization, whether or not the Reorganization is consummated, when

[1] The Shareholder Services Plan is not a plan adopted pursuant to rule 12b–1 under the Act.

approving the Reorganization and the Agreement. These expenses include professional fees and the cost of soliciting proxies for the meeting of the Acquired Fund's shareholders, consisting principally of printing and mailing expenses, together with the cost of any supplementary solicitation.

11. On January 13, 1997, the Acquiring Fund filed with the SEC its registration statement on Form N–14, containing a preliminary combined prospectus/proxy statement. Applicants sent the prospectus/proxy statement to shareholders of the Acquired Fund on or about March 5, 1997 for their approval at a special meeting of shareholders scheduled for April 7, 1997.

12. Notwithstanding approval of the Reorganization Agreement by the shareholders of the Acquired Fund, the Closing Date of the Reorganization may be postponed and the Agreement may be terminated prior to the Closing Date by either party because: (a) Its governing board determines that circumstances have developed that make proceeding with the Reorganization inadvisable; (b) a material breach by the other party of any representation, warranty, or agreement contained therein has occurred; or (c) a condition to the obligation of the terminating party cannot be met. (p. 15) Applicants agree not to make any material changes to the Agreement without prior SEC approval.

**Applicants' Legal Analysis**

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any such security or other property to such registered company, or purchasing from such registered company any security or other property.

2. Section 2(a)(3) of the Act defines the term ''affiliated person of another person'' to include, in pertinent part, any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person, and any person directly or indirectly controlling, controlled by, or under common control with such other person, and if such other person is an investment company, any investment adviser thereof.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

4. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Acquiring Fund and the Acquired Fund may be affiliated for reasons other than those set forth in the rule. Mellon owns 100% of the outstanding voting securities of Dreyfus and approximately 99% of the outstanding Class R shares of the Acquired Fund, which constitute approximately 7% of the outstanding shares of the Acquired Fund. Because of this ownership, applicants believe that the Acquiring Fund may be deemed an affiliated person of an affiliated person of the Acquired Fund, and vice versa, for reasons not based solely on their common adviser.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

6. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b), in that the terms are fair and reasonable and do not involve overreaching on the part of any person concerned. Applicants note that each Board, including the non-interested Trustees and Directors, reviewed the terms of the Reorganization as set forth in the Agreement, including the consideration to be paid or received, and found that participation in the Reorganization as contemplated by the Agreement is in the best interests of the Company, the Trust, and each Fund, and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired Fund's assets and liabilities for the shares of the Acquiring Fund will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–8004 Filed 3–28–97; 8:45 am]

BILLING CODE 8010–01–M

## Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [62FR 13728, March 21, 1997]

**STATUS: CLOSED MEETING.**

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** March 21, 1997.

**CHANGE IN THE MEETING:** Cancellation.

The closed meeting scheduled for Thursday, March 27, 1997, at 10:00 a.m., has been cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: March 27, 1997.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 97–8216 Filed 3–27–97; 2:17 pm]

BILLING CODE 8010–01–M

## Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 31, 1997.

An open meeting will be held on Thursday, April 3, 1997, at 10:00 a.m. A closed meeting will be held on Thursday, April 3, 1997, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), 9(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Thursday, April 3, 1997, at 10:00 a.m., will be:

Consideration of whether to adopt rules under the Investment Company Act of 1940 to implement certain provisions of the National Securities Markets Improvement Act of 1996 (the ''1996 Act'') relating to privately offered investment companies. The

1996 Act, among other things, amended section 3(c)(1) of the Investment Company Act (the existing exclusion from Investment Company Act regulation used by privately offered investment companies) and added section 3(c)(7) to create a new exclusion from regulation under the Investment Company Act for privately offered investment companies that consist solely of ''qualified purchasers'' owning or investing on a discretionary basis a specified amount of ''investments.'' The new rules would: (i) define the term ''investments'' for purposes of the qualified purchaser definition; (ii) define the term ''beneficial owner'' for purposes of the provisions that permit an existing privately offered investment company to convert into a qualified purchaser pool or to be treated as a qualified purchaser; (iii) address certain interpretative issues under section 3(c)(7); (iv) address certain interpretative issues under section 3(c)(1) resulting from changes made by the 1996 Act; (v) address investments in privately offered investment companies by ''knowledgeable employees''; and (vi) address certain transfers of securities issued by privately offered investment companies.

The subject matter of the closed meeting scheduled for Thursday, April 3, 1997, following the 10:00 a.m. open meeting, will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 26, 1997.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 97–8226 Filed 3–27–97; 3:08 pm]

BILLING CODE 8010–01–M

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**[Release No. 34–38431; file No. SR–CBOE–97–13]**

## Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Short Sales of S&P 500 Index Bear Market Warrants

March 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (11Act''),[1] notice is hereby given that on February 26, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by CBOE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to amend Rule 30.20 relating to short sales, to reflect an exemption granted by the Commission pursuant to Exchange Act Rule 10a–1 [2] for S&P 500 Index Bear Market Warrants (''Warrants'').[3]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE is proposing to amend Rule 30.20 regarding short sales, to reflect an exemption granted by the Commission pursuant to Exchange Act Rule 10a-1 for S&P 500 Index Bear Market Warrants.

*Description of S&P 500 Warrants*

The CBOE is currently trading S&P 500 Index [4] Bear Market Warrants with 3-month Reset, expiring November 20, 1997, issued by the International Finance Corporation (''IFC'' or ''Corporation'').[5] The Warrants constitute direct, unconditional, general and unsecured obligations of the Corporation. There were 1,250,000 warrants originally offered, and the trading symbol is OPT.WS. The Warrants trade on the New York Stock Exchange (''NYSE'') and CBOE. The Warrants are quoted and traded like other equity securities, generally in round lots of one hundred. Odd lots (less than 100 Warrants) also may be traded.

The Warrants are exercisable immediately upon purchase, subject to postponement for certain extraordinary events and subject to maximum or minimum exercise amounts, and may be exercised at any time until 3:00 p.m., New York City time, on the fourth Index Calculation Day immediately preceding November 20, 1997 (''Expiration Date'') or any earlier Delisting Date. The Warrants will expire on the Expiration Date.

No fewer than 500 Warrants may be exercised by or on behalf of a Warrant holder at any one time, except in the case of automatic exercise of the Warrants or exercise upon cancellation of the Warrants. All exercises of Warrants (other than on automatic exercise or upon cancellation) are subject, at the Corporation's option, to the limitation that on any exercise date, not more than 1,000,000 Warrants in total may be exercised and not more than 250,000 Warrants on behalf of any person or entity may be exercised.

The holder of the Warrants will be entitled to receive the product, if positive of U.S. $50 multiplied by (i) the amount, if any, by which the Index Strike Price for the applicable Valuation Date exceeds the Index Spot Price, divided by (ii) the Index Strike price, as described in the following formula:

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.10a–1 (1993).

[3] The text of the proposed rule change is available for review in the Office of the Secretary, at CBOE and in the Public Reference Room of the Commission.

[4] The Index is maintained and published by Standard & Poor's, Inc. and is intended to provide a performance benchmark for the U.S. equity markets. The Index is a capitalization weighted measure of the aggregate market value of 500 common stocks. The Index includes 105 individual groups and 11 economic sectors.

[5] The International Finance Corporation is an international organization that was established in 1956 to further economic growth in its developing member countries by promoting private sector development. The Corporation, together with private investors, assists in financing the establishment, improvement and expansion of private sector enterprises by making investments where sufficient private capital is not otherwise available on reasonable terms. The Corporation's share capital is provided by its member countries. It raises most of the funds for its investment activities through the issuance of notes, bonds and other debt securities in the international capital markets.

$$\text{U.S. } \$50 \times \frac{(\text{Index Strike Price} - \text{Index Spot Price})}{\text{Index Strike Price}}$$

The Index Strike price is 743.95, which is the closing level of the Index on the date of the Prospectus, and the Index Spot Price will be determined upon exercise. If the closing level of the Index on February 20, 1997 (''Reset Date Closing Level'') is above 743.95, then the Index Strike Price with respect to the Warrants will be increased to the Reset Date Closing Value on the Reset Date.

The ''Valuation Date'' for a Warrant will be the first Index Calculation Day immediately succeeding the applicable Exercise Date, subject to postponement upon the occurrence of certain extraordinary events or exercise limitation events, as described in the prospectus.

*Exemption From Rule 30.20*

Exchange Act Rule 3b–3 [6] defines the term ''short sale,'' and Exchange Act Rule 10a–1 [7] governs short sales generally. Paragraph (a) of Rule 10a–1 covers transactions in any security registered on a national securities exchange, if trades in such security are reported in the consolidated transaction reporting systems, and prohibits short sales with respect to these securities unless such sales occur on a ''plus tick'' (*i.e.*, at a price above the price at which the immediately preceding sale was effected), or a ''zero-plus tick'' (*i.e.*, at the last sale price if it was higher than the last different price). The CBOE has adopted a similar provision applicable to certain CBOE securities than is set forth in paragraph (b) of Rule 30.20. Exchange Act Rule 10a–1 and CBOE Rule 30.20 are designed to prevent the market price of a stock (or other reported security, as that term is defined in paragraph (a)(4) of Rule 11Aa3–1 under the Exchange Act) [8] from being manipulated downward by unrestricted short selling.

CBOE Rule 30.20(b) sets forth that securities exempted from the requirements of Exchange Act Rule 10a–1 will likewise be exempt from the parallel provisions of 30.20(b) which applies to the trading of stock, warrants, unit investment trust interests, and other securities subject to Chapter XXX of the rules of the Exchange. By letter dated March 21, 1997, in response to a request previously submitted by CBOE,[9] the Commission exempted short sales of S&P 500 Index Bear Market Warrants from the requirements of Rule 10a–1, subject to the condition that any such transactions must not be made for the purpose of creating actual or apparent active trading in, or raising or otherwise affecting the price of the Warrants or any related security.[10] In order to give effect to the exemption, it is necessary that short sales of Warrants also be exempt from CBOE Rule 30.20(b), subject to the same condition. CBOE proposes to add an interpretation to Exchange Rule 30.20 (1) describing the exemption for Warrants from Rule 10a–1 contained in the no-action letter; and (2) stating that so long as that exemption remains in force, short sales of Warrants would be exempt from the tick requirements of paragraph (b) of CBOE Rule 30.20.

The CBOE believes that secondary market transactions in S&P 500 Index Bear Market Warrants (''Warrants'') can appropriately be exempted from paragraph (b) of Rule 30.20.[11] The CBOE can not conceive of circumstances in which a person would sell the Warrants in an effort to affect the price of a single component stock or security. First, the prices of the Warrants are not dependent upon the price of any one stock. Rather, the prices are based upon the relationship of the value of the S&P 500 Index to the Valuation Data Amount as defined in the prospectus. The CBOE therefore does not believe that a person seeking to manipulate the market price of any one of the stocks that make up the S&P 500 Index would seek to sell the Warrants as a means of accomplishing that result.

Second, CBOE believes that any temporary disparities in relative market values between the Warrants and the underlying Index would tend to be corrected immediately by arbitrage activity. The arbitrage opportunity is created as a result of the ability of the Warrants to be exercised according to the formula described above. Under these circumstances, it seems unlikely that short sales of the Warrants could be used to depress the price of the underlying securities.

Moreover, the short sale rule does not apply to analogous derivative products such as index options and futures contracts. Because the Warrants will be used to offset or hedge positions in the related futures or options contracts, application of the short sale rule to the Warrants when it is not applicable to futures or options contracts would increase risks to investors seeking to engage in trading activities which might involve short sales of the Warrants and detract from the ability of market participants to insure fair valuation of the Warrants.

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments relating to the proposed rule change have been solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

CBOE requests that the Commission find good cause pursuant to Section 19(b)(2) of the Act [12] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register.**

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that CBOE's proposal to amend Rule 30.20 to reflect the exemption granted by the Commission pursuant to Exchange Act Rule 10a–1 for S&P 500 Index Bear Market Warrants is consistent with the

[6] 17 CFR 240.3b–3.

[7] 17 CFR 240.10a–1.

[8] 17 CFR 240.11Aa3–1(a)(4).

[9] *See* Letter from Timothy Thompson, Senior Attorney, CBOE, to Blair Corkran, Senior Special Counsel, Division of Market Regulation, Commission, dated February 27, 1997.

[10] *See* Letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, to Timothy Thompson, Senior Attorney, CBOE, dated March 21, 1997.

[11] The Exchange believes that the situation presented is very analogous to the case of SuperShares, which were interests in a unit investment trust which had the objective of providing investment results corresponding to the price and yield performance of stocks in the Standard & Poor's 500 Composite Stock Index. The Commission approved an interpretation exempting SuperShares from paragraph (b) of Rule 30.20. *See* Securities Exchange Act Release No. 33015 (October 5, 1993), 58 FR 53006 (October 13, 1993).

[12] 15 U.S.C. § 78s(b)(2).

Act and the rules and regulations promulgated thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) [13] which requires that the CBOE's rules be designed, among other things, to promote just and equitable principles of trade. The Commission believes that by adding interpretive language to CBOE Rule 30.20, CBOE effectively clarifies the exemption of S&P 500 Index Bear Market Warrants from the requirements of Exchange Act Rule 10a–1 regarding short sales and the exemption from application of Rule 30.20(b). The Commission believes that the interpretation to Rule 30.20 appropriately reflects the exemption and conditions thereto as set forth in the No-Action Letter issued by the Commission, and that the proposed rule change does not raise any regulatory concerns because, as noted above, the Commission has previously exempted such short sales. The Commission notes that the Warrants will be exempt from the requirements of CBOE Rule 30.20(b) so long as the Commission's exemption remains in effect.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register** because the proposal accurately codifies the position previously taken by the Commission in the Warrant No-Action Letter. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–97–13 and should be submitted by April 21, 1997.

## Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, and in particular with Section 6 of the Act.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act [14] that the proposed rule change (SR–CBOE–97–13) is hereby approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

**Deputy Secretary.**

[FR Doc. 97–8074 Filed 3–28–97; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. § 78f(b)(5) (1988).

[14] 15 U.S.C. § 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1996).

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# DEPARTMENT OF TRANSPORTATION

## Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 21, 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, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–97–2253.

*Date Filed:* March 21, 1997.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* April 18, 1997.

*Description*

Application of Thai Airways International Public Company Limited, pursuant to 49 U.S.C. Section 41302, and Subpart Q of the Regulations, applies for an amendment of its foreign air carrier permit to engage in the scheduled foreign air transportation of persons, property and mail in a manner described in the Agreement and the MOU as follows, with any omissions or inconsistencies to be resolved in favor of encompassing the maximum authority permitted under the Agreement and MOU;

A. With respect to scheduled combination foreign air transportation in both directions between points on the following routes:

(i) From Thailand via intermediate points to 8 points in the United States plus an additional 10 points in the United States for code share services only and beyond to Canada, Mexico, and a total of three additional points in Central and South America. All points in the United States and the three unnamed beyond points are to be selected by Thailand, and may be changed by Thailand upon 60 days' prior notice to the United States.

(ii) From Thailand via intermediate points across the Pacific to Hawaii, Guam, the Commonwealth of the Northern Mariana Islands and American Samoa and beyond.

B. With respect to scheduled all-cargo foreign air transportation in both directions between points on the following route:

(i) From Thailand via intermediate points to a point or points in the United States and beyond.

*Docket Number:* OST–97–2255.

*Date Filed:* March 21, 1997.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* April 18, 1997.

*Description*

Application of Custom Air Transport, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for the issuance of a certificate of public convenience and necessity so as to authorize CAT to operate charter passenger services in interstate air transportation.

*Docket Number:* OST–97–2256.

*Date Filed:* March 21, 1997.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* April 18, 1997.

*Description*

Application of Custom Air Transport, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for the issuance of a certificate of public convenience and necessity so as to authorize CAT to operate charter passenger services in foreign air transportation.

*Docket Number:* OST–97–2257.

*Date Filed:* March 21, 1997.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* April 18, 1997.

*Description*

Application of Trans Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41109(b) and Subpart Q of the Regulations, requests an amendment of its certificate of public convenience and necessity issued by Order 94–8–11 to remove the condition limiting its scheduled air transportation of property and mail, and that its certificate be reissued accordingly.

**Paulette V. Twine,**

*Chief, Documentary Services.*

[FR Doc. 97–7998 Filed 3–28–97; 8:45 am]

BILLING CODE 4910–62–P

## Federal Aviation Administration

## Noise Exposure Map Notice, Duluth International Airport, Duluth, MN

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps (NEM) submitted by Duluth Airport Authority for Duluth International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps is February 26, 1997.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Millenacker, Project Manager, Federal Aviation Administration, Airports District Office, 6020 28th Ave. So., Room No. 102, Minneapolis, MN 55450–2706, (612) 713–4350.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Duluth International Airport are in compliance with applicable requirements of Part 150, effective February 26, 1997.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing, noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Duluth Airport Authority. The specific maps under consideration are Figure 10a.—1996 Revised Existing Noise Contours, and Figure 10c.—2001 Revised Future Cast Contours in the NEM submittal dated December 18, 1996. The FAA has determined that these maps for Duluth International Airport are in compliance with applicable requirements. This determination is effective on February 26, 1997. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutory-required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706;

Duluth Airport Authority, 4701 Airport Drive, Duluth International Airport, Duluth, MN 55811

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Minneapolis, Minnesota, on February 26, 1997.

**Franklin D. Benson,**

*Manager, Minneapolis Airports District Office, FAA Great Lakes Region.*

[FR Doc. 97–8110 Filed 3–28–97; 8:45 am]

BILLING CODE 4910–13–M

## Federal Railroad Administration

## Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

### Block Signal Application (BS–AP)–No. 3420

*Applicant:* CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.2

CSX Transportation, Incorporated seeks approval of the proposed modification of the signal system, at ''SY,'' milepost A–388.4, near Charleston, South Carolina, on the Yemassee Subdivision, Jacksonville Division, including: conversion of the north end of the No. 5 crossover switch from power to hand operation, discontinuance and removal of 44R signal, and relocation of 44L signal northward.

The reason given for the proposed changes is to improve operations and increase efficiency.

**BS–AP–No. 3421**

*Applicants:*

CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

Norfolk Southern Corporation, Mr. C. M. Golias, Chief Engineer S&E Engineering, 99 Spring Street, SW., Atlanta, Georgia 30303

Belt Railway of Chicago, Mr. J. Q. Anders, Chief Engineer, 6900 South Central Avenue, Bedford Park, Illinois 60638

Chicago Commuter Rail Service Board, Mr. W. P. Kaminski, Director of Signal Engineering, 547 West Jackson Boulevard, Chicago, Illinois 60661

CSX Transportation, Incorporated (CSX), Norfolk Southern Corporation (NS), Belt Railway of Chicago (BRC), and Chicago Commuter Rail Service Board (Metra), jointly seek approval of the proposed modification of 75th Street Interlocker, milepost DC–22.5, Chicago, Illinois, on CSX's Blue Island Subdivision, Chicago Division, involving main tracks of CSX, NS, BRC, and Metra, consisting of the discontinuance and removal of: 11 mechanically operated switch point derails, 7 mechanically operated sliding derails, and 2 automatic signals. The proposed changes are associated with the replacement of the mechanical interlocking machine with a modern facility with overrun protection.

The reason given for the proposed changes is to modernize and remote control the mechanical interlocking facilities.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C., 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on March 21, 1997.

**Phil Olekszyk,**

*Deputy Associate Administrator for Safety Compliance and Program Implementation.*

[FR Doc. 97–8035 Filed 3–28–97; 8:45 am]

BILLING CODE 4910–06–P

## Surface Transportation Board

**[STB Finance Docket No. 33375]**

## Rochester & Southern Railroad, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation

Rochester & Southern Railroad, Inc. (R&S), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate the 0.7-mile line of Consolidated Rail Corporation (Conrail) known as the Rochester Industrial Track (Line Code 4835) between milepost 5.2 and milepost 5.9 in the State of New York. In addition, Conrail will grant incidental overhead trackage rights over the 0.3-mile West Shore Branch (Line Code 4833) between milepost 362.0 and the switch to Conrail's Genesee Junction Yard at milepost 361.7.

The transaction was expected to be consummated on or about March 14, 1997.

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, referring to STB Finance Docket No. 33375, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: March 24, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–8066 Filed 3–28–97; 8:45 am]

BILLING CODE 4915–00–M

## DEPARTMENT OF THE TREASURY

## Community Development Financial Institutions Fund; Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund within the Department of the Treasury is soliciting comments concerning the Bank Enterprise Award Program Application.

**DATES:** Written comments should be received on or before 60 days after the publication of this notice to be assured of consideration.

**ADDRESSES:** Direct all written comments to Kirsten S. Moy, Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–8662 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the application should be directed to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–8662 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

*Title:* Bank Enterprise Award Program Application.

*OMB Number:* 1505–0153.

*Form Number:* CDFI–0002.

*Abstract:* The Bank Enterprise Award Program provides awards to applicants that increase their equity investments in community development financial institutions and/or increase their lending and financial services in distressed communities. The application form will be used by applicants to the Program to apply for Bank Enterprise Awards. The requested information is required by the Bank Enterprise Award Program, 12 CFR part 1806 (specifically 1806.206). The information collected will be used by the Fund to evaluate applications in order to make the awards authorized under the statute (12 U.S.C. 4713) and applicable regulations.

*Current Actions:* Extension.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 75.

*Estimated Time Per Respondent:* Varies, depending on individual circumstances, with an average of 10 hours.

*Estimated Total Annual Burden Hours:* 750.

**Request for Comments**

Comments submitted in response to this Notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology;

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 25, 1997.

**Kirsten S. Moy,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 97–8003 Filed 3–28–97; 8:45 am]

BILLING CODE 4810–70–M

## Proposed Collection; Comment Request

**AGENCY:** Economic Policy, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** By this notice the Treasury Department invites public comment on a proposed information collection. The full title of the information collection is ''Outbound Portfolio Investment Survey: Survey of U.S. Ownership of Foreign Long-Term Securities''.

**DATES:** Written comments should be received by June 1, 1997.

**ADDRESSES:** Comments should be directed to: U.S. Treasury Department, 1500 Pennsylvania Ave. NW., Room 5466, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Request for additional information or copies of the forms and instructions should be addressed to William Griever at the above address or by calling (202) 622–0729.

**SUPPLEMENTARY INFORMATION:**

*Abstract:* These forms are used to conduct periodic surveys of U.S. holdings of foreign long-term securities for portfolio investment purposes. These data are used for policy analysis, and are major inputs into the computation of the U.S. balance of payments account and international investment position. The previous such survey was conducted as of March 31, 1994, and clearly demonstrated the need for such periodic surveys by significantly altering the estimated level of U.S. holdings of foreign long-term securities.

This survey is also part on an internationally-coordinated effort under the auspices of the International Monetary Fund to improve data in this area worldwide. These data are believed to be in serious error on a worldwide basis. Most of the major industrial and financial countries will be participating in this survey.

*Current Actions:* Forms will be reduced from five to three, the instructions will be simplified and greatly reduced, and fewer overall data items will be collected. Data will be collected primarily from custodians of securities, and from major investors if they do not employ U.S. custodians. Investors employing U.S. custodians need only identify their custodians and the amounts entrusted to them.

*Type of Review:* Reinstatement with change.

*Affected Public:* Business/Financial Institutions.

*Estimated Number of Respondents:* 2,500.

*Estimated Time per Respondent:* 240 hours on average for reporters supplying detailed information. 40 hours on average for reporters employing U.S. custodians. 16 hours on average for reporters claiming exemptions. Custodians with less than $20 million in foreign long-term securities in custody or investors owning less than $20 million in foreign long-term securities are exempt from reporting on the survey. The amount of time required to complete the survey will vary depending on the amount of data to report.

*Estimated Total Burden:* 147,500 hours.

*Frequency of Response:* Approximately once every five years.

*Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

**Joshua Gotbaum,**

*Assistant Secretary for Economic Policy.*

[FR Doc. 97–8012 Filed 3–28–97; 8:45 am]

BILLING CODE 4810–25–M

## Submission to OMB for Review; Comment Request

March 17, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0957.

*Form Number:* IRS Form 8508. .

*Type of Review:* Revision

*Title:* Request for Waiver From Filing Information Returns on Magnetic Media.

*Description:* Certain filers of information returns are required by law to file on magnetic media. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 1,000.

*Estimated Burden Hours Per Respondent:* 45 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 750 hours.

*OMB Number:* 1545–1507.

*Regulation Project Number:* INTL–656–87 Final.

*Type of Review:* Extension.

*Title:* Treatment of Shareholders of Certain Passive Foreign Investment Companies.

*Description:* The reporting requirements affect U.S. persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). IRS uses Form 8621 to identify PFICs, U.S. shareholders, and transactions subject to PFIC taxation and verify income inclusions, excess distributions, and deferred tax amounts.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 131,250.

*Estimated Burden Hours Per Respondent:* 46 minutes.

*Frequency of Response:* Other (One time only).

*Estimated Total Reporting Burden:* 100,000 hours.

*OMB Number:* 1545–1510.

*Revenue Procedure Number:* Revenue Procedure 96–60.

*Type of Review:* Extension.

*Title:* Procedure for Filing Forms W–2 in Certain Acquisitions.

*Description:* Information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Code sections 6051 and 6011 for Forms W–2 and 941.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 553,500.

*Estimated Burden Hours Per Respondent:* 12 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 110,700 hours.

*OMB Number:* 1545–1521.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Confirmation Letter for Contracting Out of Collection Activities.

*Description:* It is necessary that the confirmation letter be issued during the testing phase of the program for contracting out collection activities so any problems associated with the contracting out process can be quickly identified. In addition, this information will be to determine the accuracy of IRS and private vendors' records with regard to taxes due and payments submitted.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Governments.

*Estimated Number of Respondents:* 225.

*Estimated Burden Hours Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 56 hours.

*OMB Number:* 1545–1523.

*Notice Number:* Notice 97–12.

*Type of Review:* Extension.

*Title:* Electing Small Business Trusts.

*Description:* This notice provides the time and manner for making the Electing Small Business Trust election pursuant to section 1361(e)(3).

Respondents: Business or other for-profit.

*Estimated Number of Respondents:* 5,000.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* Other (once).

*Estimated Total Reporting Burden:* 5,000 hours.

*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–8076 Filed 3–28–97; 8:45 am]

BILLING CODE: 4830–01–P

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## Submission for OMB Review; Comment Request

March 20, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

### U.S. Customs Service (CUS)

*OMB Number:* 1515–0021.

*Form Number:* CF 3499.

*Type of Review:* Reinstatement.

*Title:* Application and Approval to Manipulate, Examine, Sample, or Transfer Goods.

*Description:* Customs Form 3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under Customs supervision. This form is also an application for the manipulation of merchandise in a bonded warehouse and abandonment or destruction of merchandise.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 2,290.

*Estimated Burden Hours Per Respondent:* 6 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 13,740 hours.

*OMB Number:* 1515–0046.

*Form Number:* CF 3485.

*Type of Review:* Extension.

*Title:* Lien Notice.

*Description:* The Lien Notice enables the carriers, cartmen, and similar businesses to notify Customs that a lien exists against individual/business for nonpayment of freight changes, etc., so that Customs will not permit delivery of the merchandise from public stores or a bonded warehouse until the lien is satisfied or discharged.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 2,000.

*Estimated Burden Hours Per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 8,897 hours.

*OMB Number:* 1515–0054.

*Form Number:* CF 3173.

*Type of Review*: Reinstatement.

*Title*: Application for Extension of Bond for Temporary Importation.

*Description*: Imported merchandise which is to remain in the U.S. Customs territory for one (1) year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on Customs Form 3173.

*Respondents*: Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents*: 1,200.

*Estimated Burden Hours Per Respondent*: 13 minutes.

*Frequency of Response*: On occasion.

*Estimated Total Reporting Burden*: 3,641 hours.

*OMB Number*: 1515–0148.

*Form Number*: CF 331.

*Type of Review*: Revision.

*Title*: Manufacturing Drawback Entry and/or Certificate.

*Description*: The Manufacturing Drawback Entry and/or Certificate serves as an entry, a certificate of manufacture and delivery (or the

combination), or a certificate of imported merchandise necessary in the filing of a claim for a refund of duty and/or internal revenue tax paid.

*Respondents*: Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents/ Recordkeepers*: 3,500.

*Estimated Burden Hours Per Respondent/Recordkeeper*: 20 minutes.

*Frequency of Response*: On occasion.

*Estimated Total Reporting/ Recordkeeping Burden*: 124,998 hours.

*OMB Number*: 1515–0154.

*Form Number*: CF 339.

*Type of Review*: Extension.

*Title*: User Fees.

*Description*: The User Fees, Customs Form 339, information is necessary for Customs to effectively collect fees from private and commercial vessels, private aircraft, operators of commercial trucks, and passenger and freight railroad cars entering the United States and recipients of certain dutiable mail entries for certain official services.

*Respondents*: Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents*: 60,000.

*Estimated Burden Hours Per Respondent*: 20 minutes.

*Frequency of Response*: On occasion.

*Estimated Total Reporting Burden*: 20,000 hours.

*Clearance Officer*: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., Washington, DC 20229.

*OMB Reviewer*: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–8077 Filed 3–28–97; 8:45 am]

BILLING CODE 4820–02–P

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 20, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Departmental Offices/Financial Crimes Enforcement Network (FinCEN)**

*OMB Number*: 1506–0004.

*Form Number*: IRS Form 4789.

*Type of Review*: Extension.

*Title*: Currency Transaction Report.

*Description*: The Bank Secrecy Act and its implementing regulations require all financial institutions to make a report of transactions in currency in excess of $10,000. This form is the method by which such reports are made by all financial institutions, except casinos.

Respondents: Business or other for-profit.

*Estimated Number of Respondents*: 180,000.

*Estimated Burden Hours Per Response*: 10 minutes.

*Frequency of Response*: On occasion.

*Estimated Total Reporting Burden*: 4,000,000 hours.

*Clearance Officer*: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

*OMB Reviewer*: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–8078 Filed 3–28–97; 8:45 am]

BILLING CODE 4810–25–P

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### Submission for OMB Review; Comment Request

March 18, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**U.S. Customs Service (CUS)**

*OMB Number:* 1515–0091.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Importers of Merchandise Subject to Actual Use Provisions.

*Description:* The Importer of Merchandise Subject to Actual Use Provisions is part of the regulation which provides that certain items may be admitted duty-free such as farming implements, seed, potatoes, etc., providing the importer can prove these items were virtually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Recordkeepers:* 12,000.

*Estimated Burden Hours Per Recordkeeper:* 1 hour, 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping Burden:* 13,000 hours.

*OMB Number:* 1515–0135.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Required Records for Smelting and Refining Warehouse.

*Description:* Each manufacturer engaged in smelting or refining must file an annual statement showing any material change in the character of the metal-bearing materials used or changes in the method of smelting or refining. Also the records must show the receipt and disposition of each shipment.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Recordkeepers:* 15.

*Estimated Burden Hours Per Recordkeeper:* 90 hours, 24 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping Burden:* 1,356 hours.

*OMB Number:* 1515–0137.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Declaration of Persons Who Perform Repairs or Alterations.

*Description:* The Declaration of Persons Who Perform Repairs in used by Customs to ensure duty-free status for entries covering repaired abroad. It must be filed by importers claiming duty-free status.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Recordkeepers:* 10,236.

*Estimated Burden Hours Per Recordkeeper:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping Burden:* 10,236 hours.

*Clearance Officer:* J. Edgar Nichols, (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, NW., Washington, DC 20229.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New

Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–8079 Filed 3–28–97; 8:45 am]

BILLING CODE 4820–02–P

## Submission to OMB for Review; Comment Request

March 21, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0064.

*Form Number:* IRS Form 4029.

*Type of Review:* Extension.

*Title:* Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits.

*Description:* Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under Internal Revenue Code (IRC) sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 3,754.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—7 minutes.

Learning about the law or the form—11 minutes.

Preparing the form—11 minutes.

Copying, assembling, and sending the form to the SSA—35 minutes.

*Frequency of Response:* Other (filed only once).

*Estimated Total Reporting/Recordkeeping Burden:* 4,017 hours.

*OMB Number:* 1545–0132.

*Form Number:* IRS Form 1120X.

*Type of Review:* Extension.

*Title:* Amended U.S. Corporation Income Tax Return.

*Description:* Domestic corporations use Form 1120X to correct a previously filed Form 1120 or Form 1120–A. The data is used to determine if the correct tax liability has been reported.

**Respondents: Business or other for-profit, Farms.**

*Estimated Number of Respondents/Recordkeepers:* 67,302.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—12 hr., 12 min.

Learning about the law or the form—1 hr., 14 min.

Preparing the form—3 hr., 21 min.

Copying, assembling, and sending the form to the IRS—32 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 1,166,344 hours.

*OMB Number:* 1545–0202.

*Form Number:* IRS Forms 5310 and 6088.

*Type of Review:* Extension.

*Title:* Application for Determination Upon Termination (5310); and Distributable Benefits From Employee Pension Benefit Plans (6088).

*Description:* Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the date on Forms 5310 and 6088 to determine whether a plan still qualified and whether there is any discrimination in benefits.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 30,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Form 5310 | Form 6088 |
|---|---|---|
| Recordkeeping | 47 hr., 35 min. | 5 hr., 44 min. |
| Learning about the law or the form | 4 hr., 35 min. | 1 hr., 5 min. |
| Preparing, copying, assembling, and sending the form to the IRS | 9 hr., 9 min. | 1 hr., 14 min. |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 1,040,700.

*OMB Number:* 1545–0260.

*Form Number:* IRS Form 706–CE.

*Type of Review:* Extension.

*Title:* Certificate of Payment of Foreign Death Tax.

*Description:* Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that may claim the foreign death tax credit allowed by IRC section 2014. The information is used by IRS to verify that the proper credit has been claimed.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 2,250.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—46 min.

Learning about the law or the form—4 min.

Preparing the form—25 min.

Copying, assembling, and sending the form to the IRS—28 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 3,893 hours.

*OMB Number:* 1545–0441.

*Form Number:* IRS Forms 6559 and 6559–A.

*Type of Review:* Extension.

*Title:* Transmitter Report and Summary of Magnetic Media (6559); and Continuation Sheet for Form 6559 (6559–A).

*Description:* Forms 6559 and 6559–A are used by filers of Form W–2 and Tax Data to transmit filing on magnetic media. The Social Security Administration (SSA) and the Internal Revenue Service (IRS) need signed jurat and summary data for processing purposes. The forms are used primarily by large employers and tax filing services (service bureaus).

*Respondents:* Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 100,000.

*Estimated Burden Hours Per Respondent:* 15 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 30,000 hours.

*OMB Number:* 1545–1053.

*Form Number:* IRS Form 8709.

*Type of Review:* Extension.

*Title:* Exemption From Withholding on Investment Income of Foreign Government and International Organizations.

*Description:* This form is used by foreign government and international organizations, with certain types of investments in the United States, to file with withholding agents to obtain exemption from withholding under Code Section 892. The withholding

agent uses the information to determine the appropriate withholding, if any.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 3,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—13 min.
Learning about the law or the form—25 min.
Preparing the form—26 min.
Copying, assembling, and sending the form to the IRS—20 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 42,600 hours.

*OMB Number:* 1545–1512.

*Revenue Procedure Number:* Revenue Procedure 96–61.

*Type of Review:* Extension.

*Title:* Electronic Filing Program.

*Description:* Revenue Procedure 96–61 informs those who participate in the Electronic Filing Program for Form 1040, and Form 1040A, and Form 1040EZ, of their obligations to the Internal Revenue Service, taxpayers, and other participants.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 75,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 15 hours, 17 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 1,146,272.

*OMB Number:* 1545–1513.

*Revenue Procedure Number:* Revenue Procedure 96–62.

*Type of Review:* Extension.

*Title:* On-Line Filing Program.

*Description:* Revenue Procedure 96–62 informs those who participate in the On-Line Filing Program for Form 1040, Form 1040A, and Form 1040EZ, of their obligations to the Internal Revenue Service, taxpayers, and other participants.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 14.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 423 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 5,919 hours.

*OMB Number:* 1545–1516.

*Form Number:* IRS Form 8832.

*Type of Review:* Extension.

*Title:* Entity Classification Election.

*Description:* An eligible entity that chooses not to be classified under the default rules or that wishes to change it current classification must file Form 8832 to elect a classification.

*Respondents:* Business or other for-profit, Farms.

*Estimated Number of Respondents/Recordkeepers:* 5,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—1 hr., 20 min.
Learning about the law or the form—1 hr., 41 min.
Preparing and sending the form to the IRS—17 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 16,500 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–8080 Filed 3–28–97; 8:45 am]

BILLING CODE 4830–01–P

## Submission to OMB for Review; Comment Request

March 24, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0714.

*Form Number:* IRS Forms 8027 and 8027–T.

*Type of Review:* Extension.

*Title:* Employer's Annual Information Return of Tip and Allocated Tips (8027); and Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips (8027–T).

*Description:* To help IRS in its examinations of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips by employees, and in certain cases, the employer must allocate tips to certain employees.

*Respondents:* Business and other for-profit, Individuals or households, Not-for-profit institution, State, Local or Tribal Governments.

*Estimated Number of Respondents/Recordkeepers:* 52,050.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | 8027 | 8027–T |
|---|---|---|
| Recordkeeping | 5 hr., 59 min | 43 min. |
| Learning about the law or the form | 42 min | |
| Preparing and sending the form to the IRS | 50 min | 1 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 368,908 hours.

*OMB Number:* 1545–0817.

*Regulation Project Number:* EE–28–78 Final.

*Type of Review:* Extension.

*Title:* Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.

*Description:* Internal Revenue Code section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. IRS needs the information to comply with requests for public inspection of the above-named documents.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 51,070.

*Estimated Burden Hours Per Respondent:* 14 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 12,018 hours.

*OMB Number:* 1545–1227.
*Regulation Project Number:* FI–104–90 Final.
*Type of Review:* Extension.
*Title:* Tax Treatment of Salvage and Reinsurance.
*Description:* The regulation provides a disclosure requirement for an insurance company that increases losses shown on its annual statement by the amount of estimated salvage recoverable taken into account.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 2,500.
*Estimated Burden Hours Per Respondent:* 2 hours.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 5,000 hours.

*OMB Number:* 1545–1240.
*Regulation Project Number:* INTL–116–90 (NPRM).
*Type of Review:* Extension.
*Title:* Allocation of Charitable Contributions.
*Description:* The recordkeeping requirements affects businesses or other for-profit institutions. This information is required by the IRS to ensure the proper application of section 1.861–8(e)(iv) of the regulations. This information will be used to verify the U.S. source allocation of certain charitable contributions.
*Respondents:* Business or other for-profit.
*Estimated Number of Recordkeepers:* 500.
*Estimated Burden Hours Per Recordkeeper:* 1 hour.
*Frequency of Response:* Other.
*Estimated Total Recordkeeping Burden:* 500 hours.

*OMB Number:* 1545–1347.
*Regulation Project Number:* FI–7–94 NPRM, Temporary and Final; FI–36–92 Final.
*Type of Review:* Extension.
*Title:* Arbitrage Restrictions on Tax-Exempt Bonds.
*Description:* The Code limits the ability of state and local government issuers of tax-exempt bonds to earn and/or keep arbitrage profits earned with bond proceeds. This regulation requires recordkeeping of certain interest rate hedges so that the hedges are taken into account in determining those profits.
*Respondents:* State, Local or Tribal Governments.
*Estimated Number of Respondents/Recordkeepers:* 3,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:* 14 hours.
*Frequency of Response:* On occasion.
*Estimated Total Reporting/Recordkeeping Burden:* 42,000 hours.

*OMB Number:* 1545–1517.
*Form Number:* IRS Form 1099–MSA.
*Type of Review:* Extension.
*Title:* Distributions From Medical Savings Accounts.
*Description:* This form will be used to report distributions from a medical savings account as set forth in section 220(h).
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 150,000.
*Estimated Burden Hours Per Respondent:* 7 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 45,000 hours.

*OMB Number:* 1545–1518.
*Form Number:* IRS Form 5498–MSA.
*Type of Review:* Extension.
*Title:* Medical Savings Account Information.
*Description:* This form will be used to report contributions to a medical savings account as set forth in section 220(h).
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 150,000.
*Estimated Burden Hours Per Respondent:* 10 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 60,000 hours.

*OMB Number:* 1545–1519.
*Form Number:* IRS Form 1099–LTC.
*Type of Review:* Extension.
*Title:* Long-Term Care and Accelerated Death Benefits.
*Description:* Under the terms of Internal Revenue Code (IRC) sections 7702B and 101g, qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175.00 per day are taxable. Section 6050Q requires all such amounts to be reported.
*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.
*Estimated Number of Respondents:* 1,000.
*Estimated Burden Hours Per Respondent:* 11 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 4,750 hours.

*OMB Number:* 1545–1520.
*Revenue Procedure Number:* Revenue Procedures 97–4, 97–5, 97–6 and 97–8.
*Type of Review:* Extension.
*Title:* Letter Rulings (97–4); Technical Advice (97–5); Determination Letters (97–6); User Fees (97–8).
*Description:* The information requested in proposed sections 7.07, 9.02–9.06, 10.02, 10.03, 11.03, 11.04(1)(5), 11.06, 12.01, 12.06, 12.07, 13.09(1), 14.02(1) and the Appendix of proposed Revenue Procedure 97.4; proposed sections 6.03, 9.01, 9.02, 10.03–10.05, 11.02, 11.03, 12.01, 13.03, 13.10, 15.10, 15.12, 16.04, 18.03–18.05 of proposed Revenue Procedure 97–5; proposed sections 6.16, 6.18, 7.04, 9.07(4), 10.05, 14, 16, 17, 20.02, and 22.04 of proposed Revenue Procedure 97–6; and proposed section 6.01(12)(c), 6.12(6)(a), 6.13(1), and 11 of proposed Revenue Procedure 97–8 is required to enable the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations) of the Internal Revenue Service, which was established by section 1051(a) of the Employee Retirement Income Security Act of 1974 (section 7082(b) of the Internal Revenue Code), to give advice on filing letter ruling, determination letter, and technical advice requests and process such requests.
*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, State, Local or Tribal Governments.
*Estimated Number of Respondents:* 83,068.
*Estimated Burden Hours Per Respondent:* 2 hours, 8 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 177,686 hours.
*OMB Number:* 1545–1522.
*Revenue Procedure Number:* Revenue Procedures 97–1 and 97–3.
*Type of Review:* Extension.
*Title:* 26 CFR 601.201—Rulings and Determination Letters.
*Description:* The information requested in Revenue Procedure 97–1 under proposed sections 5.05, 6.07, 8.01, 8.02, 8.03, 8.04, 8.05, 8.07, 9.01, 10.06, 10.07, 10.09, 11.01, 11.06, 11.07, 12.11, 13.02, 15.02, 15.07, 15.08, 15.09, and 15.11, paragraph (B)(1) of Appendix A, and Appendix C, and in Revenue Procedure 97–3 under proposed sections 3.01 (22), (24), (25), (27), and (28), 3.02 (1) and (3), 4.01(26), and 4.02 (1) and (7)(b) is required to enable the Internal Revenue Service to give advice on filing letter ruling and determination letter requests and process such requests.
*Respondents:* Business or other for-profit, Individuals or households, Farms, Federal Government, State, Local or Tribal Government.
*Estimated Number of Respondents:* 3,800.
*Estimated Burden Hours Per Respondent:* 80 hours, 16 minutes.
*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 304,990 hours.

*OMB Number:* 1545–1528.

*Revenue Procedure Number:* Revenue Procedure 97–15.

*Type of Review:* Extension.

*Title:* Section 103—Remedial Payment Closing Agreement.

*Description:* This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 141, 142, 144, 145, and 147 of the Internal Revenue Code of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service to enter into a closing agreement with the issuer to establish the closing agreement amount.

*Respondents:* Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 15.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 1 hour, 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 75 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–8081 Filed 3–28–97; 8:45 am]

BILLING CODE 4820–01–P

## Office of the Secretary

### List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: March 19, 1997.

**Joseph Guttentag,**

*International Tax Counsel (Tax Policy).*

[FR Doc. 97–8005 Filed 3–28–97; 8:45 am]

BILLING CODE 4810–25–M

## Customs Service

**[T.D. 97–18]**

### Customs Commercial Gauger Approval of Marine Technical Surveyors, Inc.

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

**ACTION:** Notice of approval of Marine Technical Surveyors, Inc., as a commercial gauger.

**SUMMARY:** Marine Technical Surveyors, Inc. has applied to U.S. Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under Part 151.13 of the Customs Regulations (19 CFR 151.13) at their Donaldsonville, Louisiana facility. Customs has determined that this facility meets all of the requirements for approval as a commercial gauger. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Marine Technical Surveyors, Inc.'s Donaldsonville, Louisiana site is approved to gauge the products named above in all Customs ports.

**SUPPLEMENTARY INFORMATION:**

### Background

Part 151 of the Customs Regulations provides for the acceptance at Customs ports of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Marine Technical Surveyors, Inc., of Donaldsonville, Louisiana has applied to Customs for commercial gauger approval. Customs has determined that Marine Technical Surveyors, Inc. meets all the requirements for approval as a commercial gauger. Therefore, in accordance with part 151.13(f) of the Customs Regulations, Marine Technical Surveyors, Inc.'s Donaldsonville, Louisiana site is approved to gauge the products named above in all Customs ports.

### Location

Marine Technical Surveyors, Inc.'s approved site is located at: 125 Railroad Avenue, Donaldsonville, Louisiana 70346.

**EFFECTIVE DATE:** March 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 at (202) 927–1060.

Dated: March 19, 1997.

**George D. Heavey,**

*Director, Laboratories and Scientific Services.*

[FR Doc. 97–7992 Filed 3–28–97; 8:45 am]

BILLING CODE 4820–02–P

## UNITED STATES ENRICHMENT CORPORATION

### Sunshine Act Meeting

**TIME AND DATE:** 8:00 a.m., Wednesday, April 2, 1997.

**PLACE:** USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

**STATUS:** One part of this meeting will be open to the public. The balance of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Portion Open to the Public

- NRC Regulatory Process.

Portions Closed to the Public

- Consideration of commercial and financial issues of the Corporation.

**CONTACT PERSON FOR MORE INFORMATION:** Barbara Arnold, 301–564–3354.

Dated: March 26, 1997.

**William H. Timbers, Jr.,**

*President and Chief Executive Officer.*

[FR Doc. 97–8157 Filed 3–26–97; 4:53 pm]

BILLING CODE 8720–01–M

# Corrections

**Federal Register**

Vol. 62, No. 61

Monday, March 31, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 96-36]**

### Yu-To Hsu, M.D., Denial of Application

*Correction*

In notice document 97–6793 beginning on page 12840 in the issue of Tuesday, March 18, 1997, make the following correction:

On page 12842 in the second column, before the FR document, the signature line was omitted and should have appeared as follows:

**James S. Milford,**

*Acting Deputy Administrator.*

**BILLING CODE 1505-01-D**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. 97-ANE-08]**

### Airworthiness Directives; Pratt & Whitney JT8D-200 Series Turbofan Engines

*Correction*

In proposed rules document 97–4370 beginning on page 8198 in the issue of Monday, February 24, 1997, make the following correction:

On page 8200, third column, Table 2, should read as follows:

TABLE 2

[Hubs with traveler notations]

| CCD Hub | CCD Hub | CCD Hub | CCD Hub |
|---|---|---|---|
| R32981 | S25207 | S25419 | |
| R32990 | S25208 | S25421 | |
| R32994 | S25221 | S25422 | |
| R33000 | S25229 | S25430 | |
| R33004 | S25238 | S25437 | |
| R33040 | S25246 | S25439 | |
| R33055 | S25248 | S25449 | |
| R33059 | S25250 | | |
| R33077 | S25256 | | |
| R33080 | S25262 | | |
| R33082 | S25268 | | |
| R33086 | S25278 | | |
| R33087 | S25287 | | |
| R33089 | S25288 | | |
| R33090 | | | |

**BILLING CODE 1505–01–D**

federal register

Monday
March 31, 1997

# Part II

# Environmental Protection Agency

## 40 CFR Part 63

## National Emission Standards for Hazardous Air Pollutants for Source Categories; Wool Fiberglass Manufacturing: Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[IL–64–2–5807; FRL–5695–8]**

**RIN 2060–AE75**

## National Emission Standards for Hazardous Air Pollutants for Source Categories; Wool Fiberglass Manufacturing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing sources in wool fiberglass manufacturing facilities. The hazardous air pollutants (HAPs) emitted by the facilities covered by this proposed rule include three metals (arsenic, chromium, lead) and three organic HAPs (formaldehyde, phenol, and methanol). Exposure to these HAPs can cause reversible or irreversible health effects including carcinogenic, respiratory, nervous system, developmental, reproductive, and/or dermal health effects. The EPA estimates the proposed NESHAP would reduce nationwide emissions of HAPs from these facilities by 530 megagrams per year (Mg/yr) (580 tons per year [ton/yr]), an approximate 30 percent reduction from the current level of emissions. Emissions of particulate matter (PM) would be reduced by an estimated 760 Mg/yr (840 ton/yr) under the proposed NESHAP.

The standards are proposed under the authority of section 112(d) of the Clean Air Act (CAA) and are based on the Administrator's determination that wool fiberglass manufacturing facilities may reasonably be anticipated to emit several of the 188 HAPs listed in the draft 112(s) Report to Congress from the various process operations found within the industry. The proposed NESHAP would provide protection to the public by requiring all wool fiberglass plants that are major sources to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

**DATES:** *Comments.* The EPA will accept comments on the proposed rule until May 30, 1997.

*Public hearing.* Anyone requesting a public hearing must contact the EPA no later than April 21, 1997. If a hearing is held, it will take place at 10 a.m. on April 30, 1997. Persons interested in attending the hearing should call the contact person listed below to verify that a hearing will be held.

*Request to speak at hearing.* Persons wishing to present oral testimony must contact the person listed below (see ADDRESSES) by April 21, 1997.

**ADDRESSES:** Comments. Interested parties may submit written comments (in duplicate, if possible) to Docket No. A–95–24 at the following address: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of the comments also be sent to the contact person listed below.

*Docket.* Docket A–95–24, containing supporting information used in developing the proposed standard, is located at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday. Copies of this information may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

*Public hearing.* If anyone contacts the EPA requesting a public hearing by the required date (see DATES), the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina 27711. Persons interested in presenting testimony should contact Ms. Cathy Coats at (919)541–5422.

A verbatim transcript of the hearing and any written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket in Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposed regulation, contact Mr. William J. Neuffer, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13) U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5435. For information regarding Methods 316 and 318, contact Ms. Rima N. Dishakjian, Emissions, Monitoring, and Analysis Division, telephone number (919) 541–0443.

**SUPPLEMENTARY INFORMATION:**

*Regulated entities:* Entities potentially regulated by this action are those industrial facilities that manufacture wool fiberglass. Regulated categories and entities are shown in Table 1. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by final action on this proposal. This table lists the types of entities that EPA is now aware could potentially be regulated by final action on this proposal. To determine whether your facility is regulated by final action on this proposal, you should carefully examine the applicability criteria in section III.A of this preamble and in § 63.1380 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

| Entity category | Description |
|---|---|
| Industrial | Wool Fiberglass Manufacturing Plants (SIC 3296). |
| Federal Government: Not Affected | |
| State/Local/Tribal Government: Not Affected | |

The information in this preamble is organized as follows:

I. Statutory Authority
II. Introduction
A. Background
B. NESHAP for Source Categories
C. Health Effects of Pollutants
D. Wool Fiberglass Manufacturing Industry Profile
E. Pollution Prevention
III. Summary of Proposed Standards
A. Applicability
B. Emission Limits and Requirements
C. Performance Test and Compliance Provisions
D. Monitoring Requirements
E. Notification, Recordkeeping, and Reporting Requirements
IV. Impacts of Proposed Standards
A. Applicability
B. Air Quality Impacts
C. Water Impacts
D. Solid Waste Impacts
E. Energy Impacts
F. Nonair Environmental and Health Impacts
G. Cost Impacts
H. Economic Impacts
V. Selection of Proposed Standards
A. Selection of Source Category
B. Selection of Emission Sources
C. Selection of Pollutants
D. Selection of Proposed Standards for Existing and New Sources
1. Background
2. Selection of Floor Technologies
3. Emission Limits
E. Selection of Monitoring Requirements
F. Selection of Test Methods
G. Solicitation of Comments
VI. Administrative Requirements
A. Docket
B. Public Hearing

C. Executive Order 12866
D. Enhancing the Intergovernmental Partnership Under Executive Order 12875
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility
G. Paperwork Reduction Act
H. Clean Air Act
I. Pollution Prevention Act

## I. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

## II. Introduction

### *A. Background*

Section 112(c) of the Act directs the Agency to list each category of major and area sources as appropriate emitting one or more of the 189 HAPs listed in section 112(b) of the Act. The EPA published an initial list of source categories on July 16, 1992 (57 FR 31576), and may amend the list at any time. ''Wool Fiberglass Manufacturing'' is one of the 174 categories of sources listed in the notice. As defined in the EPA report, Documentation for Developing the Initial Source Category List (docket item II-A–5), the Wool Fiberglass Manufacturing source category includes any facility engaged in producing wool fiberglass from sand, feldspar, sodium sulfate, anhydrous borax, boric acid, or any other materials. Facilities that manufacture mineral wool from rock, slag, and other similar materials are not included in the source category. On December 3, 1993 (58 FR 63941), EPA published a schedule for the promulgation of standards for the sources selected for regulation under section 112(c) of the Act. According to this schedule, MACT standards for this source category must be promulgated no later than November 15, 1997.

In the manufacture of wool fiberglass, molten glass is formed into fibers, which are bonded by an organic resin to produce a wool-like material used primarily for thermal and acoustical insulation. The EPA estimates that at the current level of control, 1,770 Mg/yr (1,950 ton/yr) of metal HAPs and formaldehyde are emitted from glass-melting furnaces and manufacturing lines in wool fiberglass plants nationwide. The HAPs released from glass-melting furnaces include arsenic, chromium, and lead; an estimated 750 Mg/yr (830 ton/yr) of particulate matter also are emitted. Organic HAPs (formaldehyde, phenol, and methanol) are released from rotary spin (RS) forming, curing, and cooling processes and from flame attenuation (FA) forming and curing processes.

### *B. NESHAP for Source Categories*

Section 112 of the Act requires that EPA promulgate regulations for the control of HAP emissions from both new and existing major sources. The statute requires the regulations to reflect the maximum degree of reduction in emissions of HAPs that is achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT. For new sources, MACT standards cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. [See section 112(d)(3).] The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the best-performing 5 sources for categories or subcategories with fewer than 30 sources. In essence, these MACT standards would ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. At the same time, this approach provides a level economic playing field, ensuring that facilities that employ cleaner processes and good emissions controls are not disadvantaged relative to competitors with poorer controls.

The control of HAPs is achieved through the promulgation of technology-based emission standards under sections 112(d) and 112(f) and work practice standards under 112(h) for categories of sources that emit HAPs. Emission reductions may be accomplished through the application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h); or (5) a combination of the above. [See section 112(d)(2).] The EPA may promulgate more stringent regulations to address residual risk that remains after the imposition of controls within 8 years of promulgation of the NESHAP. [See section 112(f)(2).]

### *C. Health Effects of Pollutants*

The CAA was created, in part, ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population'' [42 U.S.C. 7401(b)]. This proposed regulation would protect the public health by reducing emissions of HAPs from wool fiberglass manufacturing facilities. This proposed regulation is technology-based, i.e., based on MACT.

Emission data collected during development of this proposed NESHAP show that several HAPs are emitted from wool fiberglass manufacturing plants and will be reduced by implementation of the standard. The proposed emission limits would reduce emissions of three particulate metal HAPs: chromium, arsenic, and lead from glass melting furnaces. The organic HAPs (formaldehyde, phenol, and methanol) are emitted from wool fiberglass manufacturing lines and would also be reduced by the proposed standard. In addition to these HAPs and as a result of the control of the metal HAPs, the proposed standard also would reduce emissions of PM, which is regulated under the CAA as a criteria pollutant, and volatile organic compounds (VOC). More information on PM can be found in EPA's criteria document for PM emissions. Following is a summary of the potential health effects caused by exposure to these pollutants.

Three metals—arsenic, chromium, and lead—appear on the section 112(b) list of HAPs and are emitted from glass melting furnaces. Long-term inhalation exposure to arsenic is strongly associated with lung cancer, and also irritates the skin and mucous membranes. The EPA has classified arsenic as a Class A, known human carcinogen. The effects of inhaling chromium depend on whether the oxidation state of the metal is trivalent or hexavalent. Trivalent chromium is an essential nutrient, and is substantially less toxic than hexavalent chromium. Both types of chromium irritate the respiratory tract. Hexavalent chromium inhalation is associated with lung cancer, and EPA has classified it as a Class A, known human carcinogen. Data are insufficient to classify trivalent chromium as to human carcinogenicity.

Lead exposure damages the central nervous system, especially in children, who may suffer decreased IQ and other neurobehavioral deficits. Children and adults exposed to higher doses of lead may experience anemia, kidney damage, and high blood pressure. The EPA has classified lead as a Class B2, probable human carcinogen, on the basis of reports of kidney tumors in animal studies. (See docket items II–A–4, II–A–6, II–A–10, II–I–6, II–I–7, II–I–8.)

Exposure to formaldehyde, methanol, and phenol irritates the eyes, skin, and mucous membranes and causes conjunctivitis, dermal inflammation, and respiratory symptoms. Formaldehyde exposure has been associated with reproductive effects such as menstrual disorders and pregnancy problems in women workers. The EPA has classified formaldehyde as a Class B1, probable human carcinogen, on the basis of findings of nasal cancer in animal studies, and limited human data. Phenol has been shown to cause damage to the liver, kidney, cardiovascular system, and central nervous system in animal studies. Acute exposure to methanol (usually by ingestion) is well-known to cause blindness and severe metabolic acidosis, sometimes leading to death. Chronic methanol exposure, including inhalation, may cause central disturbances possibly leading to blindness. Data are not sufficient to classify either phenol or methanol as to potential human carcinogenicity. (See docket items II–A–7, II–A–9, II–I–2, II–I–3, II–I–4.)

Formaldehyde, phenol, and methanol also are VOCs, which are precursors to ozone formation. Ambient ozone can cause damage to lung tissue, reduction of lung function, and increased sensitivity of the lung to other irritants. Several provisions of the CAA are aimed at reducing emissions of VOC. Additional information on the health effects of ozone are included in EPA's Criteria document, which support the National Ambient Air Quality Standards (NAAQS) for ozone.

The EPA does recognize that the degree of adverse health effects can range from mild to severe. The extent and degree to which the health effects may be experienced is dependent upon (1) the ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain), (2) the frequency of and duration of exposures, (3) characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyles), and (4) pollutant-specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence).

*D. Wool Fiberglass Manufacturing Industry Profile*

Wool fiberglass products are primarily used as thermal and acoustical insulation for buildings, automobiles, aircraft, appliances, ductwork, and pipes. Other uses include liquid and air filtration. Approximately 90 percent of the wool fiberglass currently produced is for building insulation products.

Wool fiberglass is currently manufactured in the United States by five companies operating 27 plants in 15 states. According to the size definition applied to this industry by the U.S. Small Business Administration (750 company employees or less), none of these firms is classified as a small business. These plants operate a total of 74 manufacturing lines.

Wool fiberglass is manufactured in a process that forms thin fibers from molten glass. A typical wool fiberglass manufacturing line consists of the following processes: (1) Preparation of molten glass, (2) formation of fibers into a wool fiberglass mat, (3) curing the binder-coated fiberglass mat, (4) cooling the mat (not always present), and (5) backing, cutting, and packaging. Wool fiberglass manufacturing plants typically contain one or more manufacturing lines.

Raw materials for the glass batch are weighed, mixed, and conveyed to the glass melting furnace, which may be gas-fired, electric, or gas and electric combined. The primary component of wool fiberglass is sand, but it also includes varying quantities of feldspar, sodium sulfate, anhydrous borax, boric acid, and many other materials. Cullet, crushed recycled glass, is a primary component in most batches and is required by Executive Order for Federal agency purchases and by law in certain States. Two methods of forming fibers are used in the industry. In the rotary spin (RS) process, centrifugal force causes molten glass to flow through small holes in the wall of a rapidly rotating cylinder. In the flame attenuation (FA) process, molten glass flows by gravity from a small furnace, or pot, to form threads that are then attenuated (stretched to the point of breaking) with air and/or flame.

After the fibers are formed, they are sprayed with a binder and collected as a mat on a moving conveyor. The purpose of the binder is to hold the fibers together and its composition varies with product type. Typically, the binder consists of a solution of phenol-formaldehyde resin, water, urea, lignin, silane, and ammonia. The conveyor carries the newly formed mat through an oven for curing of the thermosetting resin and then through a cooling section. Some products do not require curing and/or cooling. FA manufacturing lines do not have cooling processes.

No Federal air standards specifically apply to HAP emissions from wool fiberglass production plants. Emission limits for PM in the new source performance standards (NSPS) for glass manufacturing plants (40 CFR part 60, subpart CC) are applicable to gas-fired and modified process glass-melting furnaces in the wool fiberglass industry that were constructed, modified, or reconstructed after June 15, 1979. The NSPS for wool fiberglass insulation manufacturing plants (40 CFR part 60, subpart PPP) limits PM emissions from wool fiberglass insulation manufacturing lines using the RS forming process that were constructed, modified, or reconstructed after February 7, 1984. The NSPS does not require controls for VOC or organic HAPs.

As a result of the NSPS and State requirements, PM controls are in place for most glass-melting furnaces. Of the 56 gas and electric furnaces (including gas/electric combinations), 37 are equipped with baghouses or electrostatic precipitators (ESPs). Among those furnaces without add-on controls are 12 electric furnaces that control PM emissions through their design and operation.

Controls also are in place for RS manufacturing lines. All 40 RS forming processes control, to varying degrees, organic emissions using one or more of the several process modifications available to this industry. Of the 43 curing ovens, 14 are equipped with a thermal incinerator. Cooling process emissions are uncontrolled for organic HAP emissions.

Because of the differences in emissions potential, limitations on the application of process controls, and the dedication of lines to certain product categories, FA forming processes are separated into four subcategories: light density, automotive, heavy density, and pipe products. None of the light density or automotive FA forming processes are equipped with HAP controls. In a few instances, FA forming processes that produce heavy density products, are controlled using process modifications. All FA forming processes producing pipe products use process modifications. None of the 31 curing ovens on FA manufacturing lines are equipped with HAP emission controls.

*E. Pollution Prevention*

Pollution prevention is a partial basis for the emission standards for RS and FA manufacturing lines. The emission standard for RS manufacturing lines is formulated as the sum of the MACT floor emission levels for forming, curing, and cooling where process modification is the MACT floor for forming processes, incineration is the MACT floor for curing ovens, and no control is the MACT floor for cooling processes. The emission standards for new and existing FA manufacturing lines producing pipe products and new FA manufacturing lines producing heavy-density products are the sum of the MACT floor emission levels for forming and curing (there are no separate cooling processes on FA manufacturing lines). Process modification is the MACT floor for forming processes and no control is the MACT floor for curing ovens. By formulating the standard as a sum of the individual forming, curing, and cooling MACT floor emission levels for RS manufacturing lines and forming and curing MACT floor emission levels for certain FA manufacturing lines, we have allowed tradeoffs for existing facilities that will accomplish the same environmental results at lower costs and will encourage process modifications and pollution prevention alternatives. According to the industry, new RS manufacturing lines may be able to meet the line standard without the use of costly incinerators with their energy and other environmental impacts, such as increased nitrogen oxides ($NO_X$) and sulfur oxides ($SO_X$) emissions, by incorporating pollution prevention measures. Pollution prevention alternatives will also increase binder utilization efficiency and reduce production costs for industry. In selecting the format of the emission standard for emissions from manufacturing lines, the EPA considered various alternatives such as setting separate emission limits for each process, i.e., forming, curing, and cooling. A line standard gives the industry greater flexibility in complying with the proposed emission limit and is the least costly because industry can avoid the capital and annual operating and maintenance costs associated with the purchase of add-on control equipment.

## III. Summary of Proposed Standards

*A. Applicability*

The proposed NESHAP applies to each of the following existing and newly constructed sources: glass-melting furnaces located at a wool fiberglass manufacturing plant (Standard Industrial Classification [SIC] code 3296), RS manufacturing lines that produce building insulation, and FA manufacturing lines producing pipe insulation. The proposed NESHAP also applies to new FA manufacturing lines producing heavy density products. Facilities that manufacture mineral wool from rock or slag are not subject to the proposed rule but are subject to a separate NESHAP for mineral wool production. Provisions are included in the NESHAP general provisions (40 CFR part 63, subpart A) for the owner or operator to obtain a determination of applicability. A facility that is determined to be an area source would not be subject to the NESHAP.

*B. Emission Limits and Requirements*

Emission limits for PM are proposed for glass-melting furnaces. Because the MACT floor for existing and the MACT floor for new glass-melting furnaces are the same, the same emission limit applies to both new and existing sources. Emission limits for formaldehyde also are proposed for each new or existing RS manufacturing line, each new and existing FA manufacturing line producing pipe insulation, and each new FA manufacturing line producing heavy density products.

A surrogate approach, where PM serves as a surrogate for HAP metals and formaldehyde serves as a surrogate for organic HAPs, is employed to allow easier and less expensive testing and monitoring requirements. The proposed emission limits are in the same format (mass of emissions per unit of production) as the existing NSPS for glass-melting furnaces and for wool fiberglass plants—kilograms per megagram (kg/Mg) or pound per ton (lb/ton) of glass pulled. Application of the proposed emission limits to the manufacturing line (forming, curing, and cooling) is consistent with the existing NSPS and the use of a kg/Mg (lb/ton) format recognizes that common industry practice is to vent more than one process unit to common ductwork/controls. This format also provides greater flexibility in achieving compliance with the use of pollution prevention measures, especially process modifications that provide the same environmental benefits without the need to purchase add-on control devices. The proposed emission limits are presented in metric units in Table 2(a) and English units in Table 2(b).

The proposed emission limits for existing sources are based on the performance of the control technology identified as the MACT floor. The MACT floor for existing glass-melting furnaces is an ESP or a baghouse. Because well-designed and -operated ESPs and baghouses, which are the MACT floor for existing glass-melting furnaces, represent the best technologies available for controlling PM emissions, including HAP metals, the MACT floor for new sources is the same.

TABLE 2(a).—SUMMARY OF PROPOSED EMISSION LIMITS FOR NEW AND EXISTING GLASS-MELTING FURNACES AND RS AND FA MANUFACTURING LINES IN WOOL FIBERGLASS MANUFACTURING PLANTS

[Metric units]

| Process | Emission limit | |
|---|---|---|
| | Existing | New |
| Furnace | 0.25 kg of PM per Mg of glass pulled | 0.25 kg of PM per Mg of glass pulled. |
| RS Manufacturing Line | 0.6 kg of formaldehyde per Mg of glass pulled | 0.40 kg of formaldehyde per Mg of glass pulled. |
| | Pipe Insulation | Pipe Insulation |
| FA Manufacturing Line | 3.4 kg of formaldehyde per Mg of glass pulled | 3.4 kg of formaldehyde per Mg of glass pulled. |
| | Heavy Density | Heavy Density |
| | None | 3.9 kg of formaldehyde per Mg of glass pulled. |

TABLE 2(b).—SUMMARY OF PROPOSED EMISSION LIMITS FOR NEW AND EXISTING GLASS-MELTING FURNACES AND RS AND FA MANUFACTURING LINES IN WOOL FIBERGLASS MANUFACTURING PLANTS

[English units]

| Process | Emission limit | |
|---|---|---|
| | Existing | New |
| Furnace | 0.50 lb of PM per ton of glass pulled | 0.50 lb of PM per ton of glass pulled. |
| RS Manufacturing Line | 1.2 lb of formaldehyde per ton of glass pulled | 0.80 lb of formaldehyde per ton of glass pulled. |
| | Pipe Insulation | Pipe Insulation |
| FA Manufacturing Line | 6.8 lb of formaldehyde per ton of glass pulled | 6.8 lb of formaldehyde per ton of glass pulled. |
| | Heavy Density | Heavy Density |
| | None | 7.8 lb of formaldehyde per ton of glass pulled. |

The MACT floor for each new or existing RS manufacturing line is represented by the use of process modification(s) for the forming process and a thermal incinerator for each curing oven. The MACT floor for cooling processes on RS manufacturing lines is no control because none of the existing cooling processes are controlled for HAPs. According to the industry, some existing plants will have to upgrade their process modifications on forming in order to meet the proposed emission limit; none will have to install incinerators on curing to comply with the standard. Process modifications are also the basis for the proposed MACT floor for forming processes on each new and existing FA manufacturing line producing pipe insulation and each new FA manufacturing line producing heavy-density products. Because none of the curing processes on FA manufacturing lines are controlled, the MACT floor is no control.

*C. Performance Test and Compliance Provisions*

A one-time performance test would demonstrate initial compliance with the proposed emission limits. Under the proposed NESHAP, the owner or operator would measure PM emissions to the atmosphere from affected glass-melting furnaces using EPA Method 5 in 40 CFR part 60, appendix A and § 63.1389 (Test methods and procedures) of the proposed rule. EPA Method 316, ''Sampling and Analysis for Formaldehyde from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries,'' or Method 318, ''Extractive FTIR Method for the Measurement of Emissions from the Mineral Wool and the Wool Fiberglass Industries'' would be used to measure formaldehyde emissions. Methods 316 and 318 are being proposed concurrently with this proposed rule. Using information from the tests, the owner or operator would determine compliance with the applicable emission limit using the instructions and equations in the proposed NESHAP. During the initial performance test, the owner or operator also would monitor and record the glass pull rate of the furnace during each of the three test runs and determine the emission rate for each run in kilograms (pounds) of emission per megagram (ton) of glass pulled (kg/Mg [lb/ton]). A determination of compliance would be based on the average of the three individual test runs.

If an ESP is used to control emissions from a glass-melting furnace, the proposed NESHAP requires the owner or operator to establish the ESP operating parameter(s) that will be used to monitor compliance. For example, the secondary voltage of each ESP electrical field may be monitored to determine proper ESP operations. During the initial performance test, the owner or operator would establish the parameters and the range of these parameter values to be used to monitor compliance with the PM emission limit.

If a glass-melting furnace is operated without the use of an add-on PM control device, the owner or operator must establish the furnace operating parameter(s) that will be used to monitor compliance. On cold top electric furnaces, for example, the temperature 18 to 24 inches above the glass melt may be used to indicate proper furnace operations. The owner or operator would establish the range of parameter values during the initial performance test to be used to monitor compliance with the PM emission limit.

To determine compliance with the proposed emission limits for new and existing RS manufacturing lines, the owner or operator would measure formaldehyde emissions to the atmosphere from forming, curing, and cooling processes and sum the emissions from these processes. For new and existing FA manufacturing lines producing pipe products and for new lines producing heavy-density products, the owner or operator would measure emissions to the atmosphere from the forming and curing processes and sum the emissions. Using information from the tests, the owner or operator would convert the emission test results to the units of the standard using the instructions and equations in the proposed NESHAP.

The owner or operator would conduct the initial performance test for each new or existing RS manufacturing line while making building insulation product. Building insulation is defined in the proposed NESHAP as wool fiberglass insulation having a loss on ignition (LOI) of less than 8 percent and a density of less than 0.03 grams per cubic centimeter ($g/cm^3$), or 2 pounds per cubic foot ($lb/ft^3$). Initial performance tests for FA manufacturing lines would be conducted on new lines while manufacturing heavy-density products (LOI of 11 to 25 percent and a density of 0.01 to 0.05 $g/cm^3$ [0.5 to 3 $lb/ft^3$]) and on new and existing lines while manufacturing pipe products (LOI of 8 to 14 percent and a density of 0.05 to 0.1 $g/cm^3$ [3 to 6 $lb/ft^3$]).

During performance tests on RS manufacturing lines producing building insulation and certain FA manufacturing lines, the owner or operator would record the LOI of each product for each line tested, the free formaldehyde content of the resin(s) used during the tests, and the binder formulation(s) used during the tests. The performance tests would be conducted using the resin having the highest free formaldehyde content that the owner or operator expects to use on that line. After the performance test, if the owner or operator wants to use a resin with a higher free formaldehyde content or change the binder formulation, another emission test must be performed to demonstrate compliance. If the owner or operator uses forming process modifications to comply, the process parameters (such as binder solids, binder application rate, or LOI) and their associated levels that will

be used to monitor compliance must be established during the performance test. After the performance test, if the owner or operator wants to operate the forming process parameters outside the performance test levels, additional performance tests would be required to verify that the source is still in compliance. If a wet scrubbing control device is used to control formaldehyde emissions from an RS manufacturing line producing building insulation or from certain FA manufacturing lines, the owner or operator must establish the operating ranges of the pressure drop across each scrubber, the scrubbing liquid flow rate to each scrubber, and the identity and feed rate of any chemical additive. The owner or operator of a scrubber would also monitor and record the LOI, the free formaldehyde content of the resin used, and the formulation of the binder used during the performance test. If the owner or operator plans to operate the scrubber in such a way that the pressure drop, liquid flow rate, or chemical additive or chemical feed rate exceeds the values established during the performance tests, additional testing must be performed to demonstrate compliance.

The proposed rule would allow the owner or operator of RS manufacturing lines and FA manufacturing lines subject to the NESHAP to conduct short-term experimental production runs, where the formaldehyde content or other process parameter deviates from levels established during previous performance tests, without conducting additional performance tests. The owner or operator would have to apply for approval from the Administrator or delegated State agency to conduct such experimental production runs. The application would include information on the nature and duration of the test runs including plans to perform emission testing. Such experimental production runs are important to industry and allow them to develop new products, improve existing products, and determine the effects on product quality and on emissions of process modifications being considered, such as binder reformulation.

If a thermal incinerator is used to comply with the proposed emission limit for formaldehyde, the owner or operator would measure the incinerator operating temperature that will be used to monitor compliance. During the initial performance test, the owner or operator would continuously record the incinerator's operating temperature and determine the average temperature during each 1-hour test run. The average of the three test runs would be used to monitor incinerator compliance.

*D. Monitoring Requirements*

All owners or operators subject to the proposed NESHAP would submit an operations, maintenance, and monitoring plan as part of their application for a part 70 permit. The plan would include procedures for the proper operation and maintenance of processes and control devices used to comply with the proposed emission limits as well as the corrective actions to be taken when control device or process parameters deviate from allowable levels established during performance testing. The plan would also identify the control device parameters or process parameters to be monitored for compliance, a monitoring schedule, and procedures for keeping records to document compliance.

Under the proposed NESHAP, each baghouse used on a glass-melting furnace would have installed a bag leak detection system that is equipped with an audible alarm that automatically sounds when an increase in particulate emissions above a predetermined level is detected. The monitor must be capable of detecting PM emissions at concentrations of 1.0 milligram per actual cubic meter (0.0004 grains per actual cubic foot) and provide an output of relative or absolute PM emissions. Such a device would serve as an indicator of the performance of the baghouse and would provide an indication of when maintenance of the baghouse is needed. An alarm by itself does not indicate noncompliance with the PM emission limit. An alarm would indicate an increase in PM emissions and trigger an inspection of the baghouse to determine the cause of the alarm. The owner or operator would initiate corrective actions according to the procedures in their operations, maintenance, and monitoring plan. The source would be considered out of compliance upon failure to initiate corrective actions within 1 hour of the alarm. If the alarm is activated for more than 5 percent of the total operating time during the 6-month reporting period, the owner or operator must implement a Quality Improvement Plan (QIP) consistent with subpart D of the draft approach to compliance assurance monitoring.[1]

For each ESP controlling PM emissions from a glass-melting furnace, the owner or operator would submit as part of their operations, maintenance, and monitoring plan, a description of how the ESP is to be operated and maintained, the ESP parameter(s) to be monitored, a monitoring schedule, and recordkeeping requirements that document compliance. Corrective action would be taken if the range of acceptable values for the selected ESP operating parameter(s), such as secondary voltage, established during the initial performance test is exceeded based on any 3-hour average of the monitored parameter. A deviation outside the established range would trigger an inspection of the control device to determine the cause of the deviation and to initiate corrective actions according to the procedures in the facility's operations, maintenance, and monitoring plan. Failure to initiate corrective actions within 1 hour of the deviation would be considered noncompliance. If the ESP parameter values are outside the range established during the performance test for more than 5 percent of total operating time in a 6-month reporting period, the owner or operator would implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[2] If the ESP parameter values are outside the range for more than 10 percent of total operating time in a 6-month reporting period, the owner or operator would be in violation of the standard.

Under the proposed NESHAP, the owner or operator of a glass-melting furnace whose emissions are not exhausted to an air pollution control device for PM control, would submit as part of their operations, maintenance, and monitoring plan a description of how the furnace is to be operated and maintained, the furnace parameter(s) to be monitored for compliance purposes, a monitoring schedule, and recordkeeping requirements that document compliance. Corrective action would be taken if the range of acceptable values for the selected operating parameter(s), such as air temperature above the glass melt in a cold top electric furnace, established during the initial performance test is exceeded based on any 3-hour average of the monitored parameter. A deviation outside the established range would trigger an inspection of the glass-melting furnace to determine the cause of the deviation and to initiate corrective actions according to the procedures in the facility's operations, maintenance, and monitoring plan. Failure to initiate corrective actions within 1 hour of the deviation would be considered noncompliance. If the furnace operating

[1] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[2] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

parameter values are outside the range established during the performance test for more than 5 percent of total operating time in a 6-month reporting period, the owner or operator would implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[3] If the furnace parameter values are outside the range for more than 10 percent of total operating time in a 6-month reporting period, the owner or operator would be in violation of the standard.

Under the proposed NESHAP, the owner or operator would continuously monitor and record the glass pull rate on all existing and new glass-melting furnaces. The exception to this would be existing furnaces that do not have continuous monitoring equipment. Such furnaces would measure the glass pull rate at least once per day. If the pull rate exceeds by more than 20 percent the average glass pull rate measured during the performance test, the owner or operator must initiate corrective actions within 1 hour. If the glass pull rate exceeds (by more than 20 percent) the average established during the performance test for more than 5 percent of the total operating time in a 6-month reporting period, a QIP must be implemented consistent with subpart D of the draft approach to compliance assurance monitoring.[4] If the glass pull rate exceeds (by more than 20 percent) the average established during the performance test for more than 10 percent of the total operating time in a 6-month reporting period, it is a violation of the standard. Under the proposed NESHAP, the owner or operator would be allowed to do additional performance testing to verify compliance while operating at glass pull rates that exceed the level established during the initial performance test. The additional performance testing would be required to demonstrate compliance with the applicable formaldehyde emission limits for the affected manufacturing line only.

RS manufacturing lines that produce building insulation and certain FA manufacturing lines would monitor and record the free formaldehyde content of each resin lot, the binder formulation of each batch, and product LOI at least once each day. If resin-free formaldehyde content exceeds the performance test levels, the owner or operator would be in violation of the standard. Under the proposed NESHAP, the binder formulation must not deviate from the formulation specifications used during the performance test.

An owner or operator of affected RS or FA manufacturing lines that use process modifications to comply with the emission standard would include in their written operations, maintenance, and monitoring plan how the process will be operated and maintained and identify the process parameters to be monitored, a monitoring schedule, and recordkeeping requirements that document compliance. Examples of process parameters that might be used to monitor compliance include product LOI, binder solids, and binder application rate. The plan would also have to demonstrate that the parameter(s) to be monitored correlate with formaldehyde emissions. The plan would include procedures for establishing maximum or minimum values, as appropriate, based on initial performance testing. Should the process parameter(s) deviate from the range established during the performance test, the owner or operator must inspect the process to determine the cause of the deviation and initiate corrective action within 1 hour of the deviation. If the process parameter(s) is outside the performance test range for more than 5 percent of total operating time during a 6-month reporting period, the owner or operator would implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[5] If the process parameter(s) is outside the range for more than 10 percent of total operating time in a 6-month reporting period, the owner or operator would be in violation of the standard.

An owner or operator who uses a wet scrubbing control device to control formaldehyde emissions from an RS manufacturing line producing building insulation or from certain FA manufacturing lines would continuously monitor and record the pressure drop across each scrubber, the scrubbing liquid flow rate to each scrubber, and the identity and feed rate of any chemical added to the scrubbing liquid. Under the proposed monitoring provisions, corrective action would be taken if any 3-hour average scrubber parameter is outside the range of acceptable values established during the initial performance test. If there was a deviation outside the established range, the owner or operator would inspect the process to determine the cause of the deviation and to initiate corrective actions according to the procedures in the facility's operations, maintenance, and monitoring plan. The owner or operator of the scrubber would be out of compliance upon failure to initiate corrective actions within 1 hour of the deviation. If any scrubber parameter is outside the performance test range for more than 5 percent of the total operating time in a 6-month reporting period, the owner or operator would implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[6] If any scrubber parameter is outside the range for more than 10 percent of total operating time in a 6-month reporting period, the owner or operator would be in violation of the standard.

If an incinerator is used to control formaldehyde emissions from a manufacturing line or from individual forming or curing processes, the owner or operator would continuously monitor and record the operating temperature of each incinerator. The temperature monitoring device would be installed in the incinerator firebox. This is typically done using a thermocouple (a standard feature on most incinerators) and a strip chart recorder or data logger. Following the initial performance test, the owner or operator must maintain the temperature so that the temperature, averaged over a 3-hour period, does not fall below the average temperature established during the initial performance test. A temperature below the performance test average would be considered a violation of the standard.

The owner or operator may modify any of the control device or process parameter levels established during the initial performance tests for compliance monitoring. The proposed NESHAP contains provisions that would allow the owner or operator to change add-on control device and process parameter values from those established during the initial performance tests by performing additional emission testing to verify compliance.

As required by the NESHAP general provisions (40 CFR part 63, subpart A), the owner or operator must develop and implement a separate startup, shutdown, and malfunction plan. The plan would include procedures for the inspection and determination of the cause of a process or control device malfunction and the corrective procedures to be followed to remedy the malfunction.

*E. Notification, Recordkeeping, and Reporting Requirements*

All notification, recordkeeping, and reporting requirements in the general

[3] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[4] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[5] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[6] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

provisions would apply to wool fiberglass manufacturing facilities. These include: (1) initial notification(s) of applicability, notification of performance test, and notification of compliance status; (2) a report of performance test results; (3) a startup, shutdown, and malfunction plan with semiannual reports of any reportable events; and (4) semiannual reports of deviations from established parameters. If deviations from established parameters are reported, the owner or operator must report quarterly until a request to return the reporting frequency to semiannual is approved. In addition to the requirements of the general provisions, the owner or operator would maintain records of the following, as applicable:

(1) Bag leak detection system alarms, including the date and time, with a brief explanation of the cause of the alarm and the corrective action taken;

(2) ESP monitoring plan parameter values, such as the secondary voltage of each electrical field, for each ESP used to control PM emissions from a glass-melting furnace, including any period when the parameter values deviate from those established during the performance test, with a brief explanation of the cause of the deviation and the corrective action taken;

(3) Uncontrolled glass-melting furnace operating parameter values, such as the temperature readings taken above the molten glass in cold top electric furnaces, including any period when the operating parameter values deviate from those established during the performance test, with a brief explanation of the cause of the deviation and the corrective action taken;

(4) The LOI and product density for each bonded product manufactured on an RS or FA manufacturing line subject to this NESHAP;

(5) The free formaldehyde content of each resin lot and the binder formulation of each batch used in the production of bonded wool fiberglass on RS or FA manufacturing lines subject to this NESHAP;

(6) Process parameters for RS and FA manufacturing lines that comply with the emission standards using process modifications, including any period when the parameter levels deviate from levels established during the performance test and the corrective actions taken;

(7) Scrubber pressure drop, scrubbing liquid flow rate, and any chemical additive (including chemical feed rate to the scrubber), including any period when the parameter levels deviate from those established during the performance tests and the corrective action taken,

(8) Incinerator operating temperature, including any period when the temperature falls below the average level established during the performance test, with a brief explanation of the cause of the deviation and the corrective action taken;

(9) Glass pull rate including any period when the pull rate exceeded the average pull rate established during the performance test by more than 20 percent with a brief explanation of the cause of the exceedance and the corrective action taken.

Initial performance tests and compliance assurance monitoring requirements for forming process modifications apply only when building insulation products are being manufactured on RS manufacturing lines and when pipe products are being manufactured on new and existing FA manufacturing lines and heavy-density products are being manufactured on new FA manufacturing lines. The LOI must be monitored to demonstrate to EPA the products being manufactured and which lines are subject to the standard. During periods when other products are being manufactured, it is expected that the parameter values, such as LOI or binder solids, may vary from those levels established during the initial performance tests for building insulation on RS manufacturing lines and heavy-density or pipe products on FA manufacturing lines. The NESHAP general provisions (40 CFR part 63, subpart A) require that records be maintained for at least 5 years from the date of each record. The owner or operator must retain the records onsite for at least 2 years but may retain the records offsite the remaining 3 years. The files may be retained on microfilm, on microfiche, on a computer, on computer disks, or on magnetic tape disks. Reports may be made on paper or on a labeled computer disk using commonly available and compatible computer software.

## IV. Impacts of Proposed Standards

### *A. Applicability*

All plants in the industry would be subject to the proposed NESHAP unless the owner or operator demonstrates the facility is not a major source according to the requirements in the NESHAP general provisions. Seven of the 30 electric or gas/electric combination glass-melting furnaces are not controlled and are expected to need to install a baghouse or ESP to comply with the proposed emission limit. All gas-fired glass-melting furnaces are well controlled and are expected to be in compliance with the NESHAP. Certain uncontrolled glass-melting furnaces, such as cold top electric furnaces, maintain low PM emissions as a result of their design and operation and are expected to meet the emission limits without the addition of control devices. Some RS forming processes would need to upgrade their process modifications to meet the emission limits for manufacturing lines.

### *B. Air Quality Impacts (Docket Item II–B–22)*

Most of the existing glass-melting furnaces are already well controlled. At the current high level of control, nationwide emissions of PM are about 750 Mg/yr (830 ton/yr). Because of the existence of controls on all gas furnaces and the emission limiting design and operation of cold top electric furnaces, no emission reduction is expected from gas or cold top electric furnaces under the proposed NESHAP. There are 30 electric or combination gas/electric furnaces of which 23 are well controlled. Under the proposed NESHAP, it is expected that baghouses would be added to the seven uncontrolled electric glass-melting furnaces, which would result in a reduction in nationwide PM emissions of 600 Mg/yr (660 ton/yr) of which 40 Mg/yr (50 ton/yr) is particulate matter less than 10 microns (μm) in diameter (PM–10) (docket item II–B–20). Impacts on new furnaces will vary. New gas-fired glass-melting furnaces would be adequately controlled, even in the absence of the proposed NESHAP, as a result of the NSPS for glass manufacturing plants (40 CFR part 60, subpart CC). Because of their design and operation, new cold top electric furnaces would meet the proposed emission limit for new furnaces without add-on controls. Only new electric furnaces are expected to be impacted by the proposed emission limits for new glass melting furnaces. New electric glass-melting furnaces are not subject to the NSPS for glass manufacturing plants and are likely, under the proposed NESHAP, to need controls to comply with the emission limit for new furnaces. The PM emission reduction from new electric glass-melting furnaces resulting from the proposed emission limit for new furnaces would be 160 Mg/yr (180 ton/yr) in the fifth year of the standard. Current nationwide emissions of metal HAPs from existing furnaces is 270 kg/yr (600 lb/yr). Under the proposed NESHAP, metal HAP emissions from existing furnaces and new furnaces would be reduced by 9 kg/

yr (20 lb/yr) and 2 kg/yr (5 lb/yr), respectively.

Nationwide emissions of formaldehyde from existing manufacturing lines are estimated to be 1,770 Mg/yr (1,950 ton/yr) at the current level of control. Emissions from RS manufacturing lines account for about 70 percent of the formaldehyde emissions. Implementation of the proposed NESHAP would reduce nationwide formaldehyde emissions from existing sources by 410 Mg/yr (450 ton/yr). Emission reductions from RS manufacturing lines producing building insulation constitute the entire reduction; there would be no emission reductions from FA manufacturing lines because, under the proposed emission limits, no additional control of FA manufacturing lines is necessary and no new FA manufacturing lines are anticipated. Reduction in formaldehyde emissions from new RS manufacturing lines is estimated to be 120 Mg/yr (130 ton/yr) in the fifth year of the standard. Nationwide baseline emissions and emission reduction estimates for glass-melting furnaces and manufacturing lines are summarized in metric units in Table 3(a) and in English units in Table 3(b).

TABLE 3(a).—NATIONWIDE ANNUAL EMISSIONS

[Metric units]

| Source | Pollutant | Baseline emissions (Mg/yr) | Emission reduction (Mg/yr)[a] |
|---|---|---|---|
| Glass-Melting Furnaces | Metal HAP | 0.3 | 0.01 |
| | PM | 750 | 760 |
| RS Manufacturing Lines | Formaldehyde | 1,220 | 530 |
| FA Manufacturing Lines | Formaldehyde | 550 | 0 |
| All Sources | Total HAPs | 1,770 | 530 |
| | PM (Non-HAP) | 750 | 760 |
| | Total Pollutants | 2,520 | 1,290 |

[a] Emission reduction in the fifth year of the standard. Includes emission reductions from new sources.

TABLE 3(b).—NATIONWIDE ANNUAL EMISSIONS

[English units]

| Source | Pollutant | Baseline emissions (ton/yr) | Emission reduction (ton/yr)[a] |
|---|---|---|---|
| Glass-Melting Furnaces | Metal HAP | 0.3 | 0.01 |
| | PM | 830 | 840 |
| RS Manufacturing Lines | Formaldehyde | 1,350 | 580 |
| FA Manufacturing Lines | Formaldehyde | 600 | 0 |
| All Sources | Total HAPs | 1,950 | 580 |
| | PM (Non-HAP) | 830 | 840 |
| | Total Pollutants | 2,780 | 1,420 |

[a] Emission reduction in the fifth year of the standard. Includes emission reductions from new sources.

An analysis of emissions from a medium-sized (27,200 Mg/yr [30,000 ton/yr] capacity) model electric furnace shows that metal HAP emissions would be reduced by about 0.001 Mg/yr (0.001 ton/yr) and PM emissions by an estimated 67 Mg/yr (74 ton/yr) from both an existing and a new electric furnace over an uncontrolled electric furnace. For a medium model plant (99,800 Mg/yr [110,000 ton/yr] capacity), metal HAP emissions from existing and new electric furnaces would be reduced by 0.004 Mg/yr (0.004 ton/yr) over a plant with uncontrolled electric furnaces; PM emissions would be reduced by an estimated 250 Mg/yr (270 ton/yr). Under the proposed NESHAP, there would be no emission reductions associated with existing gas-fired or cold top electric furnaces because all gas furnaces are already well controlled and no additional controls would be required for cold top electric furnaces to meet the proposed emission limits. Because new gas furnaces would be controlled as a result of the NSPS for glass manufacturing sources (40 CFR part 60, subpart CC), no additional emission reductions from new gas furnaces would occur under the proposed NESHAP. As with existing cold top electric furnaces, new cold top electric furnaces would be able to meet the proposed emission limit without additional control.

Based on model line and plant analyses, formaldehyde emissions from a medium-sized (27,200 Mg/yr [30,000 ton/yr] capacity) RS manufacturing line producing building insulation would be reduced by an estimated 8 Mg/yr (9 ton/yr). Emissions of formaldehyde from a medium-sized plant (99,800 Mg/yr [110,000 ton/yr] capacity) containing two large RS manufacturing lines would be reduced by an estimated 30 Mg/yr (33 ton/yr). Formaldehyde emissions from a new RS manufacturing line would be reduced an estimated 33 Mg/yr (37 ton/yr). No emission reduction would be achieved for new or existing medium-sized FA manufacturing lines producing pipe insulation since there would be no additional controls under the proposed NESHAP. The formaldehyde emission reduction from a new medium-sized (1,800 Mg/yr [2,000 ton/yr] production capacity) FA manufacturing line producing heavy-density products would total about 2.8 Mg/yr (3.1 ton/yr) although no new FA manufacturing lines are projected. Additional information on model plants and lines is included in the docket.

Because EPA proposes to regulate formaldehyde emissions as a surrogate measure for organic HAP emissions from manufacturing lines, only formaldehyde emissions data are presented here, although when the formaldehyde emission limit is met, phenol and methanol emissions will also be reduced. Where incineration is used to control formaldehyde emissions

from curing, emissions of phenol and methanol will also be controlled. Emissions data to quantify the degree of reduction in emissions of phenol and methanol as a result of increased levels of forming process modifications are not available. The results of emissions tests conducted at wool fiberglass manufacturing plants, including phenol and methanol test results, are contained in the docket.

*C. Water Impacts*

Because this standard is based on the use of baghouses, dry ESPs, thermal incinerators, and process modifications, there are no water pollution impacts. A few existing emission sources may use scrubbers to control HAP emissions although no additional sources are expected to add wet scrubbers for the control of HAP emissions. Therefore, no water impacts are expected from the proposed rule.

*D. Solid Waste Impacts*

The PM captured by the baghouses added to the seven uncontrolled electric furnaces will be recycled to the furnace and no solid or hazardous waste is generated by the use of thermal incinerators. No solid waste impacts are expected from the proposed rule.

*E. Energy Impacts (Docket Item II-B–22)*

Baghouses require electrical energy to operate fans. The additional electrical energy requirements are estimated to be 1.8 thousand megawatt hours per year (MWh/yr) over current requirements for seven additional baghouses to be added to existing sources. Emissions of PM associated with the additional energy requirements are estimated to be 0.1 ton/yr as compared to the PM emission reduction of 700 ton/yr estimated for installing the seven baghouses on uncontrolled furnaces. Projected new RS manufacturing lines would comply with the proposed standard for new sources using process modifications on forming and incinerators on curing. An additional 2.9 thousand MWh/yr for electricity and 290 billion Btu/yr of natural gas would be required for new incinerators although process modifications only may be used to comply with the proposed standard for new RS manufacturing lines. The total additional energy required as a result of this proposed NESHAP is 300 billion Btu/yr in the fifth year of the standard. No new FA manufacturing lines are projected; thus there are no increased energy requirements under the proposed standard for new FA manufacturing lines.

*F. Nonair Environmental and Health Impacts*

Reducing HAP levels may help lower occupational exposure levels and site-specific levels of PM and VOCs. New or upgraded process modifications for forming operations would decrease the quantity of HAP constituents in binder formulations. The addition of baghouses, ESPs, and incinerators may increase noise levels in the plant area due to the operation of pollution control devices where none are currently in place.

*G. Cost Impacts*

The EPA analyzed the cost impacts of the proposed standards for glass-melting furnaces by developing model lines based on site-specific information included in the ICR survey responses (docket item II–B–21) coupled with cost algorithms from the OAQPS Cost Manual (docket item II–A–3). The cost impacts of the proposed standards on wool fiberglass manufacturing facilities are based on estimates supplied by wool fiberglass companies for each of their manufacturing lines (docket item II–D–65).

The total nationwide capital and annual costs for existing glass-melting furnaces under the proposed NESHAP are $3.2 million and $1.5 million, respectively. This represents the cost of adding baghouses to seven electric glass-melting furnaces as well as the monitoring costs of bag leak detection systems installed on baghouses and temperature monitors installed on cold top electric furnaces. Control cost estimates assume the addition of pulse jet baghouses with polyester filter bags, an air-to-cloth ratio of 0.9 actual cubic meters per minute per square meter (3 acfm/ft$^2$), and a pressure drop of 20 cm (8 in.) of water column. The estimated capital and annual costs of control equipment for a medium electric furnace (production capacity of 30,000 ton/yr) are $432,000 and $209,000, respectively. The capital cost includes the cost of the control device, auxiliary equipment, and installation, and retrofit costs. The model furnace cost estimates do not include the capital and annual costs for a bag leak detection system required on all baghouses under the proposed NESHAP. The EPA estimates the capital cost of this monitoring system to be approximately $9,100 per furnace, with $1,800/yr in annual costs. Cold top electric furnaces would incur costs for monitoring an operating parameter that gives an indication of furnace performance; for cost estimating purposes, the cost of monitoring the air temperature above the molten glass surface was used. The estimated capital and annual costs of monitoring the temperature of cold top electric furnaces are $1,500 and $240, respectively. For ESPs, owners or operators are expected to monitor ESP parameters that they commonly monitor, such as secondary voltage, so that no additional monitoring costs would be incurred. Because the NSPS for glass manufacturing sources would regulate any new gas furnaces, there would be no additional control costs for new gas furnaces under the proposed NESHAP. The NSPS for glass manufacturing sources does not cover electric furnaces. Thus, under the proposed NESHAP, new electric furnaces will incur the cost associated with adding baghouses as well as bag leak detection monitoring systems. The capital and annual costs associated with a new baghouse would be $288,000 and $189,000, respectively in addition to the capital and annual costs of a bag leak detection system, $9,100 and $1,800, respectively.

Based on information supplied by the North American Insulation Manufacturers Association (NAIMA), 30 RS forming operations would upgrade their proprietary process modifications to meet the proposed emission limit for RS manufacturing lines; none of the existing curing ovens that are uncontrolled for HAPs would have to add an incinerator. No control costs are associated with complying with the proposed NESHAP for FA manufacturing lines. The proposed monitoring requirements for RS and FA manufacturing lines, i.e., monitoring resin free-formaldehyde content, product LOI and density, other process parameters, and incinerator operating temperature, are current industry practices and would not impose any additional costs. However, NAIMA estimates that there would be a one-time cost per line for testing that would be needed to establish a correlation between formaldehyde emissions and the process parameters to be monitored.

NAIMA estimated the costs of complying with the proposed standard for RS manufacturing lines for each of their lines. Capital costs per line ranged from $150,000 to $4 million and annual expenses per line ranged from $100,000 to $400,000. Nationwide capital costs of upgrading process modifications on 30 RS manufacturing lines were estimated at $16.3 million with annual costs of $4.8 million. Annual cost for new RS manufacturing lines is estimated to be $0.9 million per line. No FA lines would require additional controls under the proposed standard and there would be no additional control costs. For all RS and FA manufacturing lines subject

to the standard, there would be a one-time cost of $15,000 per line to establish the process parameter values for compliance monitoring. Because the process parameters that are likely to be used for compliance monitoring are ones that industry currently monitors, no additional costs will be incurred for monitoring beyond the one-time cost of $15,000 per line.

Total nationwide capital costs for the standard are estimated at $19.5 million and annual nationwide costs are estimated at $6.3 million/yr, including installation, operation, and maintenance of emission control and monitoring systems.

*H. Economic Impacts (Docket Item II–A–12)*

The economic analysis of the proposed NESHAP finds impacts at the facility and market-level to be modest. The average market price increases for both structural and nonstructural wool fiberglass would be less than 0.5 percent. The resultant decreases in quantity demanded range from 0.17 percent for structural insulation markets to 0.22 percent for nonstructural insulation markets. None of the affected firms are classified as small businesses and no closures are predicted. For more detail, see the full economic impact analysis in the docket.

## V. Selection of Proposed Standards

*A. Selection of Source Category*

Section 112(c) of the Act directs the Agency to list each category of major and area sources, as appropriate, emitting one or more of the 189 HAPs listed in section 112(b) of the Act. The EPA published an initial list of source categories on July 16, 1992 (57 FR 31576), and may amend the list at any time. ''Wool Fiberglass Production'' is one of the 174 source categories listed in the notice.

As defined in the EPA report, ''Documentation for Developing the Initial Source Category List'' (docket item II–A–5), the Wool Fiberglass Production source category includes any facility engaged in producing wool fiberglass from sand, feldspar, sodium sulfate, anhydrous borax, boric acid, or any other materials. Facilities that manufacture mineral wool from rock, slag, and other similar materials are not included in the source category. A separate MACT standard for mineral wool production is currently under development.

Before this project began, no formaldehyde test methods and no HAP data were available to assess the effectiveness of control devices in this industry for controlling HAP emissions. The EPA and the wool fiberglass industry worked in a partnership to address the data needs for the purpose of establishing a MACT standard. Through a cooperative effort, EPA and NAIMA developed methods for measuring formaldehyde emissions from wool fiberglass manufacturing processes. Using information supplied voluntarily by industry for each wool fiberglass manufacturing line, EPA identified processes and control systems as candidates for emissions testing that were considered representative of the MACT floor and MACT for new sources. EPA and the industry were able to obtain the necessary emissions data as a result of these cooperative efforts.

Based on the information collected, EPA believes it is likely that all but three wool fiberglass plants are major sources subject to the proposed NESHAP. A major source must have the potential to emit 9.1 Mg/yr (10 ton/yr) or more of a single HAP or 23 Mg/yr (25 ton/yr) or more of a combination of HAPs. Three facilities (each with one line producing bonded products) may be area sources. At these sites, two of the three glass-melting furnaces and all three RS forming processes are controlled at the MACT floor level. Because these facilities are not believed to present an adverse environmental or health risk, EPA has determined that it is not necessary to include these wool fiberglass manufacturing facilities on the list of area sources required by section 112(c)(3) of the Act.

On December 3, 1993 (58 FR 63941), EPA published a schedule for the promulgation of standards for the sources selected for regulation under section 112(c) of the Act. According to this schedule, MACT standards for this source category must be promulgated no later than November 15, 1997. If standards are not promulgated by May 15, 1999 (18 months following the promulgation deadline), section 112(j) of the Act requires States or local agencies with approved permit programs to issue permits or revise existing permits containing either an equivalent emission limitation or an alternate emission limitation for HAP control. (See ''Guidelines for MACT Determinations Under Section 112(j),'' EPA 453/R–94–026, May 1994.)

*B. Selection of Emission Sources*

The wool fiberglass manufacturing source category, as defined in the EPA report, ''Documentation for Developing the Initial Source Category List,'' includes, but is not limited to: (1) The glass-melting furnace, (2) marble forming, (3) refining unit, (4) fiber formation process, (5) binder application process, (6) curing process, and (7) cooling process. For the reasons described below, EPA selected the forming, curing, and cooling processes on new and existing RS manufacturing lines and the forming and curing processes on existing FA manufacturing lines producing pipe insulation and on new FA manufacturing lines producing pipe insulation or heavy-density products for control under the proposed NESHAP. The proposed NESHAP also covers glass-melting furnaces located at wool fiberglass manufacturing facilities.

Glass-melting furnaces are generally large, shallow, and well-insulated vessels that are heated from above by gas burners or from within by electrical current. About 66 percent of the glass-melting furnaces used in the wool fiberglass industry are all-electric, about 25 percent are gas-fired and about 9 percent are a combination of gas and electric. Glass pull rates for furnaces range from 18 to 272 Mg/d (20 to 300 ton/d).

In the glass-melting furnaces, raw materials (e.g., sand, feldspar, sodium sulfate, anhydrous borax, boric acid) are introduced continuously or in batches on top of a bed of molten glass, where they mix and dissolve at temperatures ranging from 1,500 °C to 17,00 °C (2,700 °F to 3,100 °F), and are transformed by a series of chemical reactions to molten glass. Particulate emissions are caused by entrainment of dust from batch dumping and the combustion process and from volatilization of raw materials. Emissions of chromium result from entrainment of materials eroded from the refractory lining of the furnace and the furnace exhaust stack. Lead and arsenic are released from the batch materials and from the use of contaminated cullet (crushed recycled glass). Glass-melting furnaces may be either gas-fired, electric, or a combination of gas and electric. Emissions from glass-melting furnaces are typically controlled by baghouses or dry ESPs. One type of electric furnace, the cold top electric furnace, has low PM emissions without add-on controls as a result of its design. Operators of these units maintain a thick crust of raw materials on top of the molten glass, which impedes the release of heat and keeps the air temperature above the molten glass at or below 120 °C (250 °F).

One of two methods may be used for the next stage of the process, fiber formation. In an RS forming process, a regulated flow of molten glass enters the center of a rotating spinner. Spinners are in a linear arrangement, with 2 to 12 spinners on a single line. Centrifugal action forces the molten glass out of the

spinners through hundreds of small orifices in the spinner wall to form glass threads. As the threads exit the spinner, a high-velocity air jet or a mixture of air and natural gas flame forces the threads downward, which attenuates the threads to form glass fibers.

In the FA forming process, also known as the ''pot and marble'' process, glass marbles that were produced at separate on- or offsite facilities are fed into ceramic pots (typically 6 to 28 pots per line) that are heated to a high temperature. Glass strands flow by gravity down through holes in the bottom of the pot and are directed by pinch rollers. Following the pinch rollers, a high-velocity, high-temperature mixture of air and gas flame is used to attenuate the fibers. Particulate and organic emissions are released during the fiber-forming process due to volatilization of raw materials and entrainment of fiberglass particles in the process air stream.

After the fibers are formed, they are sprayed with a binder. A typical binder consists of phenol-formaldehyde resin, water, urea, lignin, silane, and ammonia. The binder composition used in the RS and FA forming process is similar. Air, at a flow rate ranging from about 430 to 5,100 actual cubic meters per minute (15,000 to 180,000 acfm), forces the fibers downward onto a continuously moving conveyor to form a mat, which is conveyed to the curing oven. Emissions of formaldehyde, phenol, and methanol occur as a result of the vaporization of the volatile binder as it comes in contact with hot fibers and as a result of binder that is not deposited on the mat but passes through the conveyor and is exhausted to the atmosphere. HAP emissions from forming are controlled by process modifications, such as resin and binder chemistry and fiberization technology.

The curing oven drives off moisture remaining on the fibers and sets the binder. The temperature of the curing oven varies for each product, ranging from about 180 °C to 320 °C (350 °F to 600 °F). Fans are used to draw hot air through the mat within each of the oven zones; the hot air may be recycled within each zone to conserve energy. The total air flow exiting the oven ranges from about 200 to 850 actual cubic meters per minute (7,000 to 30,000 acfm) for the RS process and from 85 to 480 actual cubic meters per minute (3,000 to 17,000 acfm) for the FA process. Emissions of formaldehyde, phenol, and methanol are the result of vaporization of volatile compounds in the binder. Emissions from about one-third of the curing ovens on RS manufacturing lines are controlled by thermal incinerators; the remainder are uncontrolled for organic HAP emissions. None of the curing ovens on FA manufacturing lines are controlled for organic HAPs.

The quantity of binder solids sprayed onto the glass fibers is governed by the type of product being manufactured. Typically, about 70 percent of the binder applied to the fiberglass remains on the product. The remainder remains on the conveyor and is recycled back into the process via the wash water or is exhausted with the forming or curing oven air. Quality control checks are routinely performed to determine the product LOI, which ensures that the correct weight percent of binder is present in the product.

After curing, the fiber mat is conveyed to a cooling section, where ambient air is forced through the mat to eliminate ''hot spots'' in the product and to facilitate finishing and packaging. Cooling air flow rates range from 140 to 990 actual cubic meters per minute (5,000 to 35,000 acfm). By the time the mat with its thermally set binder reaches cooling, emissions of formaldehyde, phenol, and methanol are relatively small compared to forming and curing. Cooling processes are not controlled for HAP emissions. Most FA manufacturing lines do not have cooling sections because the product is able to cool adequately between exiting the curing oven and reaching the finishing and handling sections.

At the current level of control, existing glass-melting furnaces emit approximately 270 kg/yr (600 lb/yr) of HAP and 750 Mg/yr (830 ton/yr) of PM. Under the proposed NESHAP, EPA expects that seven currently uncontrolled electric furnaces would install controls. Electric furnaces (excluding cold top electric furnaces) emit an estimated 9 kg/yr (20 lb/yr) of HAP and about 635 Mg/yr (700 ton/yr) of PM. Control of these furnaces would ensure that all furnaces are controlled to the MACT floor emission level.

Existing cold top electric furnaces (air temperature above the molten glass of 120 °C [250 °F] or less) are not equipped with add-on control devices. Particulate emissions from the 12 existing cold top electric furnaces are limited by the thick crust maintained on the molten glass surface. Emissions are estimated to be 27 kg/yr (60 lb/yr) of HAP and about 55 Mg/yr (60 ton/yr) of PM. These furnaces are expected to comply with the proposed emission limit without the need for add-on control devices. The EPA considered requiring controls for cold top electric furnaces and has determined that the cost effectiveness of additional controls beyond the floor is not reasonable.

Manufacture of wool fiberglass releases an estimated 1,770 Mg/yr (1,950 ton/yr) of formaldehyde from RS and FA manufacturing lines. The Agency selected forming, curing, and cooling processes on all new and existing RS manufacturing lines and forming and curing processes on existing FA manufacturing lines producing pipe insulation and new FA manufacturing lines producing pipe insulation or heavy-density products for control under the proposed NESHAP. Because no controls are currently used, the MACT floor is no control and because the cost effectiveness of additional controls beyond the floor is not reasonable, the Agency is not setting emission limits for existing FA manufacturing lines producing light-density, automotive, or heavy-density products or new FA manufacturing lines producing light-density or automotive products. Because no plants have equipped forming or curing processes on these manufacturing lines with emission controls, the MACT floor is no control. The EPA considered beyond-the-floor controls for both RS and FA manufacturing lines and has determined that the cost effectiveness of additional controls does not justify going beyond the floor.

*C. Selection of Pollutants*

The EPA proposes to regulate emissions of formaldehyde, a HAP and surrogate for phenol and methanol emissions, and PM emissions, a surrogate for metal HAP emissions. Formaldehyde, phenol, methanol, and the metal HAPs are included on the list of HAPs under section 112(b) of the Act and are emitted from wool fiberglass manufacturing sources.

Formaldehyde is the only organic HAP emitted from the wool fiberglass industry that has been identified to be a potential carcinogen. EPA proposes to regulate emissions of formaldehyde, phenol, and methanol using formaldehyde as a surrogate measure for the proposed emission limits for manufacturing lines. Use of formaldehyde as a surrogate allows a single emission limit rather than individual emission limits for formaldehyde, phenol, and methanol (which would require separate measurements) because when the formaldehyde emission limit is met, phenol and methanol emissions will also be reduced.

*D. Selection of Proposed Standards for Existing and New Sources*

1. Background

After EPA has identified the specific source categories or subcategories of major sources to regulate under section 112, MACT standards must be set for each category or subcategory. Section 112 establishes a minimum baseline or ''floor'' for standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. [See section 112(d)(3).] The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the best-performing five sources for categories or subcategories with fewer than 30 sources.

After the floor has been determined for a new or existing source in a source category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. In establishing the standards, EPA may distinguish among classes, types, and sizes of sources within a category or subcategory. [See section 112(d)(1).]

The next step in establishing MACT standards is to investigate regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be selected. Information about the industry is analyzed to develop model plants for projecting national impacts, including HAP emission reduction levels and cost, energy, and secondary impacts. Regulatory alternatives (which may be different levels of emissions control, equal to or more stringent than the floor levels) are then evaluated to select the regulatory alternative that best reflects the appropriate MACT level. The selected alternative may be more stringent than the MACT floor, but the control level selected must be technologically achievable. The regulatory alternatives and emission limits selected for new and existing sources may be different because of different MACT floors.

The Agency may consider going beyond the floor to require more stringent controls. Here, EPA considers the achievable emission reductions of HAPs (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other nonair environmental impacts. The objective is to achieve the maximum degree of emissions reduction without unreasonable economic or other impacts. [See section 112(d)(2).] Subcategorization within a source category may be considered when there is enough evidence to demonstrate clearly that there are significant differences among the subcategories.

The EPA examined the processes, the process operations, and other factors to determine if separate classes of units, operations, or other criteria have an effect on air emissions or their controllability. The EPA considered developing subcategories of glass-melting furnaces on the basis of the energy sources used to convert the raw materials to molten glass and their emission potential. Glass-melting furnaces are typically either gas-fired, electric, or a combination of gas and electric. After examining PM emissions data for gas, electric, and combination gas and electric furnaces, EPA concluded that there is a large amount of variability in PM emissions regardless of energy source and that most furnaces are already well controlled by either ESPs or baghouses. Therefore, EPA decided not to develop subcategories of glass-melting furnaces.

Wool fiberglass manufacturing lines can be classified by the type of forming process (RS and FA) used. Approximately 90 percent of the wool fiberglass manufactured by the RS forming process is building insulation, whereas the wool fiberglass manufactured by the FA forming process is specialty products, such as automotive or filtration products. Because of the type of products, the RS and FA forming process differ significantly in the way fibers are formed, production rates, air flow and energy expended per ton of product, application of process modifications, and the amount of binder applied to the wool fiberglass. As a result of these differences in manufacturing methodologies, levels of pollutant emissions, and application of controls (such as process modifications), EPA subcategorized manufacturing lines into those using the RS forming process (RS manufacturing lines) and those using the FA forming process (FA manufacturing lines). RS manufacturing lines consist of forming, curing, and cooling. FA manufacturing lines consist of forming and curing processes; cooling is not a distinct separate process on FA manufacturing lines. FA manufacturing lines can be further subcategorized by the type of specialty product made. The FA subcategories include light-density, heavy-density, automotive, and pipe insulation products. Each of these subcategories is characterized by a specific range of LOIs and densities, which gives each subcategory a different emission potential. Also, the control measures that can be used to reduce HAP emissions, for example, process modifications, are different for the FA subcategories. For all these reasons, the proposed standards have different emission limits for RS manufacturing lines and FA manufacturing lines and, within the FA subcategory, different emission limits for two FA subcategories.

2. Selection of Floor Technologies

In establishing these proposed emission standards, the add-on or process control technology representative of the MACT floor was determined for each subcategory. In general, these determinations were made on the basis of the performances of the technologies as reported by emission test results. The technologies determined to be the MACT floors are those determined to be the median of the technologies that are representative of the best performing 12 percent of the sources (for which there are emissions data) where there are more than 30 sources in the subcategory or the best performing five sources (for which there are emissions data) where there are fewer than 30 sources.

Of the 56 existing glass-melting furnaces, 12 are controlled by ESPs and 25 by baghouses (more than one furnace may be controlled by a single control device). PM emissions data are available for 18 furnaces. Because the number of furnaces is greater than 30, the MACT floor is represented by the average of the best performing 12 percent of the existing sources. Based on PM emissions data for the best performing 12 percent, baghouses and ESPs are equally effective in controlling PM emissions from glass-melting furnaces. Therefore, the MACT floor for existing glass-melting furnaces is represented by well-designed and operated baghouses and ESPs. An ESP representative of the MACT floor will have a specific collection area of 32 square meters per 1,000 actual cubic meters per hour (590 $ft^2$/1,000 acfm); a baghouse representative of the MACT floor is a pulse-jet baghouse with polyester bag material and an air-to-cloth ratio of 0.9 actual cubic meters per minute per square meter (3 acfm/$ft^2$). Because the same well-designed and -operated baghouses and ESPs are considered by EPA to be the best control technology for PM emissions, including metal HAP emissions, MACT for new furnaces

would be the same as the MACT floor for existing sources, a baghouse or an ESP.

HAP emissions control on RS forming processes is achieved by process modifications including resin and binder chemistry, fiberization technology, binder application, and forming conditions (docket item II-D–62). Resins are manufactured by an outside supplier or in-house using proprietary technologies to meet the specifications of the wool fiberglass manufacturer. Variables, such as the phenol-to-formaldehyde mole ratio, resin cook procedures, and catalysts, control both the free-formaldehyde and phenol levels as well as the types and relative percentage of phenol oligomers, all of which influence the levels of emissions and acceptability of a resin for a given process. Resin purchase specifications are typically written so that the free-formaldehyde content is ''not to exceed'' a certain level. In binder chemistry, the addition of various additives can reduce formaldehyde emissions. Urea, for example, added to the binder solution reacts with free formaldehyde, which can form stable, nonreversible urea formaldehyde compounds. In fiberization technology, temperature of the fiber veil is a critical process variable (a lower temperature may reduce HAP volatilization) affected by the fiberizer design and operation as well as by air and water treatment of the fiber veil. Binder application efficiency, the amount of binder that stays on the fiberglass, is increased by matching binder droplet size to the fiber diameter. Factors such as nozzle size geometry, configuration of the nozzle assembly, and location affect binder droplet size. Forming conditions, such as air volume and velocity affect binder application efficiency; too much or too little air flow can increase emissions. Each of these process modifications has been implemented on each of the 40 RS forming processes, although the degree to which each process modification has been implemented is different for each line. Add-on controls such as wet scrubbers or wet ESPs, primarily for PM control, were shown to be ineffective for gaseous HAP removal. Thus, the MACT floor for forming on existing RS manufacturing lines is represented by process modifications. Because the number of RS forming sources, 40, is greater than 30, the MACT floor is represented by the median of the best performing 12 percent of existing sources, or five sources (40x0.12=4.8). Based on HAP emissions data for the best performing 12 percent of existing sources, process modifications are the MACT floor for forming processes on RS manufacturing lines. Because of differences in application between companies and because of the proprietary nature of process modifications, a detailed description of forming process modifications cannot be presented.

Of the 43 curing ovens on RS manufacturing lines, 14 are controlled using incinerators. Based on the median of the top 12 percent, the thermal incinerator is the MACT floor for curing processes on existing RS manufacturing lines. Thermal incinerators have been shown to be highly effective in the control of emissions of organic HAPs and can achieve destruction efficiencies in excess of 98 percent with an adequately high temperature, good mixing, sufficient oxygen, and adequate residence time. Low organic concentration gas streams, such as those emitted from wool fiberglass curing processes, can be expected to have low heating values and require auxiliary fuel. Heat recovery through the use of a recuperative incinerator can reduce the energy requirements. Emission test measurements demonstrate that a thermal incinerator is at least 99 percent effective in the removal of formaldehyde and phenol from curing ovens. Based on the median of the best performing 12 percent of existing sources, a thermal incinerator representative of the MACT floor has a combustion temperature of 700 °C (1,300 °F) and a gas residence time of 1 second.

While the MACT floor for cooling is no control, cooling is included in the definition of RS manufacturing line, and therefore covered as part of the proposed RS manufacturing line standard. This inclusion prevents the shifting of emissions from forming and curing to the cooling section.

The EPA's analysis of MACT floor control options for existing RS manufacturing lines (described above) showed that the median of the best performing 12 percent of existing forming processes control HAP emissions using process modifications and the median of the best performing 12 percent of existing curing ovens are controlled by incinerators. As a result, the MACT floor for RS manufacturing lines is forming process modifications coupled with an incinerator for curing emissions. These controls were determined to be the most efficient for the control of HAPs among the various controls used in the industry for existing RS manufacturing lines. Based on the best controlled source, MACT for new RS manufacturing lines is more stringent than the MACT floor for existing RS manufacturing lines. MACT for new RS forming processes incorporates a higher degree of process modifications than is present on most existing forming processes but which is available to all the industry and can be designed into new forming processes. Because the MACT floor for existing curing ovens, incinerators operating at 700 °C (1,300 °F) and a gas residence time of 1 second, represent the best-controlled source, MACT for new curing ovens is the same as the MACT floor for existing curing ovens. None of the cooling processes are controlled for gaseous HAPs; as a result, MACT for new cooling processes is no control. Thus, EPA has determined that the MACT floor for new RS manufacturing lines is represented by a high level of process modifications on RS forming processes, incinerators on curing ovens, and no control on cooling processes.

As discussed earlier, none of the forming processes on FA manufacturing lines producing light-density or automotive products are equipped with HAP emission controls. Thus, the MACT floor is no control for forming processes on new and existing FA lines producing these products. The median of the best performing five lines (fewer than 30 sources) producing heavy-density products was determined to be no control; thus, the MACT floor for forming on existing FA manufacturing lines producing heavy-density products is no control. The best-controlled heavy-density forming process uses process modifications; therefore, process modifications are the basis for the MACT floor for the forming process on new FA manufacturing lines producing heavy-density products.

Emissions from the forming process on all FA manufacturing lines producing pipe insulation are controlled by the same level of process modifications. Therefore, process modifications are the basis for the MACT floor for the forming process on all new and existing FA manufacturing lines producing pipe insulation.

No control systems have been applied for the control of HAP emissions from curing ovens on FA manufacturing lines. Therefore, the MACT floor for curing ovens on new and existing FA manufacturing lines is no control. Although the MACT floor for curing is no control, curing is included in the definition of FA manufacturing line and, therefore, is covered as part of the proposed FA manufacturing line standard. This inclusion prevents the shifting of emissions from forming to the curing section.

The EPA's analysis of MACT floor control options for existing FA

manufacturing lines producing pipe product showed the best performing five forming processes (fewer than 30 sources) controlled by the same level of process modifications and curing ovens uncontrolled for HAP emissions. As a result, the MACT floor for existing FA manufacturing lines producing pipe products is process modifications for forming and no control for curing. Because the same level of process modifications is used on forming processes on all FA manufacturing lines producing pipe products and because no HAP controls are used on curing ovens, EPA has determined that the MACT floor for new FA manufacturing lines producing pipe products is the same as the MACT floor for existing sources.

As described above, the MACT floor for forming processes and curing ovens on existing FA manufacturing lines producing heavy-density products is no control; therefore, the MACT floor for existing FA manufacturing lines producing heavy-density products is no control. Based on the best-controlled source, MACT for new FA manufacturing lines producing heavy-density products is process modifications on forming. Because no curing ovens are controlled, the MACT floor for new curing ovens is no control, the same as the MACT floor for existing curing ovens. Thus, EPA has determined that the MACT floor for new FA manufacturing lines that produce heavy-density products is represented by process modifications on forming and no control on curing ovens.

The EPA considered requiring controls beyond the MACT floor for glass-melting furnaces and RS and FA manufacturing lines. However, based on an assessment of the impacts of beyond-the-floor controls, EPA concluded that the cost effectiveness of an incremental reduction in emissions would make additional controls unreasonable (docket items II–A–12, II–B–17, II–B–22).

3. Emission Limits

As part of this rulemaking, emissions data were collected from tests at 10 wool fiberglass plants and from other test data supplied by NAIMA to characterize uncontrolled and controlled emissions from the various processes and evaluate the effectiveness of existing control systems. Sites tested during this rulemaking were selected based on their use of the control technology identified as candidates for MACT floor. Using the test data, EPA established the MACT floor emission limits for existing and new sources.

Emissions data were evaluated for 18 furnaces controlled by baghouses and ESPs (docket item II–I–20). Emissions ranged widely for both gas and electric furnaces and for both well-designed and well-operated baghouses and ESPs. Controlled PM emissions from all furnaces ranged from 0.01 to 0.54 kg/Mg (0.02 to 1.08 lb/ton) of glass pulled. Emissions of PM from baghouse-controlled furnaces ranged from 0.01 to 0.54 kg/Mg (0.02 to 1.08 lb/ton) of glass pulled and from 0.01 to 0.25 kg/Mg (0.02 to 0.5 lb/ton) of glass pulled for ESP-controlled furnaces. Controlled electric furnace PM emissions ranged from 0.01 to 0.35 kg/Mg (0.02 to 0.7 lb/ton) of glass pulled; controlled gas furnace emissions ranged from 0.01 to 0.54 kg/Mg (0.02 to 1.08 lb/ton). In proposing emission limits, EPA took into consideration the wide variation in controlled emissions for both gas and electric furnaces and for well-designed and operated baghouses and ESPs. The proposed PM emission limits represent a level that can be achieved by all existing furnaces that are controlled by well-designed and operated baghouses and ESPs. Because MACT for new and existing furnaces is the same, EPA proposed the same PM emission limit, 0.25 kg of PM/Mg (0.5 lb of PM/ton) of glass pulled, for new furnaces as for existing furnaces. The proposed PM emission limit for existing glass-melting furnaces, 0.25 kg/Mg (0.5 lb/ton) of glass pulled, is the same as the current NSPS level for gas-fired glass-melting furnaces in the wool fiberglass industry (see 40 CFR part 60, subpart CC). Both baghouses and ESPs are used to control emissions from gas-fired furnaces. In proposing the same emission limit for new and existing furnaces, EPA recognizes that both baghouses and ESPs used on existing furnaces are already highly efficient at controlling PM emissions and there is no basis for a more stringent emission limit based on this control technology.

The limited emission test data for metal HAPs show their emissions to be low, often below the detection limits of the test method. In cooperative efforts by EPA and NAIMA, tests for metal HAPs were performed at six glass-melting furnaces (docket item II–B–15). For a medium capacity controlled furnace (27,000 Mg/yr [30,000 ton/yr]), emissions of arsenic would be 0.2 lb/yr, chromium emissions would range from 1.2 to 18 lb/yr, and lead emissions would be 0.6 to 2.1 lb/yr. Total metal HAP emissions from a large (50,000 Mg/yr [55,000 ton/yr]) controlled model gas-fired furnace are an estimated 60 lb/yr.

For RS forming processes, the number of sources is 40. Because the number of sources is greater than 30, the MACT floor is represented by the median of the best performing 12 percent of existing sources, or five sources. Emissions of formaldehyde from forming processes representative of the best performing five were measured (docket items II–B–15, II–B–21, II–D–64). Emissions of formaldehyde from these five forming processes were 0.15, 0.33, 0.49, 0.49, and 0.6 kg/Mg (0.3, 0.65, 0.97, 0.97, and 1.2 lb/ton) of glass pulled. Using these results, the median emission level is 0.49 kg of formaldehyde per megagram (0.97 lb of formaldehyde per ton) of glass pulled. The emission level selected as representative of new forming processes, 0.33 kg of formaldehyde per megagram (0.65 lb of formaldehyde per ton) of glass pulled, reflects the performance of the best process modification available to the industry. The emission level of 0.15 kg/Mg (0.3 lb/ton) is from a proprietary forming process not available to the rest of the industry. Therefore, it was not considered MACT for new sources. Emissions test results for RS forming processes are summarized in Table 4.

TABLE 4.—SUMMARY OF EMISSION TEST RESULTS ON RS MANUFACTURING LINES

[Docket Items II–B–15, II–B–21, II–D–64]

| Process and Plant | Control | Average Formaldehyde Emissions | |
|---|---|---|---|
| | | kg/mg | lb/ton |
| Forming | Process modifications[a] | | |
| Plant P | | 0.15 | 0.3 |
| Plant S | | 0.33 | 0.65 |
| Plant T | | 0.6 | 1.2 |
| Plant U | | 0.49 | 0.97 |

TABLE 4.—SUMMARY OF EMISSION TEST RESULTS ON RS MANUFACTURING LINES—Continued

[Docket Items II–B–15, II–B–21, II–D–64]

| Process and Plant | Control | Average Formaldehyde Emissions | |
|---|---|---|---|
| | | kg/mg | lb/ton |
| Plant V | | 0.49 | 0.97 |
| Curing | | | |
| Plant M | Incinerator (1300 °F, 0.5-s residence time) | | |
| | Inlet | 0.497 | 0.994 |
| | Outlet | 0.00039 | 0.00078 |
| Plant N | Incinerator (1500 °F, 2.5-s residence time) | | |
| | Outlet | 0.00146 | 0.00292 |
| Cooling | | | |
| Plant O | Uncontrolled | 0.004 | 0.007 |

[a] Process modifications include resin chemistry, binder chemistry, fiberization technology, binder application, forming conditions.

RS curing processes, controlled by incinerators, were tested at two plants using the technology that EPA determined represented the MACT floor for RS curing, resulting in one measurement of 0.0004 kg of formaldehyde per megagram (0.001 lb of formaldehyde per ton) of glass pulled and another measurement of 0.0015 kg of formaldehyde per megagram (0.003 lb of formaldehyde per ton) of glass pulled (docket item II–B–15). Because results from just two tests were available, the higher result (0.0015 kg of formaldehyde per megagram [0.003 lb of formaldehyde per ton] of glass pulled) was chosen to represent MACT floor emissions from existing and new curing ovens. The only test result for emissions from cooling operations was 0.005 kg of formaldehyde per megagram (0.01 lb of formaldehyde per ton) of glass pulled (docket item II–B–15); this emission level was selected to represent the emissions from new and existing cooling processes. Emissions data for RS curing and cooling processes are summarized in Table 4.

The proposed formaldehyde emission limit for existing RS manufacturing lines, 0.6 kg of formaldehyde per megagram (1.2 lb of formaldehyde per ton) of glass pulled, is based on the combined manufacturing line emission levels from forming, curing, and cooling with a 20 percent allowance to account for the use of short-term test data as compared to long-term continuous monitoring data. In metric units, the emission limit for existing RS manufacturing lines was calculated as follows: $(0.49 + 0.0015 + 0.005) \times 1.20 = 0.6$ kg of formaldehyde per megagram of glass pulled. In English units, the emission limit for existing RS manufacturing lines was calculated as follows: $(0.97 + 0.003 + 0.01) \times 1.20 = 1.2$ lb of formaldehyde per ton of glass pulled. The proposed emission limit for new RS manufacturing lines, 0.4 kg of formaldehyde per megagram (0.8 lb of formaldehyde per ton) of glass pulled, was derived using 0.33 kg/Mg (0.65 lb/ton) for the forming emission level and the same emission levels for curing and cooling as mentioned above. In metric units, the emission limit for new RS manufacturing lines was calculated as follows: $(0.33 + 0.0015 + 0.005) \times 1.20 = 0.4$ kg of formaldehyde per megagram of glass pulled. In English units, the emission limit for new RS manufacturing lines was calculated as follows: $(0.65 + 0.003 + 0.01) \times 1.20 = 0.8$ lb of formaldehyde per ton of glass pulled.

For existing and new FA manufacturing lines that produce pipe insulation, the MACT floor for forming is the same process modification, which has been applied to an equal degree to all forming processes. Because there are no formaldehyde emission controls on curing on FA manufacturing lines producing pipe insulation, the MACT floor for curing is no control. Emissions of formaldehyde have been measured from forming and curing on six FA manufacturing lines producing pipe insulation where the same MACT floors for forming and curing were used (see Table 5). Results from short-term formaldehyde emission tests on these FA manufacturing lines were 1.7, 2.4, 2.4, 2.4, 3.2 and 3.4 kg/Mg (3.4, 4.7, 4.8, 4.9, 6.5, and 6.8 lb/ton) of glass pulled (docket item II–D–54). Even though the same control technologies and methods on manufacturing lines (forming and curing) producing the same product were used, the emissions varied widely from 3.4 to 6.8 lb/ton. Because the test data for the same control technologies and methods that represent the MACT floors show a range of emissions and because emissions tests used short term tests (3 hrs) while the MACT standard will need to be met at all times, EPA has set the proposed formaldehyde emission limit for new and existing FA manufacturing lines producing pipe insulation at 3.4 kg of formaldehyde per megagram (6.8 lb of formaldehyde per ton) of glass pulled. The EPA believes that this emission rate is the level that can be consistently achieved by the control technologies and methods that are the MACT floor.

TABLE 5.—SUMMARY OF EMISSIONS DATA FOR FA MANUFACTURING LINES

[Docket item II–D–54]

| Process and product | Control | Formaldehyde emissions | |
|---|---|---|---|
| | | kg/mg | lb/ton |
| Heavy density | Forming—process modifications | 2.3 | 4.6 |
| | Curing—no control | 3.9 | 7.8 |

TABLE 5.—SUMMARY OF EMISSIONS DATA FOR FA MANUFACTURING LINES—Continued

[Docket item II–D–54]

| Process and product | Control | Formaldehyde emissions | |
|---|---|---|---|
| | | kg/mg | lb/ton |
| Pipe | Forming—process modifications | 1.7 | 3.4 |
| | Curing—no control | 2.35 | 4.7 |
| | | 2.4 | 4.8 |
| | | 2.45 | 4.9 |
| | | 3.25 | 6.5 |
| | | 3.4 | 6.8 |

In the case of new FA manufacturing lines that produce heavy-density product, the MACT floor is represented by process modifications on forming processes, which have been applied to the same degree on two forming processes, and no control on curing. The emission limit selected for new FA manufacturing lines producing heavy-density product is based on the results of emissions testing on forming and curing processes on two FA manufacturing lines producing heavy-density products where the same process modifications have been applied to forming and both curing ovens are uncontrolled (see Table 5). Emissions of formaldehyde from these two FA manufacturing lines were 2.3 and 3.9 kg of formaldehyde per megagram (4.6 and 7.8 lb of formaldehyde per ton) of glass pulled (docket item II–D–54). Because of the small number of tests, the use of short-term test data (rather than long-term continuous monitoring data), and to allow for the variability in emission results from forming processes using the same floor level process modifications, the 3.9 kg/Mg (7.8 lb/ton) level was chosen to represent MACT floor emissions from new FA manufacturing lines manufacturing heavy-density products.

*E. Selection of*

*Monitoring Requirements*

Several monitoring options were identified and evaluated for sources in wool fiberglass manufacturing facilities. Under the most stringent option, a continuous opacity monitor (COM) would be required for monitoring PM emissions from glass-melting furnaces, and a continuous emission monitor (CEM) would be required for measurements of formaldehyde, phenol, and methanol. No EPA-approved continuous monitoring method is available for measuring PM, which is used as a surrogate for metal HAP emissions.

Where continuous monitors do not exist or are too expensive, monitoring would rely on parametric monitoring of one or more parameters associated with the production process or control device, coupled with corrective action for operating problems. Potential parameters could include incinerator operating temperature, ESP electrical readings, and binder formulation parameters. A bag leak detection system could be used to monitor PM emissions from baghouses and ensure proper operation and maintenance of the control devices. Visible emissions observations by Method 9 could be required on a daily or weekly basis to ensure proper operation of control devices on glass-melting furnaces. For this industry, however, opacity is not considered a good indicator of compliance because of the low grain loadings. Therefore, this option was not considered further.

A one-time performance test is necessary to demonstrate compliance with the applicable emission limit for glass-melting furnaces and manufacturing lines. Using the surrogate approach, the owner or operator would measure PM emissions from the furnace control system using EPA Method 5 in appendix A to 40 CFR part 60 and § 63.1389 (Test methods and procedures) and formaldehyde emissions using EPA Method 316 or Method 318. Methods 316 and 318 are also being proposed today. The sampling and analytical cost for a three-run performance test is estimated at $8,000 for Method 5 and $9,000 for Method 316. The owner or operator could also use EPA Method 318, for measuring formaldehyde emissions for compliance purposes as well measuring other pollutant emissions. The method is also validated for use as a CEM. The sampling and analytical cost for three Fourier Transform Infrared (FTIR) gas-phase extractive runs, including other tests needed in conjunction with Method 318, is about $15,000.

During the performance tests for each glass-melting furnace and each RS and FA manufacturing line subject to the standard, the owner or operator would monitor and record the glass pull rate and determine the arithmetic mean for each test run. A determination of compliance during the performance tests would be based on the average of the three individual test runs.

Each owner or operator subject to the proposed NESHAP would submit a written operations, maintenance, and monitoring plan as part of their application for a part 70 permit. The plan would include procedures for the proper operation and maintenance of processes and add-on control devices used to comply with the proposed emission limits as well as the corrective actions to be taken when a process or control device parameter deviates from allowable levels established during performance testing. The plan would identify the process parameters and control device parameters that would be monitored to determine compliance, a monitoring schedule, and procedures for keeping records to document compliance. Additional information may be required depending on the add-on control device or process that is used to comply with the emission standard.

The owner or operator of each furnace controlled by an ESP would submit as part of their operations, maintenance, and monitoring plan the ESP parameters (e.g., secondary voltage of each electrical field) to be monitored, a monitoring schedule, recordkeeping procedures to document compliance, and how the ESP is to be maintained and operated. The proposed monitoring provisions specify that corrective actions be taken according to the procedures in the operations, maintenance, and monitoring plan in the event of a deviation in any 3-hour average ESP parameter outside the range established during performance testing. Failure to initiate corrective actions within 1 hour of the deviation would be considered noncompliance. If the ESP

parameter values are outside the range established during the performance test for more than 5 percent of total operating time in a 6-month reporting period, the owner or operator would implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[7] If the ESP parameter values are outside the range for more than 10 percent of total operating time in a 6-month reporting period, the owner or operator would be in violation of the standard.

Following the performance test, the owner or operator of each glass-melting furnace controlled by a baghouse would monitor emissions exiting the PM control system using a bag leak detection system since opacity is not a good indicator of performance at the low, controlled PM levels characteristic of these sources. The bag leak detection system must be equipped with an alarm system that will sound when an increase in PM emissions is detected. On a positive pressure baghouse where more than a single bag leak detection system probe may be necessary, the instrumentation and alarm for the bag leak detection system may be shared among detectors. Provisions are included in the rule regarding installation, calibration, and operation of the system. The monitoring provisions specify that when the bag leak detection system alarm is activated, the baghouse be inspected for the cause of the alarm and that corrective action be initiated according to the procedures in the operations, maintenance, and monitoring plan. Failure to initiate corrective actions within 1 hour of the alarm would be considered noncompliance. If the alarm is activated for more than 5 percent of the total operating time during the 6-month reporting period, the owner or operator must implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[8]

The owner or operator of a glass-melting furnace whose emissions are not exhausted to an air pollution control device for PM control would submit as part of their operations, maintenance, and monitoring plan a description of how the furnace is to be operated and maintained, the furnace parameter(s) to be monitored for compliance purposes, a monitoring schedule, and recordkeeping procedures for documenting compliance. On cold top electric furnaces, for example, the air temperature above the glass melt may be monitored as an indicator of furnace performance. Corrective action would be taken if the range of acceptable values for the selected operating parameter(s), such as air temperature above the glass melt in a cold top electric furnace, established during the initial performance test, is exceeded based on any 3-hour average of the monitored parameter. A deviation outside the established range would trigger an inspection of the glass-melting furnace to determine the cause of the deviation and the initiation of corrective actions according to the procedures in the facility's operations, maintenance, and monitoring plan. Failure to initiate corrective actions within 1 hour of the deviation would be considered noncompliance. If the furnace operating parameter values are outside the range established during the performance test for more than 5 percent of total operating time in a 6-month reporting period, the owner or operator would implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[9] If the furnace parameter values are outside the range for more than 10 percent of total operating time in a 6-month reporting period, the owner or operator would be in violation of the standard.

The owner or operator would perform the one-time performance test for each new and existing RS manufacturing line that produces building insulation (defined as having an LOI of less than 8 percent and a density of less than 32 $kg/m^3$ [2 $lb/ft^3$]) while manufacturing building insulation. Similarly, performance tests would be performed for each new FA manufacturing line that produces heavy-density (defined as having an LOI of 11 to 25 percent and a density of 8 to 48 $kg/m^3$ [0.5 to 3 $lb/ft^3$]) or pipe insulation products (defined as having an LOI of 8 to 14 percent and a density of 48 to 96 $kg/m^3$ [3 to 6 $lb/ft^3$]) and each existing FA manufacturing line that produces pipe insulation products.

During the performance test on RS and FA manufacturing lines, the owner or operator would monitor and record the free-formaldehyde content of each resin lot, the binder formulation of each batch used during the tests, and the product LOI and density for each line tested. The performance test would be run using the resin with the highest free formaldehyde content that is expected to be used on each manufacturing line subject to the standard. After the initial performance test, if an owner or operator wants to use a resin with a higher free-formaldehyde content or change the binder formulation, another performance test must be conducted to verify compliance. Following the performance test, the owner or operator would maintain records of the free-formaldehyde content of each incoming resin lot, the formulation of each binder batch, and daily product LOI and product density. If resin free-formaldehyde content exceeds the performance test levels, the owner or operator would be in violation of the standard. Under the proposed NESHAP, the binder formulation must not deviate from the formulation specifications used during the performance test.

If the owner or operator of an RS or an FA manufacturing line plans to use forming process modifications to comply with the proposed standard, the operations, maintenance, and monitoring plan must specify the process parameters (e.g., LOI, binder solids, and/or binder application rate) to be monitored and their correlation with formaldehyde emissions, the monitoring schedule, and recordkeeping procedures for documenting compliance, in addition to procedures for the proper operation and maintenance of the process modifications. The owner or operator would monitor forming process parameters by adhering to the procedures detailed in their operations, maintenance, and monitoring plan. Should the process parameter(s) deviate from the range established during the performance test, the owner or operator must inspect the process to determine the cause of the deviation and initiate corrective action within 1 hour of the deviation. If the process parameter(s) are outside the performance test range for more than 5 percent of total operating time during a 6-month reporting period, the owner or operator would implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[10] If the process parameter(s) are outside the range for more than 10 percent of total operating time in a 6-month reporting period, the owner or operator would be in violation of the standard.

If a wet scrubbing control device is used to control formaldehyde emissions from an RS or FA manufacturing line subject to the standard, the owner or operator must establish during the performance test the pressure drop across each scrubber, the scrubbing liquid flow rate to each scrubber, and the identity and feed rate of any chemical added to the scrubbing liquid. If the owner or operator plans to operate

[7] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[8] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[9] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[10] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

the scrubber in such a way that the pressure drop, liquid flow rate, or chemical additive or chemical feed rate exceeds the range of values established during the performance tests, additional testing would be necessary to demonstrate compliance. Following the initial performance tests, an owner or operator who uses a wet scrubbing control device to control formaldehyde emissions from an RS or FA manufacturing line would record the pressure drop across each scrubber, the scrubbing liquid flow rate to each scrubber, and the identity and feed rate of any chemical added to the scrubbing liquid. The proposed monitoring provisions also specify that corrective action be taken if the range of acceptable values established during the initial performance test is exceeded. Deviation by any 3-hour average scrubber parameter outside the established range would cause the owner or operator to inspect the process to determine the cause of the deviation and to initiate corrective actions according to the procedures in the operations, maintenance, and monitoring plan. Failure to initiate corrective actions within 1 hour of the deviation would be considered noncompliance. If any scrubber parameter is outside the performance test range for more than 5 percent of the total operating time in a 6-month reporting period, the owner or operator would implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[11] If any of the scrubber parameter values are outside the range for more than 10 percent of total operating time in a 6-month reporting period, the owner or operator would be in violation of the standard.

If an incinerator is used to comply with the applicable emission limits for manufacturing lines, the incinerator operating temperature would have to be continuously monitored and recorded using a device such as a thermocouple with a strip chart recorder or data logger. During the performance test, the owner or operator would continuously monitor the temperature and record the average temperature during each 1-hour test. The average of the three 1-hour test runs would be used to monitor compliance. Following the performance tests, the owner or operator would maintain the temperature so that any 3-hour average does not fall below the temperature established during the performance test. If the temperature falls below the average, the owner or operator would be considered out of compliance. The operations, maintenance, and monitoring plan for an incinerator would include procedures to follow in the event of a temperature drop. Examples of procedures that might be included in the plan for incinerators include: (1) inspection of burner assemblies and pilot sensing devices for proper operation and cleaning; (2) adjusting primary and secondary chamber combustion air; (3) inspecting dampers, fans, blowers, and motors for proper operation, and (4) shutdown procedures.

Under the proposed NESHAP, the owner or operator would be allowed to change the control device or process parameter levels established during the initial performance tests. The owner or operator would be permitted to expand the range or increase the level of any add-on control device or process parameter level used to monitor compliance by performing additional emission testing to demonstrate that at the new levels, the affected source complies with the emission limits in §§ 63.1382, 63.1383, or 63.1384.

The EPA general provisions in 40 CFR part 63, subpart A, require each owner or operator to develop and implement a startup, shutdown, and malfunction plan. Under the proposed NESHAP, the plan would include procedures for routine and long-term maintenance of the control devices according to the manufacturer's instructions or recommendations.

The EPA believes that these monitoring provisions will provide sufficient information needed to determine compliance or operating problems at the source. At the same time, the provisions are not labor intensive, do not require expensive, complex equipment, and are not burdensome in terms of recordkeeping needs.

*F. Selection of Test Methods*

Under the proposed NESHAP, the owner or operator conducts a one-time performance (emissions) test to determine initial compliance with the emission limits for glass-melting furnaces and manufacturing lines. Under the proposed rule, PM serves as a surrogate for HAP metals and formaldehyde, a HAP, serves as a surrogate measure for all organic HAPs.

The owner or operator would measure PM emissions from the control device (baghouse or ESP) exhaust outlet for the furnace or from the furnace exhaust outlet where no controls are in place using EPA Method 5 in appendix A to 40 CFR part 60, ''Determination of Particulate Emissions from Stationary Sources,'' and § 63.1388 (Test methods and procedures) of the proposed rule. To prevent sulfate formation in the sampling apparatus, the method specifies that the probe and filter holder be maintained at a temperature no greater than 177±14 °C (350±25 °F). To determine emissions of formaldehyde from RS manufacturing lines, the owner or operator would measure emissions of formaldehyde at the exhaust outlets of the forming, curing, and cooling processes and sum the measurements to determine manufacturing line emissions. To measure formaldehyde emissions from FA manufacturing lines subject to this standard, emissions from the forming process and from curing would be measured and the results summed to determine manufacturing line emissions. Formaldehyde emissions may be measured using EPA Method 316, ''Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries,'' with formaldehyde analyses by spectrophotometry using the modified pararosaniline method. Method 316 is being proposed concurrently with this proposed rule. Method 316 is a manual test method for the measurement of formaldehyde. The method was developed by the industry trade group, NAIMA. The method was validated at a mineral wool facility, which has been determined to be a similar source, according to the procedures in Test Method 301, 40 CFR part 63, appendix A. In Method 316, gaseous and particulate pollutants are withdrawn isokinetically from an emission source and are collected in high purity water. Formaldehyde present in the emissions is highly soluble in water. The water containing formaldehyde is then analyzed using the modified pararosaniline method. Formaldehyde in the sample reacts with acidic pararosaniline and sodium sulfite, forming a purple chromophore. The intensity of the purple color, measured spectrophotometrically, provides a measure of the formaldehyde concentration in the sample.

Formaldehyde emissions can also be measured using EPA Method 318, ''Extractive FTIR Method for the Measurement of Emissions from the Mineral Wool and Wool Fiberglass Industries.'' The Fourier Transform Infrared (FTIR) spectrometry method is also being proposed today for addition to appendix A to 40 CFR part 63. The FTIR spectrometry method uses a multicomponent measurement system to quantify a wide variety of pollutants in one test. Method 318 is an extractive

[11] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

FTIR procedure and has been validated by the EPA according to Method 301 requirements. The Method 318 procedure involves removing a slipstream of stack gas and filling a sample cell with the stack gas sample, which is then analyzed by FTIR spectrometry.

Methods for determining the product LOI and the free formaldehyde content of resins are also contained in the proposed rule. The owner or operator also may use other alternative test methods subject to approval by the Administrator.

Using the results of each test run and information generated during the performance tests (i.e., average glass pull rate in tons per hour for each test run), the owner or operator would then use the equations and procedures in the rule to convert the emission rate of PM and formaldehyde into the units of the standard.

*G. Solicitation of Comments*

The EPA seeks full public participation in arriving at its final decisions and encourages comments on all aspects of this proposal from all interested parties. Full supporting data and detailed analyses should be submitted with comments to allow EPA to make maximum use of the comments. All comments should be directed to the Air and Radiation Docket and Information Center, Docket No. A–95–24 (see **ADDRESSES**). Comments on this notice must be submitted on or before the date specified in **DATES**.

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments and clearly label it ''Confidential Business Information.'' Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. William Neuffer, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Information Manager, OAQPS/MD–13; Research Triangle Park, North Carolina 27711. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the submission may be made available to the public without further notice to the commenter.

## VI. Administrative Requirements

*A. Docket*

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency materials, will serve as the record for judicial review. [See section 307(d)(7)(A) of the Act.]

*B. Public Hearing*

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Act. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement (see **DATES** and **ADDRESSES**). Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

*C. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a ''significant regulatory action'' within the meaning of Executive Order 12866, thus OMB review of the proposed regulation is not required. However, an economic impact analysis of the proposed NESHAP was prepared and is available in the docket.

*D. Enhancing the Intergovernmental Partnership Under Executive Order 12875*

In compliance with Executive Order 12875, we have involved State regulatory experts in the development of this proposed rule. No tribal governments are believed to be affected by this proposed rule. State and local governments are not directly impacted by the rule, i.e., they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement the rule, e.g., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the resources burden of implementing the rule. Comments have been solicited from States and have been carefully considered in the rule development process. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the development of the final rule.

*E. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995 (109 Stat. 48), requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative for State, local, and tribal governments and the private sector that

achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

This rule is based partially on pollution prevention alternatives and has been applied on a manufacturing line basis. Therefore, it is the least costly and burdensome approach for industry since the purchase of add-on control devices will be avoided by most of the industry. The total nationwide capital cost for the standard is estimated at $19.5 million; annual nationwide cost is estimated at $6.3 million/yr. Because this proposed rule, if promulgated, is estimated to result in the expenditure by State and local governments, in aggregate, or by the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement. Because small governments will not be affected by this rule, the Agency is not required to develop a plan with regard to small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

*F. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because no company that owns sources in the source category meets the criteria for small business. Companies in the wool fiberglass manufacturing industry are part of SIC 3296. Companies in SIC 3296 are classified as small by the U.S. Small Business Administration if the company has fewer than 750 employees. None of the firms in the industry have fewer than 750 employees and thus, are not small businesses by this criterion. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*G. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1795.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–2740.

The proposed information requirements include the notification, recordkeeping, and reporting requirements of the NESHAP general provisions, authorized under section 114 of the Act, which are mandatory for all owners or operators subject to national emission standards. All information submitted to EPA for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. The proposed rule does not require any notifications or reports beyond those required by the general provisions. Proposed subpart NNN does require additional records of specific information needed to determine compliance with the rule. These include records of: (1) Any bag leak detection system alarm, including the date and time, with a brief explanation of the cause of the alarm and the corrective action taken; (2) ESP parameter values, such as secondary voltage for each electrical field, including any deviation outside the range established during the performance test and a brief explanation of the cause of the deviation and the corrective action taken; (3) uncontrolled furnace operating parameters, such as air temperature above the glass melt of cold top electric furnaces, including any exceedances of the established parameter values and a brief explanation of the cause and the corrective action taken; (4) the free-formaldehyde content of the resin being used; (5) the formulation of the binder being used; (6) the LOI and density for each bonded product manufactured on an RS or FA manufacturing line subject to the proposed NESHAP; (7) forming process modification parameters, including any period when the parameter levels are inconsistent with levels established during the performance test with a brief explanation of the cause and corrective actions taken; (8) pressure drop, liquid flow rate, and information on chemical additives to the scrubbing liquid including any period when the levels established during the performance tests are exceeded and a brief explanation of the cause and the corrective action taken; and (9) incinerator operating temperature, including any period when the temperature falls below the level established during the performance test, with a brief explanation of the cause of the deviation and the corrective action taken. Each of these information requirements is needed to determine compliance with the standard.

The annual public reporting and recordkeeping burden for this collection is estimated at 17,800 labor hours per year at an annual cost of $571,000. This estimate includes a one-time performance test and report (with repeat tests where needed); one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports of any event in which the procedures in the plan were not followed; semiannual excess emissions reports; notifications; and recordkeeping. The annualized capital cost associated with monitoring requirements is estimated at $41,000. The operation and maintenance cost is estimated at $3,000/yr.

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 purpose of collecting, validating, verifying, processing, maintaining, disclosing, and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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.

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 Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked ''Attention: Desk Office for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after March 31, 1997, a comment to OMB is most likely to have its full effect if OMB

receives it by April 30, 1997. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*H. Clean Air Act*

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

*I. Pollution Prevention Act*

The Pollution Prevention Act of 1990 establishes that pollution should be prevented or reduced at the source whenever feasible. The emission standards for RS and FA manufacturing lines subject to the standard are formulated as line standards, i.e., the sum of the individual forming, curing, and cooling MACT floor emission levels for RS manufacturing lines and forming and curing MACT floor emission levels for certain FA manufacturing lines. By formulating the standard as a line standard, tradeoffs are allowed for existing facilities that will accomplish the same environmental results at lower costs and will encourage process modifications and pollution prevention alternatives. According to the industry, new RS manufacturing lines may be able to meet the line standard without the use of costly incinerators with their energy and other environmental impacts, such as increased nitrogen oxides ($NO_X$)and sulfur oxides ($SO_X$) emissions, by incorporating pollution prevention measures, such as binder reformulation and improved binder application efficiency. Pollution prevention alternatives will also increase binder utilization efficiency and reduce production costs for industry. In selecting the format of the emission standard for emissions from manufacturing lines, the EPA considered various alternatives such as setting separate emission limits for each process, i.e., forming, curing, and cooling. A line standard gives the industry greater flexibility in complying with the proposed emission limits and is the least costly because industry can avoid the capital and annual operating and maintenance costs associated with the purchase of add-on control equipment by using pollution prevention measures.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Wool fiberglass manufacturing.

Dated: February 21, 1997.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart NNN to read as follows:

### Subpart NNN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

Sec.
63.1380 Applicability.
63.1381 Definitions.
63.1382 Emission standards for glass-melting furnaces.
63.1383 Emission standards for rotary spin manufacturing lines.
63.1384 Emission standard for flame attenuation manufacturing lines.
63.1385 Compliance dates.
63.1386 Monitoring requirements.
63.1387 Performance test requirements.
63.1388 Test methods and procedures.
63.1389 Notification, recordkeeping, and reporting requirements.
63.1390 Delegation of authority.
63.1391 63.1399 [Reserved].
Table 1 to Subpart NNN—Applicability of general provisions (40 CFR part 63, subpart A) to subpart NNN.
Appendix A to Subpart NNN—Method for the determination of LOI
Appendix B to Subpart NNN—Free formaldehyde analysis of insulation resins by hydroxylamine hydrochloride
Appendix C to Subpart NNN—Method for the determination of product density

## Subpart NNN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

### § 63.1380 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, the requirements of this subpart apply to the owner or operator of each wool fiberglass manufacturing facility.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants (HAPs), as measured according to the methods and procedures in this subpart, emitted from the following sources at a wool fiberglass manufacturing facility subject to this subpart:

(1) Each new and existing glass-melting furnace located at a wool fiberglass manufacturing facility;

(2) Each new and existing rotary spin wool fiberglass manufacturing line producing a bonded wool fiberglass building insulation product; and

(3) Each new and existing flame attenuation wool fiberglass manufacturing line producing a bonded pipe product and each new flame attenuation wool fiberglass manufacturing line producing a bonded heavy-density product.

(c) The requirements of this subpart do not apply to the owner or operator of a wool fiberglass manufacturing facility that the owner or operator demonstrates, to the satisfaction of the Administrator, is not a major source as defined in § 63.2 of the general provisions.

(d) The provisions of 40 CFR Part 63, Subpart A—General Provisions that apply and those that do not apply to this subpart are specified in Table 1 of this subpart.

### § 63.1381 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, or in this section as follows:

*Bag leak detection system* means systems that include, but are not limited to, devices using triboelectric, light scattering, and other effects to monitor relative or absolute particulate matter (PM) emissions.

*Bonded* means wool fiberglass to which a phenol-formaldehyde binder has been applied.

*Building insulation* means the bonded wool fiberglass insulation, having a loss on ignition of less than 8 percent and a density of less than 32 kilograms per cubic meter ($kg/m^3$) (2 pounds per cubic foot [$lb/ft^3$]), most frequently manufactured (as measured by hours of production times glass pull rate) during the preceding calendar year.

*Flame attenuation* means a process used to produce wool fiberglass where molten glass flows by gravity from melting furnaces, or pots, to form filaments that are drawn down and attenuated by passing in front of a high-velocity gas burner flame.

*Glass-melting furnace* means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations,

superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming processes. The forming apparatus, including flow channels, is not considered part of the *glass-melting furnace.*

*Glass pull rate* means the mass of molten glass used in the manufacture of wool fiberglass at a single manufacturing line in a specified time period.

*HAP* means those chemicals and their compounds that are included on the list of hazardous air pollutants in section 112(b) of the Clean Air Act.

*Heavy-density product* means bonded wool fiberglass insulation manufactured on a flame attenuation manufacturing line and having a loss on ignition of 11 to 25 percent and a density of 8 to 48 $kg/m^3$ (0.5 to 3 $lb/ft^3$).

*Incinerator* means an enclosed air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases.

*Loss on ignition* (LOI) means the percent decrease in weight of wool fiberglass after it has been ignited. The LOI is used to monitor the weight percent of binder in wool fiberglass.

*Manufacturing line* means the manufacturing equipment comprising any combination of a forming section, where molten glass is fiberized and a fiberglass mat is formed; a curing section, where binder resin in the mat is thermally set; and a cooling section, where the mat is cooled.

*Pipe product* means bonded wool fiberglass insulation manufactured on a flame attenuation manufacturing line and having a loss on ignition of 8 to 14 percent and a density of 48 to 96 $kg/m^3$ (3 to 6 $lb/ft^3$).

*Rotary spin* means a process used to produce wool fiberglass building insulation by forcing molten glass through numerous small orifices in the side wall of a spinner to form continuous glass fibers that are then broken into discrete lengths by high-velocity air flow. Any process used to produce bonded wool fiberglass building insulation by a process other than flame attenuation is considered rotary spin.

*Wool fiberglass* means a thermal, acoustical, or other insulation material composed of glass fibers made from glass produced or melted at the same facility where the manufacturing line is located.

**§ 63.1382 Emission standards for glass-melting furnaces.**

On or after the date the initial performance test is completed or required to be completed under § 63.7, whichever date is earlier, the owner or operator shall not discharge or cause to be discharged into the atmosphere in excess of 0.25 kilogram (kg) of particulate matter (PM) per megagram (Mg) (0.5 pound [lb] of PM per ton) of glass pulled for each new or existing glass-melting furnace.

**§ 63.1383 Emission standards for rotary spin manufacturing lines.**

On or after the date the initial performance test is completed or required to be completed under § 63.7, whichever date is earlier, the owner or operator shall not discharge or cause to be discharged into the atmosphere in excess of:

(a) 0.6 kg of formaldehyde per megagram (1.2 lb of formaldehyde per ton) of glass pulled for each existing rotary spin manufacturing line; and

(b) 0.4 kg of formaldehyde per megagram (0.8 lb of formaldehyde per ton) of glass pulled for each new rotary spin manufacturing line.

**§ 63.1384 Emission standards for flame attenuation manufacturing lines.**

On or after the date the initial performance test is completed or required to be completed under § 63.7, whichever date is earlier, the owner or operator shall not discharge or cause to be discharged into the atmosphere in excess of:

(a) 3.9 kg of formaldehyde per megagram (7.8 lb of formaldehyde per ton) of glass pulled for each new flame attenuation manufacturing line that produces heavy-density wool fiberglass; and

(b) 3.4 kg of formaldehyde per megagram (6.8 lb of formaldehyde per ton) of glass pulled from each existing or new flame attenuation manufacturing line that produces pipe product wool fiberglass.

**§ 63.1385 Compliance dates.**

(a) *Compliance dates.* The owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of this subpart by no later than:

(1) (Date 3 years after effective date of the final rule) for an existing glass-melting furnace, rotary spin manufacturing line, or flame attenuation manufacturing line; or

(2) Upon startup for a new glass-melting furnace, rotary spin manufacturing line, or flame attenuation manufacturing line.

(b) *Compliance extension.* The owner or operator may request from the Administrator, or the applicable regulatory authority in a State with an approved permit program, an extension of the compliance date for the emission standards for one additional year if needed to install add-on controls or process modifications. The owner or operator shall submit a request for an extension according to the procedures in § 63.6(i)(3) of the general provisions.

**§ 63.1386 Monitoring requirements.**

(a) The owner or operator of each wool fiberglass manufacturing facility shall prepare for each glass-melting furnace, RS manufacturing line, and FA manufacturing line subject to the provisions of this subpart, a written operations, maintenance, and monitoring plan. The plan shall be submitted to the Administrator for review and approval as part of the application for a part 70 permit and shall include the following information:

(1) Procedures for the proper operation and maintenance of process modifications and add-on control devices used to meet the emission limits of §§ 63.1382, 63.1383, and 63.1384;

(2) Process parameters and add-on control device parameters to be monitored to determine compliance; and

(3) Corrective actions to be taken when process parameters or add-on control device parameters deviate from the levels established during initial performance testing.

(b) Where a baghouse is used to control PM emissions from a glass-melting furnace, the owner or operator shall install, calibrate, maintain, and continuously operate a bag leak detection system.

(1) The bag leak detection system must be capable of detecting PM emissions at concentrations of 1.0 milligram per actual cubic meter (0.0004 grains per actual cubic foot) and greater.

(2) The bag leak detection system sensor must provide output of relative or absolute PM emissions.

(3) The bag leak detection system must be equipped with an alarm system that will sound when an increase in PM emissions over a preset level is detected.

(4) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. If a negative pressure or induced air baghouse is used, the bag leak detection system must be installed downstream of the baghouse. Where multiple bag leak detection systems are required (for either type of baghouse), the system

instrumentation and alarm may be shared among the monitors.

(5) The bag leak detection system shall be installed, operated, calibrated, and maintained in a manner consistent with available guidance from the U.S. Environmental Protection Agency or, in the absence of such guidance, the manufacturer's written specifications and recommendations.

(6) Calibration of the system shall, at a minimum, consist of establishing the baseline output by adjusting the range and the averaging period of the device and establishing the alarm setpoints and the alarm delay time. Calibration of the system shall be done during the initial performance test.

(7) The owner or operator shall not adjust the range, averaging period, alarm setpoints, or alarm delay time after the initial performance test without written approval from the Administrator.

(8) Following the performance test, if the alarm for the bag leak detection system is triggered, the owner or operator shall inspect the control device to determine the cause of the deviation and initiate within 1 hour of the alarm the corrective actions specified in the procedures in the operations, maintenance, and monitoring plan.

(9) If the alarm is sounded for more than 5 percent of the total operating time in a 6-month reporting period, the owner or operator must implement a Quality Improvement Plan (QIP) consistent with subpart D of the draft approach to compliance assurance monitoring.[1]

(c)(1) Where an electrostatic precipitator (ESP) is used to control PM emissions from a glass-melting furnace, the owner or operator shall include in the ESP operations, maintenance, and monitoring plan the following information:

(i) ESP operating parameter(s), such as secondary voltage of each electrical field, to be monitored and the procedures to be followed during the performance test to establish the range of values that will be used to identify any operational problems;

(ii) A schedule for monitoring the ESP operating parameter(s);

(iii) Recordkeeping procedures, consistent with § 63.1389, to show that the ESP operating parameter(s) is within the range established during the performance test; and

(iv) Procedures for the proper operation and maintenance of the ESP.

(2) Following the performance test, if any 3-hour average value for the ESP monitoring parameter(s) deviates from the range established during the performance test, the owner or operator shall inspect the control device to determine the cause of the deviation and initiate within 1 hour of the deviation the corrective actions necessary to return the ESP parameter(s) to the levels established during the performance test according to the procedures in the operations, maintenance, and monitoring plan.

(3) If the monitored ESP parameter is outside the level established during the performance test more than 5 percent of the total operating time in a 6-month reporting period, the owner or operator must implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[2]

(4) If the monitored ESP parameter is outside the level established during the performance test more than 10 percent of the total operating time in a 6-month reporting period, the owner or operator is in violation of the standard.

(d)(1) For a glass-melting furnace, including a cold top electric furnace, where no add-on controls are used to control PM emissions, the owner or operator shall include in the operations, maintenance, and monitoring plan the following information:

(i) The operating parameter(s), such as the air temperature above the glass melt, to be monitored and the procedures to be followed during the performance test to establish the range of values that will be used to identify any operational problems;

(ii) A schedule for monitoring the operating parameter(s) of the glass-melting furnace;

(iii) Recordkeeping procedures, consistent with § 63.1389, to show that the glass-melting furnace parameter(s) is within the range established during the performance test; and

(iv) Procedures for the proper operation and maintenance of the glass-melting furnace.

(2) Following the performance test, if any 3-hour average value for the parameter used to monitor uncontrolled glass-melting furnaces deviates from the range established during the performance test, the owner or operator shall inspect the glass-melting furnace to determine the cause of the deviation and initiate within 1 hour of the deviation the corrective actions necessary to return the process parameter(s) to the levels established during the performance test according to the procedures in the operations, maintenance, and monitoring plan.

(3) If the monitored parameter is outside the level established during the performance test more than 5 percent of the total operating time in a 6-month reporting period, the owner or operator must implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[3]

(4) If the monitored parameter is outside the level established during the performance test more than 10 percent of the total operating time in a 6-month reporting period, the owner or operator is in violation of the standard.

(e)(1) The owners or operators of existing glass-melting furnaces shall continuously monitor and record the glass pull rate except that for glass-melting furnaces that are not equipped with continuous monitors, the glass pull rate shall be monitored and recorded once per day.

(2) On all new glass-melting furnaces, the owner or operator shall install, calibrate, and maintain monitors that continuously record the glass pull rate.

(3) Following the performance test, if the glass pull rate exceeds the average glass pull rate established during the performance test by greater than 20 percent, the owner or operator shall inspect the glass-melting furnace to determine the cause of the exceedance and initiate within 1 hour of the exceedance the corrective actions necessary to return the glass pull rate to the level established during the performance test according to the procedures in the operations, maintenance, and monitoring plan.

(4) If the glass pull rate exceeds by more than 20 percent the level established during the performance test for more than 5 percent of the total operating time in a 6-month reporting period, the owner or operator must implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[4]

(5) If the glass pull rate exceeds by 20 percent the level established during the performance test for more than 10 percent of the total operating time in a 6-month reporting period, the owner or operator is in violation of the standard.

(f)(1) The owner or operator who uses an incinerator to control formaldehyde emissions from forming or curing shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the operating temperature in the firebox of each incinerator.

(2) Following the performance test, if any 3-hour average operating

[1] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[2] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[3] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[4] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

temperature of the incinerator falls below the average established during the performance test, the owner or operator is considered out of compliance.

(g)(1) The owner or operator of each rotary spin manufacturing line and flame attenuation manufacturing line subject to the provisions of this subpart shall monitor and record the following information:

(i) The free-formaldehyde content of each resin lot;

(ii) The formulation of each batch of binder used; and

(iii) At least once per day, the LOI and density of each bonded wool fiberglass product manufactured.

(2) Following the performance test, if the free-formaldehyde content of the resin exceeds the levels established during the performance test or the binder formulation varies from the binder formulation specification established during the performance test, the owner or operator is in violation of the standard.

(h)(1) The owner or operator of each rotary spin manufacturing line and flame attenuation manufacturing line subject to the provisions of this subpart who uses process modifications to comply with the standards in §§ 63.1383 and 63.1384 shall include as part of their operations, maintenance, and monitoring plan the following information:

(i) Procedures for the proper operation and maintenance of the process;

(ii) Process parameters to be monitored to demonstrate compliance with the applicable emission standards in §§ 63.1383 and 63.1384. Examples of process parameters include LOI, binder solids content, and binder application rate;

(iii) Correlation(s) between process parameter(s) to be monitored and formaldehyde emissions;

(iv) A schedule for monitoring the process parameters; and

(v) Recordkeeping procedures, consistent with § 63.1389, to show that the process parameters values established during the performance test are not exceeded.

(2) Following the performance test, if the process parameter levels exceed the levels established during the performance test, the owner or operator shall inspect the process to determine the cause of the deviation and initiate within 1 hour of the deviation the corrective actions necessary to return the process parameter(s) to the levels established during the performance test according to the procedures in the operations, maintenance, and monitoring plan.

(3) If the process parameter is outside the level established during the performance test more than 5 percent of the total operating time in a 6-month reporting period, the owner or operator must implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[5]

(4) If the process parameter is outside the level established during the performance test more than 10 percent of the total operating time in a 6-month reporting period, the owner or operator is in violation of the standard.

(i)(1) The owner or operator of each rotary spin manufacturing line and flame attenuation manufacturing line subject to the provisions of this subpart who uses a wet scrubbing control device to comply with the emission standards in §§ 63.1383 and 63.1384 shall install, calibrate, maintain, and operate monitoring devices that continuously monitor and record the gas pressure drop across each scrubber and scrubbing liquid flow rate to each scrubber. The pressure drop monitor is to be certified by its manufacturer to be accurate within ±250 pascals (±1 inch water gauge) over its operating range, and the flow rate monitor is to be certified by its manufacturer to be accurate within ±5 percent over its operating range. The owner or operator shall also continuously monitor and record the feed rate of any chemical(s) added to the scrubbing liquid.

(2) Following the performance test, if any 3-hour average of the scrubber pressure drop, liquid flow rate, or chemical additive to the scrubber exceeds the levels established during the performance tests, the owner or operator shall inspect the control device to determine the cause of the exceedance and initiate within 1 hour of the exceedance the corrective actions necessary to return the scrubber parameters to the levels established during the performance test according to the procedures in the scrubber operations, maintenance, and monitoring plan.

(3) If a scrubber parameter is outside the level established during the performance test more than 5 percent of the total operating time in a 6-month reporting period, the owner or operator must implement a QIP consistent with subpart D of the draft approach to compliance assurance monitoring.[6]

(4) If a scrubber parameter is outside the level established during the performance test more than 10 percent of the total operating time in a 6-month reporting period, the owner or operator is in violation of the standard.

(j) For all control device and process operating parameters measured during the initial performance test, the owners or operators of glass-melting furnaces, rotary spin manufacturing lines or flame attenuation manufacturing lines subject to this subpart may change the ranges established during the initial performance test if additional performance testing is conducted to verify that, at the new control device or process parameter levels, they comply with the emission standards in §§ 63.1382, 63.1383, and 63.1384.

**§ 63.1387 Performance test requirements.**

(a) The owner or operator subject to the provisions of this subpart shall conduct a performance test to demonstrate compliance with the applicable emission standards in §§ 63.1382, 63.1383, and 63.1384. The owner or operator shall conduct the performance test, according to the procedures in the general provisions (40 CFR part 63, subpart A) and in this section.

(1) All monitoring systems and equipment must be installed, operational, and properly calibrated prior to the performance test.

(2) The owner or operator shall monitor and record the glass pull rate and determine the average of the recorded measurements for each test run.

(3) The owner or operator shall conduct a performance test for each existing and new glass-melting furnace.

(4) The owner or operator shall conduct a performance test for each new and existing rotary spin manufacturing line producing building insulation.

(5) The owner or operator shall conduct a performance test for each new flame attenuation manufacturing line producing a heavy-density product or a pipe product and each existing flame attenuation manufacturing line producing a pipe product.

(6) During the performance test, the owner or operator of a glass-melting furnace controlled by an ESP shall monitor and record the ESP parameter level(s), as specified in the operation, maintenance, and monitoring plan required in § 63.1386, which will be used to demonstrate compliance after the initial performance test. If the owner or operator plans a change in the ESP parameter levels from the levels established during the initial performance test, another performance test is required.

(7) The owner or operator of each rotary spin manufacturing line and

[5] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

[6] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

flame attenuation manufacturing line regulated by this subpart shall conduct performance tests using the resin with the highest free-formaldehyde content. During the performance test of each rotary spin manufacturing line and flame attenuation manufacturing line regulated by this subpart, the owner or operator shall monitor and record the free-formaldehyde content of the resin, the binder formulation used, and the product LOI. If the owner or operator of a rotary spin manufacturing line or a flame attenuation manufacturing line subject to this subpart plans to use a resin with a higher free-formaldehyde content or a different binder formulation than that recorded during the initial performance test, another performance test is required.

(8) With prior approval from the Administrator, an owner or operator of a rotary spin or flame attenuation manufacturing line regulated by this subpart may conduct short-term experimental production runs using binder formulations or other process modifications where the free-formaldehyde content or other process parameter values would be outside those established during performance tests without first conducting performance tests. An application to perform an experimental short-term production run shall include the following information:

(i) The purpose of the experimental run;

(ii) The affected line;

(iii) How the established process parameters will deviate from previously approved levels;

(iv) The duration of the test run;

(v) The date and time of the test run; and

(vi) A description of any emission testing to be performed during the test.

(9) During the performance test, the owner or operator shall continuously record the operating temperature of each incinerator and record the average of each 1-hour test; the average of the three 1-hour tests shall be used to monitor compliance.

(10) During the performance test, the owner or operator of a rotary spin manufacturing line or flame attenuation manufacturing line who plans to use process modifications to comply with the emission standards in §§ 63.1383 and 63.1384 shall monitor and record the process parameter level(s), as specified in the operations, maintenance, and monitoring plan required in § 63.1386, which will be used to demonstrate compliance after the initial performance test. If the owner or operator plans a change in the process parameter levels from the levels established during the initial performance test, another performance test is required.

(11) During the performance test, the owner or operator of a rotary spin manufacturing line or flame attenuation manufacturing line who plans to use a wet scrubbing control device to comply with the emission standards in §§ 63.1383 and 63.1384 shall continuously monitor and record the pressure drop across the scrubber, the scrubbing liquid flow rate, and addition of any chemical to the scrubber including the chemical feed rate to be used to determine compliance after the initial performance test.

(b) To determine compliance with the PM emission standard for glass-melting furnaces, use the following equation:

$$E = \frac{C \times Q \times K_1}{P} \qquad \text{(Eq. 1)}$$

where:

E = Emission rate of PM, kg/Mg (lb/ton) of glass pulled;

C = Concentration of PM, g/dscm (gr/dscf);

Q = Volumetric flow rate of exhaust gases, dscm/h (dscf/h);

$K_1$ = Conversion factor, 1 kg/1,000 g (1 lb/7,000 gr); and

P = Average glass pull rate, Mg/h (tons/h).

(c) To determine compliance with the emission standard for formaldehyde for rotary spin manufacturing lines and flame attenuation forming processes, use the following equation:

$$E = \frac{C \times MW \times Q \times K_1 \times K_2}{K_3 \times P \times 10^6} \qquad \text{(Eq. 2)}$$

where:

E = Emission rate of formaldehyde, kg/Mg (lb/ton) of glass pulled;

C = Measured volume fraction of formaldehyde, ppm;

MW = Molecular weight of formaldehyde, 30.03 g/g-mol;

Q = Volumetric flow rate of exhaust gases, dscm/h (dscf/h);

$K_1$ = Conversion factor, 1 kg/1,000 g (1 lb/453.6 g);

$K_2$ = Conversion factor, 1,000 L/m$^3$ (28.3 L/ft$^3$);

$K_3$ = Conversion factor, 24.45 L/g-mol; and

P = Average glass pull rate, Mg/h (tons/h).

**§ 63.1388 Test methods and procedures.**

(a) The owner or operator shall use the following methods to determine compliance with the applicable emission standards:

(1) Method 1 (40 CFR part 60, appendix A) for the selection of the sampling port location and number of sampling ports;

(2) Method 2 (40 CFR part 60, appendix A) for volumetric flow rate;

(3) Method 3 or 3A (40 CFR part 60, appendix A) for $O_2$ and $CO_2$ for diluent measurements needed to correct the concentration measurements to a standard basis;

(4) Method 4 (40 CFR part 60, appendix A) for moisture content of the stack gas;

(5) Method 5 (40 CFR part 60, appendix A) for the concentration of PM. Each run shall consist of a minimum run time of 2 hours and a minimum sample volume of 60 dry standard cubic feet (dscf). The probe and filter holder heating system may be set to provide a gas temperature no greater than 177 ±14 °C (350 ±25 °F);

(6) Method 316 (appendix A of this part) for the concentration of formaldehyde. Each run shall consist of a minimum run time of 1 hour;

(7) Method 318 (appendix A of this part) for the concentration of formaldehyde;

(8) Method contained in appendix A of this subpart for the determination of product LOI;

(9) Method contained in appendix B of this subpart for the determination of the free-formaldehyde content of resin;

(10) Method contained in appendix C of this subpart for the determination of product density;

(11) An alternative method, subject to approval by the Administrator.

(b) Each performance test shall consist of 3 runs. The owner or operator shall use the average of the three runs in the applicable equation for determining compliance.

**§ 63.1389 Notification, recordkeeping, and reporting requirements.**

(a) *Notifications.* As required by § 63.9 (b) through (d), the owner or operator shall submit the following written initial notifications to the Administrator:

(1) Notification for an area source that subsequently increases its emissions such that the source is a major source subject to the standard;

(2) Notification that a source is subject to the standard, where the initial startup is before the effective date of the standard;

(3) Notification that a source is subject to the standard, where the source is new or has been reconstructed, the initial startup is after the effective date of the standard, and for which an application for approval of construction or reconstruction is not required;

(4) Notification of intention to construct a new major source or

reconstruct a major source; of the date construction or reconstruction commenced; of the anticipated date of startup; of the actual date of startup, where the initial startup of a new or reconstructed source occurs after the effective date of the standard, and for which an application for approval or construction or reconstruction is required (See § 63.9(b)(4) and (5));

(5) Notification of special compliance obligations;

(6) Notification of performance test; and

(7) Notification of compliance status.

(b) *Performance test report.* As required by § 63.10(d)(2), the owner or operator shall report the results of the initial performance test as part of the notification of compliance status required in paragraph (a)(7) of this section.

(c) *Startup, shutdown, and malfunction plan and reports.* (1) The owner or operator shall develop and implement a written plan as described in § 63.6(e)(3) of the general provisions that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process modifications and control systems used to comply with the standard. In addition to the information required in § 63.6(e)(3), the plan shall include:

(i) Procedures to determine and record the cause of the malfunction and the time the malfunction began and ended;

(ii) Corrective actions to be taken in the event of a malfunction of a control device or process modification, including procedures for recording the actions taken to correct the malfunction or minimize emissions; and

(iii) A maintenance schedule for each control device and process modification that is consistent with the manufacturer's instructions and recommendations for routine and long-term maintenance.

(2) The owner or operator shall also keep records of each event as required by § 63.10(b) of the general provisions and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the procedures in the plan as described in § 63.10(e)(3)(iv) of the general provisions.

(d) *Excess emissions report.* As required by § 63.10(e)(3)(v) of the general provisions, the owner or operator shall report semiannually if measured emissions are in excess of the applicable standard or a monitored parameter is exceeded. The report shall contain the information specified in § 63.10(c) of the general provisions. When no exceedances have occurred, the owner or operator shall submit a report stating that no excess emissions occurred during the reporting period.

(e) *Recordkeeping.* (1) As required by § 63.10(b) of the general provisions, the owner or operator shall maintain files of all information (including all reports and notifications) required by the general provisions and this subpart:

(i) The owner or operator must retain each record for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The most recent 2 years of records must be retained at the facility. The remaining 3 years of records may be retained off site;

(ii) The owner or operator may retain records on microfilm, on a computer, on computer disks, on magnetic tape, or on microfiche; and

(iii) The owner or operator may report required information on paper or on a labeled computer disk using commonly available and EPA-compatible computer software.

(2) In addition to the general records required by § 63.10(b)(2) of the general provisions, the owner or operator shall maintain records of the following information:

(i) Any bag leak detection system alarm, including the date and time, with a brief explanation of the cause of the alarm and the corrective action taken;

(ii) The ESP monitoring parameters including any deviation in the ESP monitoring parameters with a brief explanation of the cause of the deviation and the corrective action taken;

(iii) The monitoring parameter for uncontrolled glass-melting furnaces including any exceedances and a brief explanation of the cause of the exceedance and the corrective action taken;

(iv) The formulation of each binder batch on a rotary spin manufacturing line or flame attenuation manufacturing line subject to the provisions of this subpart and the free formaldehyde content of each resin lot;

(v) Forming process parameters as identified in the approved operations, maintenance, and monitoring plan where process modifications are used to comply with the applicable emission limits, including any period when the process parameter levels were inconsistent with the levels established during the performance test, with a brief explanation of the cause of the deviation and the corrective action taken;

(vi) Scrubber operating parameters where a scrubber is used to comply with the applicable formaldehyde emission limits, including any periods of exceedances with a brief explanation of the cause of the deviation and the corrective action taken;

(vii) Incinerator operating temperature, including any period when the temperature falls below the average temperature established during the performance test, with a brief explanation of the cause of the deviation and the corrective action taken; and

(viii) The LOI for each product manufactured on a rotary spin manufacturing line or flame attenuation manufacturing line subject to the provisions of this subpart.

**§ 63.1390 Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: § 63.1388(a)(11).

**§§ 63.1391–63.1399 [Reserved]**

TABLE 1 TO SUBPART NNN—APPLICABILITY OF GENERAL PROVISIONS

[40 CFR Part 63, Subpart A to Subpart NNN]

| General provisions citation | Requirement | Applies to subpart NNN | Comment |
|---|---|---|---|
| 63.1(a)(1)–(a)(4) | Applicability | Yes | |
| 63.1(a)(5) | | No | [Reserved]. |
| 63.1(a)(6)–(a)(8) | | Yes | |
| 63.1(a)(9) | | No | [Reserved]. |
| 63.1(a)(10)–(a)(14) | | Yes | |
| 63.1(b)(1)–(b)(3) | Initial Applicability Determination | Yes | |

TABLE 1 TO SUBPART NNN—APPLICABILITY OF GENERAL PROVISIONS—Continued

[40 CFR Part 63, Subpart A to Subpart NNN]

| General provisions citation | Requirement | Applies to subpart NNN | Comment |
|---|---|---|---|
| 63.1(c)(1)–(c)(2) | Applicability After Standard Established | Yes | |
| 63.1(c)(3) | | No | [Reserved]. |
| 63.1(c)(4)–(c)(5) | | Yes | |
| 63.1(d) | | No | [Reserved]. |
| 63.1(e) | Applicability of Permit Program | Yes | |
| 63.2 | Definitions | Yes | Additional definitions in § 63.1381. |
| 63.3(a)–(c) | Units and Abbreviations | Yes | |
| 63.4(a)(1)–(a)(3) | Prohibited Activities | Yes | |
| 63.4(a)(4) | | No | [Reserved]. |
| 63.4(a)(5) | | Yes | |
| 63.4(b)–(c) | | Yes | |
| 63.5(a)(1)–(a)(2) | Construction/Reconstruction | Yes | |
| 63.5(b)(1) | Existing, New, Reconstructed | Yes | |
| 63.5(b)(2) | | No | [Reserved]. |
| 63.5(b)(3)–(b)(6) | | Yes | |
| 63.5(c) | | No | [Reserved]. |
| 63.5(d) | Approval of Construction/Reconstruction | Yes | |
| 63.5(e) | | Yes | |
| 63.5(f) | | Yes | |
| 63.6(a) | Compliance with Standards and Maintenance Requirements. | Yes | |
| 63.6(b)(1)–(b)(5) | | Yes | |
| 63.6(b)(6) | | No | [Reserved]. |
| 63.6(b)(7) | | Yes | |
| 63.6(c)(1) | Compliance Date for Existing Sources | Yes | § 63.1385 specifies compliance dates. |
| 63.6(c)(2) | | Yes | |
| 63.6(c)(3)–(c)(4) | | No | [Reserved]. |
| 63.6(c)(5) | | Yes | |
| 63.6(d) | | No | [Reserved]. |
| 63.6(e)(1)–(e)(2) | Operation & Maintenance | Yes | § 63.1386(a) specifies operations/ maintenance plan |
| 63.6(e)(3) | Startup, Shutdown Malfunction Plan | Yes | |
| 63.6(f)(1)–(f)(3) | Compliance with Nonopacity Emission Standards. | Yes | |
| 63.6(g)(1)–(g)(3) | Alternative Nonopacity Standard | Yes | |
| 63.6(h) | Opacity/VE Standards | No | Subpart NNN-no COMS, VE or opacity standards. |
| 63.6(i)(1)–(i)(14) | Extension of Compliance | Yes | |
| 63.6(i)(15) | | No | [Reserved]. |
| 63.6(i)(16) | | Yes | |
| 63.6(j) | Exemption from Compliance | Yes | |
| 63.7(a) | Performance Testing Requirements | Yes | § 63.1387 has specific requirements. |
| 63.7(b) | Notification | Yes | |
| 63.7(c) | Quality Assurance Program/Test Plan | Yes | |
| 63.7(d) | Performance Testing Facilities | Yes | |
| 63.7(e)(1)–(e)(4) | Conduct of Performance Tests | Yes | |
| 63.7(f) | Alternative Test Method | Yes | |
| 63.7(g) | Data Analysis | Yes | |
| 63.7(h) | Waiver of Performance Tests | Yes | |
| 63.8(a)(1)–(a)(2) | Monitoring Requirements | Yes | |
| 63.8(a)(3) | | No | [Reserved]. |
| 63.8(a)(4) | | Yes | |
| 63.8(b) | Conduct of Monitoring | Yes | |
| 63.8(c) | CMS Operation/Maintenance | Yes | |
| 63.8(d) | Quality Control Program | Yes | |
| 63.8(e) | Performance Evaluation for CMS | Yes | |
| 63.8(f) | Alternative Monitoring Method | Yes | |
| 63.8(g) | Reduction of Monitoring Data | Yes | |
| 63.9(a) | Notification Requirements | Yes | |
| 63.9(b) | Initial Notifications | Yes | |
| 63.9(c) | Request for Compliance Extension | Yes | |
| 63.9(d) | New Source Notification for Special Compliance Requirements. | Yes | |
| 63.9(e) | Notification of Performance Test | Yes | |
| 63.9(f) | Notification of VE/Opacity Test | No | Opacity/VE tests not required. |
| 63.9(g) | Additional CMS Notifications | Yes | |
| 63.9(h)(1)–(h)(3) | Notification of Compliance Status | Yes | |
| 63.9(h)(4) | | No | [Reserved]. |
| 63.9(h)(5)–(h)(6) | | Yes | |

TABLE 1 TO SUBPART NNN—APPLICABILITY OF GENERAL PROVISIONS—Continued

[40 CFR Part 63, Subpart A to Subpart NNN]

| General provisions citation | Requirement | Applies to subpart NNN | Comment |
|---|---|---|---|
| 63.9(i) | Adjustment of Deadlines | Yes | |
| 63.9(j) | Change in Previous Information | Yes | |
| 63.10(a) | Recordkeeping/Reporting | Yes | |
| 63.10(b) | General Requirements | Yes | |
| 63.10(c)(1) | Additional CMS Recordkeeping | Yes | |
| 63.10(c)(2)–(c)(4) | | No | [Reserved]. |
| 63.10(c)(5)–(c)(8) | | Yes | |
| 63.10(c)(9) | | No | [Reserved]. |
| 63.10(c)(10)–(15) | | Yes | |
| 63.10(d)(1) | General Reporting Requirements | Yes | |
| 63.10(d)(2) | Performance Test Results | Yes | |
| 63.10(d)(3) | Opacity or VE Observations | No | No limits for VE/opacity. |
| 63.10(d)(4) | Progress Reports | Yes | |
| 63.10(d)(5) | Startup, Shutdown, Malfunction Reports | Yes | |
| 63.10(e)(1)–(e)(3) | Additional CMS Reports | Yes | |
| 63.10(e)(4) | Reporting COM Data | No | COM not required |
| 63.10(f) | Waiver of Recordkeeping/Reporting | Yes | |
| 63.11(a) | Control Device Requirements | Yes | |
| 63.11(b) | Flares | No | Flares not applicable. |
| 63.12 | State Authority and Delegations | Yes | |
| 63.13 | State/Regional Addresses | Yes | |
| 63.14 | Incorporation by Reference | No. | |
| 63.15 | Availability of Information | Yes | |

## Appendix A to Subpart NNN—Method for the Determination of LOI

*1. Purpose.*

The purpose of this test is to determine the LOI of cured blanket insulation. The method is applicable to all cured board and blanket products.

*2. Equipment.*

2.1 Scale sensitive to 0.1 gram.

2.2 Furnace designed to heat to at least 540 °C (1,000 °F) and controllable to ±10 °C (50 °F).

2.3 Wire tray for holding specimen while in furnace.

*3. Procedure.*

3.1 Cut a strip along the entire width of the product that will weigh at least 10.0 grams. Sample should be free of dirt or foreign matter. (Note: Remove all facing from sample.)

3.2 Cut the sample into pieces approximately 12 inches long, weigh to the nearest 0.1 gram and record. Place in wire tray. Sample should not be compressed or overhang on tray edges. (Note: On air duct products, remove shiplaps and overspray.)

3.3 Place specimen in furnace at 540 °C (1,000 °F), ±10 °C (50 °F) for 15 to 20 minutes to insure complete oxidation. After ignition, fibers should be white and should not be fused together.

3.4 Remove specimen from the furnace and cool to room temperature.

3.5 Weigh cooled specimen to the nearest 0.1 gram. Deduct the weight of the wire tray and then calculate the loss in weight as a percent of the original specimen weight.

## Appendix B to Subpart NNN—Free Formaldehyde Analysis of Insulation Resins by Hydroxylamine Hydrochloride

*1. Scope.*

This method was specifically developed for water-soluble phenolic resins that have a relatively high free-formaldehyde (FF) content such as insulation resins. It may also be suitable for other phenolic resins, especially those with a high FF content.

*2. Principle.*

2.1 a. The basis for this method is the titration of the hydrochloric acid that is liberated when hydroxylamine hydrochloride reacts with formaldehyde to form formaldoxine:

$$HCHO + NH2OH{:}HCl \rightarrow CH2{:}NOH + H2O + HCl$$

b. Free formaldehyde in phenolic resins is present as monomeric formaldehyde, hemiformals, polyoxymethylene hemiformals, and polyoxymethylene glycols. Monomeric formaldehyde and hemiformals react rapidly with hydroxylamine hydrochloride, but the polymeric forms of formaldehyde must hydrolyze to the monomeric state before they can react. The greater the concentration of free formaldehyde in a resin, the more of that formaldehyde will be in the polymeric form. The hydrolysis of these polymers is catalyzed by hydrogen ions.

2.2 The resin sample being analyzed must contain enough free formaldehyde so that the initial reaction with hydroxylamine hydrochloride will produce sufficient hydrogen ions to catalyze the depolymerization of the polymeric formaldehyde within the time limits of the test method. The sample should contain approximately 0.3 grams free formaldehyde to ensure complete reaction within 5 minutes.

*3. Apparatus.*

3.1 Balance, readable to 0.01 g or better.

3.2 pH meter, standardized to pH 4.0 with pH 4.0 buffer and pH 7 with pH 7.0 buffer.

3.3 50-mL burette for 1.0 N sodium hydroxide.

3.4 Magnetic stirrer and stir bars.

3.5 250-mL beaker.

3.6 50-mL graduated cylinder.

3.7 100-mL graduated cylinder.

3.8 Timer.

*4. Reagents.*

4.1 Standardized 1.0 N sodium hydroxide solution.

4.2 Hydroxylamine hydrochloride solution, 100 grams per liter, pH adjusted to 4.00.

4.3 Hydrochloric acid solution, 1.0 N and 0.1 N.

4.4 Sodium hydroxide solution, 0.1 N.

4.5 50/50 v/v mixture of distilled water and methyl alcohol.

*5. Procedure.*

5.1 Determine the sample size as follows:

a. If the expected FF is greater than 2 percent, go to Part A to determine sample size.

b. If the expected FF is less than 2 percent, go to Part B to determine sample size.

c. Part A: Expected FF ≥ 2 percent. Grams resin = 60/expected percent FF.

1. The following table shows example levels:

| Expected percent free formaldehyde | Sample size, grams |
|---|---|
| 2 | 30.0 |
| 5 | 12.0 |

| Expected percent free formaldehyde | Sample size, grams |
|---|---|
| 8 | 7.5 |
| 10 | 6.0 |
| 12 | 5.0 |
| 15 | 4.0 |

ii. It is very important to the accuracy of the results that the sample size be chosen correctly. If the milliliters of titrant are less than 15 mL or greater than 30 mL, reestimate the needed sample size and repeat the tests.

d. Part B: Expected FF < 2 percent Grams resin = 30/expected percent FF.

i. The following table shows example levels:

| Expected percent free formaldehyde | Sample size, grams |
|---|---|
| 2 | 15 |
| 1 | 30 |
| 0.5 | 60 |

ii. If the milliliters of titrant are less than 5 mL or greater than 30 mL, reestimate the needed sample size and repeat the tests.

5.2 Weigh the resin sample to the nearest 0.01 grams into a 250-mL beaker. Record sample weight.

5.3 Add 100 mL of the methanol/water mixture and stir on a magnetic stirrer. Confirm that the resin has dissolved.

5.4 Adjust the resin/solvent solution to pH 4.0, using the prestandardized pH meter, 1.0 N hydrochloric acid, 0.1 N hydrochloric acid, and 0.1 N sodium hydroxide.

5.5 Add 50 mL of the hydroxylamine hydrochloride solution, measured with a graduated cylinder. Start the timer.

5.6 Stir for 5 minutes. Titrate to pH 4.0 with standardized 1.0 N sodium hydroxide. Record the milliliters of titrant and the normality.

*6. Calculations.*

$$\% \text{ FF} = \frac{\text{mL sodium hydroxide} \times \text{normality} \times 3.003}{\text{grams of sample}}$$

*7. Method precision and accuracy.*

Test values should conform to the following statistical precision: Variance = 0.005; Standard deviation = 0.07; 95% Confidence Interval, for a single determination = 0.2.

*8. Author.*

This method was prepared by K. K. Tutin and M. L. Foster, Tacoma R&D Laboratory, Georgia-Pacific Resins, Inc. (Principle written by R. R. Conner.)

*9. References.*

9.1 GPAM 2221.2.

9.2 PR&C TM 2.035.

9.3 Project Report, Comparison of Free Formaldehyde Procedures, January 1990, K. K. Tutin.

## Appendix C to Subpart NNN—Method for the Determination of Product Density

*1. Purpose.*

The purpose of this test is to determine the product density of cured blanket insulation. The method is applicable to all cured board and blanket products.

*2. Equipment.*

One square foot (12 in. by 12 in.) template, or templates that are multiple of one square foot, for use in cutting insulation samples.

*3. Procedure.*

3.1 Obtain a sample at least 30 in. long across the machine width. Sample should be free of dirt or foreign matter.

3.2 Lay out the cutting pattern according to the plants written procedure for the designated product.

3.2 Cut samples using one square foot (or multiples of one square foot) template.

3.3 Weigh product and obtain area weight ($lb/ft^2$).

3.4 Measure sample thickness.

3.5 Calculate the product density:

Density ($lb/ft^3$) = area weight ($lb/ft^2$)/ thickness (ft)

3. Appendix A to part 63 is amended by adding in numerical order methods 316 and 318 to read as follows:

## APPENDIX A TO PART 63—TEST METHODS

* * * * *

*Method 316—Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries*

1.0 *Introduction.*

This method is applicable to the determination of formaldehyde, CAS Registry number 50–00–0, from stationary sources in the mineral wool and wool fiber glass industries. High purity water is used to collect the formaldehyde. The formaldehyde concentrations in the stack samples are determined using the modified Pararosaniline Method. Formaldehyde can be detected as low as $8.8 \times 10^{-10}$ lbs/cu ft (11.3 ppbv) or as high as $1.8 \times 10^{3}$ lbs/cu ft (23,000,000 ppbv), at standard conditions over a 1 hour sampling period, sampling approximately 30 cu ft.

2.0 *Summary of Method.*

Gaseous and particulate pollutants are withdrawn isokinetically from an emission source and are collected in high purity water. Formaldehyde present in the emissions is highly soluble in high purity water. The high purity water containing formaldehyde is then analyzed using the modified pararosaniline method. Formaldehyde in the sample reacts with acidic pararosaniline, and the sodium sulfite, forming a purple chromophore. The intensity of the purple color, measured spectrophotometrically, provides an accurate and precise measure of the formaldehyde concentration in the sample.

3.0 *Definitions.*

See the definitions in the General Provisions in subpart A of this part.

4.0 *Interferences.*

Sulfite and cyanide in solution interfere with the pararosaniline method. A procedure to overcome the interference by each compound has been described by Miksch, et al.

5.0 *Safety.* [Reserved]

6.0 *Apparatus and Materials.*

6.1 A schematic of the sampling train is shown in Figure 1. This sampling train configuration is adapted from EPA Method 5, 40 CFR part 60, appendix A, procedures. The sampling train consists of the following components: probe nozzle, probe liner, pitot tube, differential pressure gauge, impingers, metering system, barometer, and gas density determination equipment. Figure 1 is as follows:

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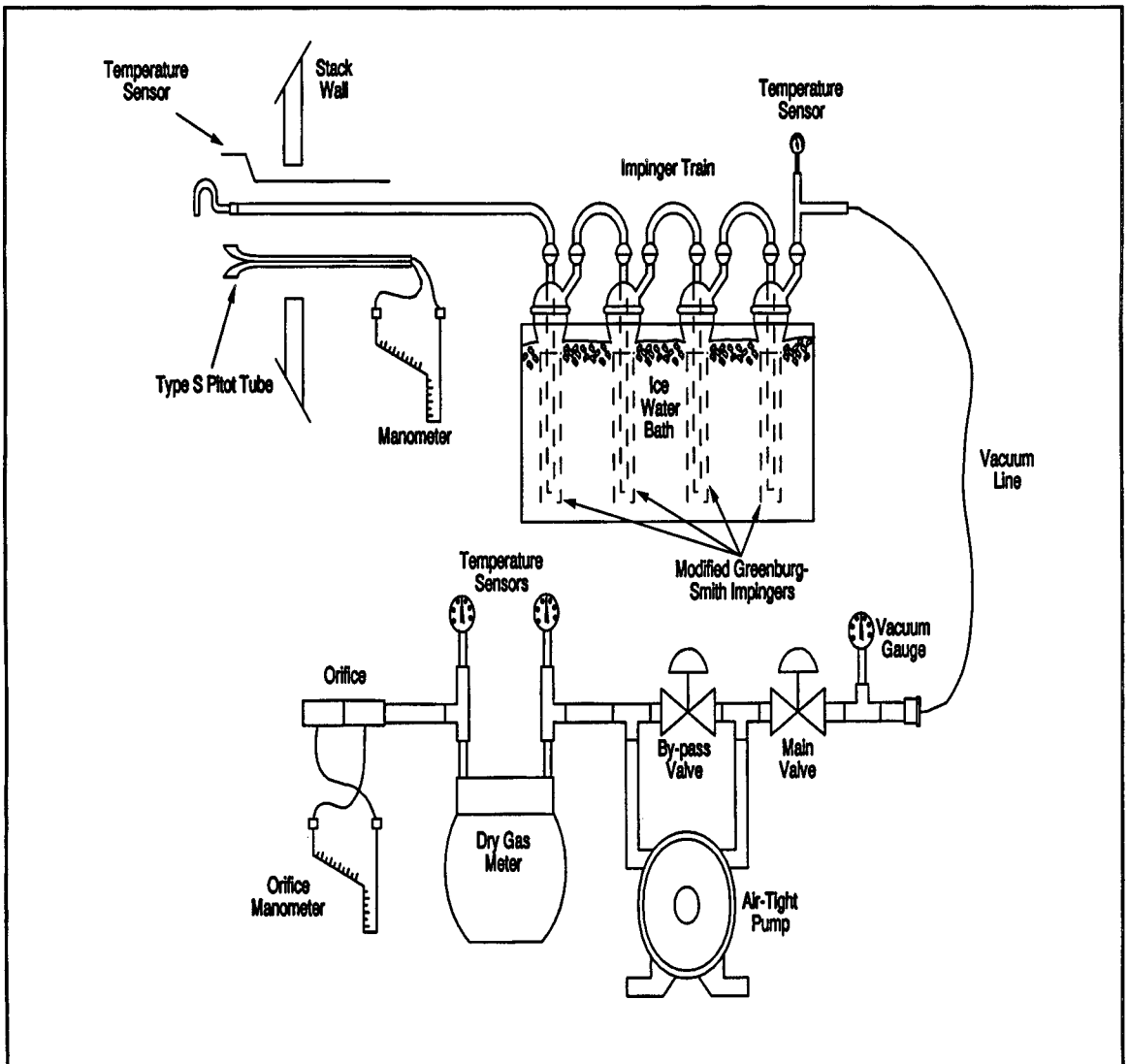


Figure 1. Sampling Train.

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6.1.1 Probe Nozzle: Quartz, glass, or stainless steel with sharp, tapered (30° angle) leading edge. The taper shall be on the outside to preserve a constant inner diameter. The nozzle shall be buttonhook or elbow design. A range of nozzle sizes suitable for isokinetic sampling should be available in increments of 0.15 cm (1/16 in), e.g., 0.32 to 1.27 cm (1/8 to 1/2 in), or larger if higher volume sampling trains are used. Each nozzle shall be calibrated according to the procedure outlined in Section 10.1.

6.1.2 Probe Liner: Borosilicate glass or quartz shall be used for the probe liner. The probe shall be maintained at a temperature of 120°C ± 14°C (248°F ± 25°F).

6.1.3 Pitot Tube: The Pitot tube shall be Type S, as described in Section 2.1 of EPA Method 2, 40 CFR part 60, appendix A, or any other appropriate device. The pitot tube shall be attached to the probe to allow constant monitoring of the stack gas velocity. The impact (high pressure) opening plane of the pitot tube shall be even with or above the nozzle entry plane (see Figure 2–6b, EPA Method 2, 40 CFR part 60, appendix A) during sampling. The Type S pitot tube assembly shall have a known coefficient, determined as outlined in Section 4 of EPA Method 2, 40 CFR part 60, appendix A.

6.1.4 Differential Pressure Gauge: The differential pressure gauge shall be an inclined manometer or equivalent device as described in Section 2.2 of EPA Method 2, 40 CFR part 60, appendix A. One manometer shall be used for velocity-head reading and the other for orifice differential pressure readings.

6.1.5 Impingers: The sampling train requires a minimum of four impingers, connected as shown in Figure 1, with ground glass (or equivalent) vacuum-tight fittings. For the first, third, and fourth impingers, use the Greenburg-Smith design, modified by replacing the tip with a 1.3 cm inside diameter (1/2 in) glass tube extending to 1.3 cm (1/2 in) from the bottom of the flask. For the second impinger, use a Greenburg-Smith impinger with the standard tip. Place a thermometer capable of measuring temperature to within 1°C (2°F) at the outlet of the fourth impinger for monitoring purposes.

6.1.6 Metering System: The necessary components are a vacuum gauge, leak-free pump, thermometers capable of measuring temperatures within 3°C (5.4°F), dry-gas meter capable of measuring volume to within 1 percent, and related equipment as shown in Figure 1. At a minimum, the pump should be capable of 4 cfm free flow, and the dry gas meter should have a recording capacity of 0–999.9 cu ft with a resolution of 0.005 cu ft. Other metering systems may be used which are capable of maintaining sample volumes to within 2 percent. The metering system may be used in conjunction with a pitot tube to enable checks of isokinetic sampling rates.

6.1.7 Barometer: The barometer may be mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in Hg). In many cases, the barometric reading may be obtained from a nearby National Weather Service Station, in which case the station value (which is the absolute barometric pressure) is requested and an adjustment for elevation differences between the weather station and sampling point is applied at a rate of minus 2.5 mm Hg (0.1 in Hg) per 30 m (100 ft) elevation increases (vice versa for elevation decrease).

6.1.8 Gas Density Determination Equipment: Temperature sensor and pressure gauge (as described in Sections 2.3 and 2.3 of EPA Method 2, 40 CFR part 60, appendix A), and gas analyzer, if necessary (as described in EPA Method 3, 40 CFR part 60, appendix A). The temperature sensor ideally should be permanently attached to the pitot tube or sampling probe in a fixed configuration such that the top of the sensor extends beyond the leading edge of the probe sheath and does not touch any metal. Alternatively, the sensor may be attached just prior to use in the field. Note, however, that if the temperature sensor is attached in the field, the sensor must be placed in an interference-free arrangement with respect to the Type S pitot openings (see Figure 2–7, EPA Method 2, 40 CFR part 60, appendix A). As a second alternative, if a difference of no more than 1 percent in the average velocity measurement is to be introduced, the temperature gauge need not be attached to the probe or pitot tube.

6.2 Sample Recovery.

6.2.1 Probe Liner: Probe nozzle and brushes; bristle brushes with stainless steel wire handles are required. The probe brush shall have extensions of stainless steel, Teflon, or inert material at least as long as the probe. The brushes shall be properly sized and shaped to brush out the probe liner, the probe nozzle, and the impingers.

6.2.2 Wash Bottles: One wash bottle is required. Polyethylene, teflon, or glass wash bottles may be used for sample recovery.

6.2.3 Graduate Cylinder and/or Balance: A graduated cylinder or balance is required to measure condensed water to the nearest 1 ml or 1 g. Graduated cylinders shall have division not >2 ml. Laboratory balances capable of weighing to ± 0.5 g are required.

6.2.4 Polyethylene Storage Containers: 500 ml wide-mouth polyethylene bottles are required to store impinger water samples.

6.2.5 Rubber Policeman and Funnel: A rubber policeman and funnel are required to aid the transfer of material into and out of containers in the field.

6.3 Sample Analysis.

6.3.1 Spectrophotometer—B&L 70, 710, 2000, etc., or equivalent; 1 cm pathlength cuvette holder.

6.3.2 Disposable polystyrene cuvettes, pathlengh 1 cm, volume of about 4.5 ml.

6.3.3 Pipettors—Fixed-volume Oxford pipet (250 µl; 500 µl; 1000 µl); adjustable volume Oxford or equivalent pipettor 1–5 m'' model, set to 2.50 ml.

6.3.4 Pipet tips for pipettors above.

6.3.5 Parafilm, 2° wide; cut into about 1″ squares.

7.0 *Reagents.*

7.1 High purity water: All references to water in this method refer to high purity water (ASTM Type I water or equivalent). The water purity will dictate the lower limits of formaldehyde quantification.

7.2 Silica Gel: Silica gel shall be indicting type, 6–16 mesh. If the silica gel has been used previously, dry at 175°C (350°F) for 2 hours before using. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used.

7.3 Crushed Ice: Quantities ranging from 10–50 lbs may be necessary during a sampling run, depending upon ambient temperature. Samples which have been taken must be stored and shipped cold; sufficient ice for this purpose must be allowed.

7.4 Quaternary ammonium compound stock solution: Prepare a stock solution of dodecyltrimethylammonium chloride (98 percent minimum assay, reagent grade) by dissolving 1.0 gram in 1000 ml water. This solution contains nominally 1000 µg/ml quaternary ammonium compound, and is used as a biocide for some sources which are prone to microbial contamination.

7.5 Pararosaniline: Weigh 0.16 grams pararosaniline (free base; assay of 95 percent or greater, C.I. 42500; Sigma P7632 has been found to be acceptable) into a 100 ml flask. Exercise care, since pararosaniline is a dye and will stain. Using a wash bottle with high-purity water, rinse the walls of the flask. Add no more than 25 ml water. Then, carefully add 20 ml of concentrated hydrochloric acid to the flask. The flask will become warm after the addition of acid. Add a magnetic stir bar to the flask, cap, and place on a magnetic stirrer for approximately 4 hours. Then, add additional water so the total volume is 100 ml. This solution is stable for several months when stored tightly capped at room temperature.

7.6 Sodium sulfite: Weigh 0.10 grams anhydrous sodium sulfite into a 100 ml flask. Dilute to the mark with high purity water. Invert 15–20 times to mix and dissolve the sodium sulfite. This solution MUST BE PREPARED FRESH EVERY DAY.

7.7 Formaldehyde standard solution: Pipet exactly 2.70 ml of 37 percent formaldehyde solution into a 1000 ml volumetric flask which contains about 500 ml of high-purity water. Dilute to the mark with high-purity water. This solution contains nominally 1000 µg/ml of formaldehyde, and is used to prepare the working formaldehyde standards. The exact formaldehyde concentration may be determined if needed by suitable modification of the sodium sulfite method (Reference: J.F. Walker, FORMALDEHYDE (Third Edition), 1964.). The 1000 µg/ml formaldehyde stock solution is stable for at least a year if kept tightly closed, with the neck of the flask sealed with Parafilm. Store at room temperature.

7.8 a. Working formaldehyde standards: Pipet exactly 10.0 ml of the 1000 µg/ml formaldehyde stock solution into a 100 ml volumetric flask which is about half full of high-purity water. Dilute to the mark with high-purity water, and invert 15–20 times to mix thoroughly.

This solution contains nominally 100 µg/ml formaldehyde. Prepare the working standards from this 100 µg/ml standard solution and using the Oxford pipets:

| Working standard, µ/mL | µL or 100 µg/mL solution | Volumetric flask volume (dilute to mark with water) |
|---|---|---|
| 0.250 ..... | 250 | 100 |
| 0.500 ..... | 500 | 100 |
| 1.00 ..... | 1000 | 100 |
| 2.00 ..... | 2000 | 100 |
| 3.00 ..... | 1500 | 50 |

b. The 100 µg/ml stock solution is stable for 4 weeks if kept refrigerated between analyses. The working standards (0.25—3.00 µg/ml) should be prepared fresh every day, consistent with good laboratory practice for trace analysis. If the laboratory water is not of sufficient purity, it may be necessary to prepare the working standards EVERY DAY. The laboratory MUST ESTABLISH that the working standards are stable—DO NOT assume that your working standards are stable for more than a day unless you have verified this by actual testing for several series of working standards.

8.0 *Sample Collection.*

8.1 Because of the complexity of this method, field personnel should be trained in and experienced with the test procedures in order to obtain reliable results.

8.2 Laboratory Preparation:

8.2.1 All the components shall be maintained and calibrated according to the procedure described in APTD–0576, unless otherwise specified.

8.2.2 Weigh several 200 to 300 g portions of silica gel in airtight containers to the nearest 0.5 g. Record on each container the total weight of the silica gel plus containers. As an alternative to preweighing the silica gel, it may instead be weighed directly in the impinger or sampling holder just prior to train assembly.

8.3 Preliminary Field Determinations.

8.3.1 Select the sampling site and the minimum number of sampling points according to EPA Method 1, 40 CFR part 60, appendix A, or other relevant criteria. Determine the stack pressure, temperature, and range of velocity heads using EPA Method 2, 40 CFR part 60, appendix A. A leak-check of the pitot lines according to Section 3.1 of EPA Method 2, 40 CFR part 60, appendix A, must be performed. Determine the stack gas moisture content using EPA Approximation Method 4, 40 CFR part 60, appendix A, or its alternatives to establish estimates of isokinetic sampling rate settings. Determine the stack gas dry molecular weight, as described in EPA Method 2, 40 CFR part 60, appendix A, Section 3.6. If integrated EPA Method 3, 40 CFR part 60, appendix A, sampling is used for molecular weight determination, the integrated bag sample shall be taken simultaneously with, and for the same total length of time as, the sample run.

8.3.2 Select a nozzle size based on the range of velocity heads so that it is not necessary to change the nozzle size in order to maintain isokinetic sampling rates below 28 l/min (1.0 cfm). During the run do not change the nozzle. Ensure that the proper differential pressure gauge is chosen for the range of velocity heads encountered (see Section 2.2 of EPA Method 2, 40 CFR part 60, appendix A).

8.3.3 Select a suitable probe liner and probe length so that all traverse points can be sampled. For large stacks, to reduce the length of the probe, consider sampling from opposite sides of the stack.

8.3.4 A minimum of 30 cu ft of sample volume is suggested for emission sources with stack concentrations not greater than 23,000,000 ppbv. Additional sample volume shall be collected as necessitated by the capacity of the water reagent and analytical detection limit constraint. Reduced sample volume may be collected as long as the final concentration of formaldehyde in the stack sample is 10 (ten) times the detection limit.

8.3.5 Determine the total length of sampling time needed to obtain the identified minimum volume by comparing the anticipated average sampling rate with the volume requirement. Allocate the same time to all traverse points defined by EPA Method 1, 40 CFR part 60, appendix A. To avoid timekeeping errors, the length of time sampled at each traverse point should be an integer or an integer plus 0.5 min.

8.3.6 In some circumstances (e.g., batch cycles) it may be necessary to sample for shorter times at the traverse points and to obtain smaller gas-volume samples. In these cases, careful documentation must be maintained in order to allow accurate calculations of concentrations.

8.4 Preparation of Collection Train.

8.4.1 During preparation and assembly of the sampling train, keep all openings where contamination can occur covered with Teflon film or aluminum foil until just prior to assembly or until sampling is about to begin.

8.4.2 Place 100 ml of water in each of the first two impingers, and leave the third impinger empty. If additional capacity is required for high expected concentrations of formaldehyde in the stack gas, 200 ml of water per impinger may be used or additional impingers may be used for sampling. Transfer approximately 200 to 300 g of pre-weighed silica gel from its container to the fourth impinger. Care should be taken to ensure that the silica gel is not entrained and carried out from the impinger during sampling. Place the silica gel container in a clean place for later use in the sample recovery. Alternatively, the weight of the silica gel plus impinger may be determined to the nearest 0.5 g and recorded.

8.4.3 With a glass or quartz liner, install the selected nozzle using a Viton-A O-ring when stack temperatures are < 260°C (500°F) and a woven glass-fiber gasket when temperatures are higher. See APTD–0576 for details. Other connection systems utilizing either 316 stainless steel or Teflon ferrules may be used. Mark the probe with heat-resistant tape or by some other method to denote the proper distance into the stack or duct for each sampling point.

8.4.4 Assemble the train as shown in Figure 1. During assembly, a very light coating of silicone grease may be used on ground-glass joints of the impingers, but the silicone grease should be limited to the outer portion (see APTD–0576) of the ground-glass joints to minimize silicone grease contamination. If necessary, Teflon tape may be used to seal leaks. Connect all temperature sensors to an appropriate potentiometer/display unit. Check all temperature sensors at ambient temperatures.

8.4.5 Place crushed ice all around the impingers.

8.4.6 Turn on and set the probe heating system at the desired operating temperature. Allow time for the temperature to stabilize.

8.5 Leak-Check Procedures.

8.5.1 Pre-test Leak-check: Recommended, but not required. If the tester elects to conduct the pre-test leak-check, the following procedure shall be used.

8.5.1.1 a. After the sampling train has been assembled, turn on and set probe heating system at the desired operating temperature. Allow time for the temperature to stabilize. If a Viton-a O-ring or other leak-free connection is used in assembling the probe nozzle to the probe liner, leak-check the train at the sampling site by plugging the nozzle and pulling a 381 mm Hg (15 in Hg) vacuum. (Note: A lower vacuum may be used, provided that the lower vacuum is not exceeded during the test.)

b. If a woven glass fiber gasket is used, do not connect the probe to the train during the leak-check. Instead, leak-check the train by first attaching a carbon-filled leak-check impinger to the inlet and then plugging the inlet and pulling a 381 mm Hg (15 in Hg) vacuum. (A lower vacuum may be used if this lower vacuum is not exceeded during the test.) Next connect the probe to the train and leak-check at about 25 mm Hg (1 in Hg) vacuum. Alternatively, leak-check the probe with the rest of the sampling train in one step at 381 mm Hg (15 in Hg) vacuum. Leakage rates in excess of (a) 4 percent of the average sampling rate or (b) 0.00057 $m^3$/min (0.02 cfm), whichever is less, are unacceptable.

8.5.1.2 The following leak-check instructions for the sampling train described in APTD–0576 and APTD–0581 may be helpful. Start the pump with the fine-adjust valve fully open and coarse-valve completely closed. Partially open the coarse-adjust valve and slowly close the fine-adjust valve until the desired vacuum is reached. Do not reverse direction of the fine-adjust valve, as liquid will back up into the train. If the desired vacuum is exceeded, either perform the leak-check at this higher vacuum or end the leak-check, as described below, and start over.

8.5.1.3 When the leak-check is completed, first slowly remove the plug from the inlet to the probe. When the vacuum drops to 127 mm (5 in) Hg or less, immediately close the coarse-adjust valve. Switch off the pumping system and reopen the fine-adjust valve. Do not reopen the fine-adjust valve until the coarse-adjust valve has been closed to prevent the liquid in the impingers from being forced backward in the sampling line and silica gel from being entrained backward into the third impinger.

8.5.2 Leak-checks During Sampling Run:

8.5.2.1 If, during the sampling run, a component change (e.g., impinger) becomes necessary, a leak-check shall be conducted immediately after the interruption of sampling and before the change is made. The leak-check shall be done according to the procedure described in Section 10.3.3, except

that it shall be done at a vacuum greater than or equal to the maximum value recorded up to that point in the test. If the leakage rate is found to be no greater than 0.0057 $m^3$/min (0.02 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable. If a higher leakage rate is obtained, the tester must void the sampling run. (Note: Any correction of the sample volume by calculation reduces the integrity of the pollutant concentration data generated and must be avoided.)

8.5.2.2 Immediately after component changes, leak-checks are optional. If performed, the procedure described in section 6.5.1.1 shall be used.

8.5.3 Post-test Leak-check:

8.5.3.1 A leak-check is mandatory at the conclusion of each sampling run. The leak-check shall be done with the same procedures as the pre-test leak-check, except that the post-test leak-check shall be conducted at a vacuum greater than or equal to the maximum value reached during the sampling run. If the leakage rate is found to be no greater than 0.00057 $m^3$/min (0.02 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable. If, however, a higher leakage rate is obtained, the tester shall record the leakage rate and void the sampling run.

8.6 Sampling Train Operation.

8.6.1 During the sampling run, maintain an isokinetic sampling rate to within 10 percent of true isokinetic, below 28 l/min (1.0 cfm). Maintain a temperature around the probe of 120°C ± 14°C (248° ± 25°F).

8.6.2 For each run, record the data on a data sheet such at the one shown in Figure 2. Be sure to record the initial dry-gas meter reading. Record the dry-gas meter readings at the beginning and end of each sampling time increment, when changes in flow rates are made, before and after each leak-check, and when sampling is halted. Take other readings required by Figure 2 at least once at each sample point during each time increment and additional readings when significant adjustments (20 percent variation in velocity head readings) necessitate additional adjustments in flow rate. Level and zero the manometer. Because the manometer level and zero may drift due to vibrations and temperature changes, make periodic checks during the traverse.

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Figure 2. Formaldehyde Field Data

Plant . . . . . .
Location . . . . . .
Operator . . . . . .
Date . . . . . .
Run No . . . . . .
Sample box No . . . . . .
Meter box No . . . . . .
Meter ΔH . . . . . .
C Factor . . . . . .
Pitot tube coefficient, Op

SCHEMATIC OF STACK CROSS SECTION

Ambient temperature . . . . . .
Barometric pressure . . . . . .
Assumed moisture, percent . . . .
Probe length, m (ft) . . . . . .
Nozzle Identification No . . . .
Average calibrated nozzle
diameter, cm (in.) . . . . . .
Probe heater setting . . . . . .
Leak rate, $m^3$/min (cfm) . . . . .
Probe liner material . . . . . .
Static pressure, mm Hg (in. Hg) .
Filter No. . . . . .

Figure 2. Formaldehyde Field Data--Continued

| Traverse point number | Sampling time (e) min. | Vacuum mm Hg (in. Hg) | Stack temperature (T ) °C (°F) | Velocity head (ΔP) mm (in) $H_2O$ | Pressure differential across orifice meter mm $H_2O$ (in. $H_2O$) | Gas sample volume $m^3$ ($ft^3$) | Gas sample temperature at dry gas meter | | Filter holder temperature °C (°F) | Temperature of gas leaving condenser or last impinger °C (°F) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Inlet °C (°F) | Outlet °C (°F) | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Total | | | | | | | Avg. | Avg. | | |
| Average | | | | | | | Avg. | | | |

BILLING CODE 6560–50–C

8.6.3 Clean the stack access ports prior to the test run to eliminate the chance of sampling deposited material. To begin sampling, remove the nozzle cap, verify that the probe heating system are at the specified temperature, and verify that the pitot tube and probe are properly positioned. Position the nozzle at the first traverse point, with the tip pointing directly into the gas stream. Immediately start the pump and adjust the flow to isokinetic conditions. Nomographs, which aid in the rapid adjustment of the isokinetic sampling rate without excessive computations, are available. These nomographs are designed for use when the Type S pitot tube coefficient is 0.84±0.02 and the stack gas equivalent density (dry molecular weight) is equal to 29±4. APTD–0576 details the procedure for using the nomographs. If the stack gas molecular weight and the pitot tube coefficient are outside the above ranges, do not use the nomographs unless appropriate steps are taken to compensate for the deviations.

8.6.4 When the stack is under significant negative pressure (equivalent to the height of the impinger stem), take care to close the coarse-adjust valve before inserting the probe into the stack in order to prevent liquid from backing up through the train. If necessary, a low vacuum on the train may have to be started prior to entering the stack.

8.6.5 When the probe is in position, block off the openings around the probe and stack access port to prevent unrepresentative dilution of the gas stream.

8.6.6 Traverse the stack cross section, as required by EPA Method 1, 40 CFR part 60, appendix A, being careful not to bump the probe nozzle into the stack walls when sampling near the walls or when removing or inserting the probe through the access port, in order to minimize the chance of extracting deposited material.

8.6.7 During the test run, make periodic adjustments to keep the temperature around the probe at the proper levels. Add more ice and, if necessary, salt, to maintain a temperature of < 20°C (68°F) at the silica gel outlet.

8.6.8 A single train shall be used for the entire sampling run, except in cases where simultaneous sampling is required in two or more separate ducts or at two or more different locations within the same duct, or in cases where equipment failure necessitates a change of trains. An additional train or trains may also be used for sampling when the capacity of a single train is exceeded.

8.6.9 When two or more trains are used, separate analyses of components from each train shall be performed. If multiple trains have been used because the capacity of a single train would be exceeded, first impingers from each train may be combined, and second impingers from each train may be combined.

8.6.10 At the end of the sampling run, turn off the coarse-adjust valve, remove the probe and nozzle from the stack, turn off the pump, record the final dry gas meter reading, and conduct a post-test leak-check. Also, check the pitot lines as described in EPA Method 2, 40 CFR part 60, appendix A. The lines must pass this leak-check in order to validate the velocity-head data.

8.6.11 Calculate percent isokineticity (see Method 2) to determine whether the run was valid or another test should be made.

8.7 Sample Preservation and Handling.

8.7.1 Samples from most sources applicable to this method have acceptable holding times using normal handling practices (shipping samples iced, storing in refrigerator at 2°C until analysis). However, forming section stacks and other sources using waste water sprays may be subject to microbial contamination. For these sources, a biocide (quaternary ammonium compound solution) may be added to collected samples to improve sample stability and method ruggedness.

8.7.2 Sample holding time: Samples should be analyzed within 14 days of collection. Samples must be refrigerated/kept cold for the entire period preceding analysis. After the samples have been brought to room temperature for analysis, any analyses needed should be performed on the same day. Repeated cycles of warming the samples to room temperature/refrigerating/rewarming, then analyzing again, etc., have not been investigated in depth to evaluate if analyte levels remain stable for all sources.

8.7.3 Additional studies will be performed to evaluate whether longer sample holding times are feasible for this method.

8.8 Sample Recovery.

8.8.1 Preparation:

8.8.1.1 Proper cleanup procedure begins as soon as the probe is removed from the stack at the end of the sampling period. Allow the probe to cool. When the probe can be handled safely, wipe off all external particulate matter near the tip of the probe nozzle and place a cap over the tip to prevent losing or gaining particulate matter. Do not cap the probe tightly while the sampling train is cooling because a vacuum will be created, drawing liquid from the impingers back through the sampling train.

8.8.1.2 Before moving the sampling train to the cleanup site, remove the probe from the sampling train and cap the open outlet, being careful not to lose any condensate that might be present. Remove the umbilical cord from the last impinger and cap the impinger. If a flexible line is used, let any condensed water or liquid drain into the impingers. Cap off any open impinger inlets and outlets. Ground glass stoppers, Teflon caps, or caps of other inert materials may be used to seal all openings.

8.8.1.3 Transfer the probe and impinger assembly to an area that is clean and protected from wind so that the chances of contaminating or losing the sample are minimized.

8.8.1.4 Inspect the train before and during disassembly, and note any abnormal conditions.

8.8.1.5 Save a portion of the washing solution (high purity water) used for cleanup as a blank.

8.8.2 Sample Containers:

8.8.2.1 Container 1: Probe and Impinger Catches. Using a graduated cylinder, measure to the nearest ml, and record the volume of the solution in the first three impingers. Alternatively, the solution may be weighed to the nearest 0.5 g. Include any condensate in the probe in this determination. Transfer the combined impinger solution from the graduated cylinder into the polyethylene bottle. Taking care that dust on the outside of the probe or other exterior surfaces does not get into the sample, clean all surfaces to which the sample is exposed (including the probe nozzle, probe fitting, probe liner, first three impingers, and impinger connectors) with water. Use less than 400 ml for the entire waste (250 ml would be better, if possible). Add the rinse water to the sample container.

8.8.2.1.1 Carefully remove the probe nozzle and rinse the inside surface with water from a wash bottle. Brush with a bristle brush and rinse until the rinse shows no visible particles, after which make a final rinse of the inside surface. Brush and rinse the inside parts of the Swagelok (or equivalent) fitting with water in a similar way.

8.8.2.1.2 Rinse the probe liner with water. While squirting the water into the upper end of the probe, tilt and rotate the probe so that all inside surfaces will be wetted with water. Let the water drain from the lower end into the sample container. The tester may use a funnel (glass or polyethylene) to aid in transferring the liquid washes to the container. Follow the rinse with a bristle brush. Hold the probe in an inclined position, and squirt water into the upper end as the probe brush is being pushed with a twisting action through the probe. Hold the sample container underneath the lower end of the probe, and catch any water and particulate matter that is brushed from the probe. Run the brush through the probe three times or more. Rinse the brush with water and quantitatively collect these washings in the sample container. After the brushing, make a final rinse of the probe as describe above. (Note: Two people should clean the probe in order to minimize sample losses. Between sampling runs, brushes must be kept clean and free from contamination.)

8.8.2.1.3 Rinse the inside surface of each of the first three impingers (and connecting tubing) three separate times. Use a small portion of water for each rinse, and brush each surface to which the sample is exposed with a bristle brush to ensure recovery of fine particulate matter. Make a final rinse of each surface and of the brush, using water.

8.8.2.1.4 After all water washing and particulate matter have been collected in the sample container, tighten the lid so the sample will not leak out when the container is shipped to the laboratory. Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container clearly to identify its contents.

8.8.2.1.5 If the first two impingers are to be analyzed separately to check for breakthrough, separate the contents and rinses of the two impingers into individual containers. Care must be taken to avoid physical carryover from the first impinger to the second. Any physical carryover of collected moisture into the second impinger will invalidate a breakthrough assessment.

8.8.2.2 Container 2: Sample Blank. Prepare a blank by using a polyethylene container and adding a volume of water equal to the total volume in Container 1. Process the blank in the same manner as Container 1.

8.8.2.3 Container 3: Silica Gel. Note the color of the indicating silica gel to determine whether it has been completely spent and make a notation of its condition. The impinger containing the silica gel may be used as a sample transport container with both ends sealed with tightly fitting caps or plugs. Ground-glass stoppers or Teflon caps may be used. The silica gel impinger should then be labeled, covered with aluminum foil, and packaged on ice for transport to the laboratory. If the silica gel is removed from the impinger, the tester may use a funnel to pour the silica gel and a rubber policeman to remove the silica gel from the impinger. It is not necessary to remove the small amount of dust particles that may adhere to the impinger wall and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use water or other liquids to transfer the silica gel. If a balance is available in the field, the spent silica gel (or silica gel plus impinger) may be weighed to the nearest 0.5 g.

8.8.2.4 Sample containers should be placed in a cooler, cooled by (although not in contact with) ice. Putting sample bottles in zip-lock bags can aid in maintaining the integrity of the sample labels. Sample containers should be placed vertically to avoid leakage during shipment. Samples should be cooled during shipment so they will be received cold at the laboratory. It is critical that samples be chilled immediately after recovery. If the source is susceptible to microbial contamination from wash water (e.g.) forming section stack), add biocide as directed in section 8.2.5.

8.8.2.5 A quaternary ammonium compound can be used as a biocide to stabilize samples against microbial degradation following collection. Using the stock quaternary ammonium compound (QAC) solution; add 2.5 ml QAC solution for every 100 ml of recovered sample volume (estimate of volume is satisfactory) immediately after collection. The total volume of QAC solution must be accurately known and recorded to correct for any dilution caused by the QAC solution addition.

8.8.3 Sample Preparation for Analysis

8.8.3.1 The sample should be refrigerated if the analysis will not be performed on the day of sampling. Allow the sample to warm at room temperature for about two hours (if it has been refrigerated) prior to analyzing.

8.8.3.2 Analyze the sample by the pararosaniline method, as described in Section 11. If the color-developed sample has an absorbance above the highest standard, a suitable dilution in high purity water should be prepared and analyzed.

9. *Quality Control.*

9.1 Sampling: See EPA Manual 600/4–77–02b for Method 5 quality control.

9.2 Analysis: The quality assurance program required for this method includes the analysis of the field and method blanks, and procedure validations. The positive identification and quantitation of formaldehyde are dependent on the integrity of the samples received and the precision and accuracy of the analytical methodology. Quality assurance procedures for this method are designed to monitor the performance of the analytical methodology and to provide the required information to take corrective action if problems are observed in laboratory operations or in field sampling activities.

9.2.1 Field Blanks: Field blanks must be submitted with the samples collected at each sampling site. The field blanks include the sample bottles containing aliquots of sample recovery water, and water reagent. At a minimum, one complete sampling train will be assembled in the field staging area, taken to the sampling area, and leak-checked at the beginning and end of the testing (or for the same total number of times as the actual sampling train). The probe of the blank train must be heated during the sample test. The train will be recovered as if it were an actual test sample. No gaseous sample will be passed through the blank sampling train.

9.2.2 Blank Correction: The field blank formaldehyde concentrations will be subtracted from the appropriate sample formaldehyde concentrations. Blank formaldehyde concentrations above 0.25 µg/ml should be considered suspect, and subtraction from the sample formaldehyde concentrations should be performed in a manner acceptable to the applicable administrator.

9.2.3 Method Blanks: A method blank must be prepared for each set of analytical operations, to evaluate contamination and artifacts that can be derived from glassware, reagents, and sample handling in the laboratory.

10. *Calibration.*

10.1 Probe Nozzle: Probe nozzles shall be calibrated before their initial use in the field. Using a micrometer, measure the inside diameter of the nozzle to the nearest 0.025 mm (0.001 in). Make measurements at three separate places across the diameter and obtain the average of the measurements. The difference between the high and low numbers shall not exceed 0.1 mm (0.004 in). When the nozzle becomes nicked or corroded, it shall be repaired and calibrated, or replaced with a calibrated nozzle before use. Each nozzle must be permanently and uniquely identified.

10.2 Pitot Tube: The Type S pitot tube assembly shall be calibrated according to the procedure outlined in Section 4 of EPA Method 2, or assigned a nominal coefficient of 0.84 if it is not visibly nicked or corroded and if it meets design and intercomponent spacing specifications.

10.3 Metering System.

10.3.1 Before its initial use in the field, the metering system shall be calibrated according to the procedure outlined in APTD–0576. Instead of physically adjusting the dry-gas meter dial readings to correspond to the wet-test meter readings, calibration factors may be used to correct the gas meter dial readings mathematically to the proper values. Before calibrating the metering system, it is suggested that a leak-check be conducted. For metering systems having diaphragm pumps, the normal leak-check procedure will not delete leakages with the pump. For these cases, the following leak-check procedure will apply: make a ten-minute calibration run at 0.00057 $m^3$min (0.02 cfm). At the end of the run, take the difference of the measured wet-test and dry-gas meter volumes and divide the difference by 10 to get the leak rate. The leak rate should not exceed 0.00057 $m^3$min (0.02 cfm).

10.3.2 After each field use, check the calibration of the metering system by performing three calibration runs at a single intermediate orifice setting (based on the previous field test). Set the vacuum at the maximum value reached during the test series. To adjust the vacuum, insert a valve between the wet-test meter and the inlet of the metering system. Calculate the average value of the calibration factor. If the calibration has changed by more than 5 percent, recalibrate the meter over the full range of orifice settings, as outlined in APTD–0576.

10.3.3 Leak-check of metering system: The portion of the sampling train from the pump to the orifice meter (see Figure 1) should be leak-checked prior to initial use and after each shipment. Leakage after the pump will result in less volume being recorded than is actually sampled. Use the following procedure: Close the main valve on the meter box. Insert a one-hole rubber stopper with rubber tubing attached into the orifice exhaust pipe. Disconnect and vent the low side of the orifice manometer. Close off the low side orifice tap. Pressurize the system to 13–18 cm (5–7 in) water column by blowing into the rubber tubing. Pinch off the tubing and observe the manometer for 1 min. A loss of pressure on the manometer indicates a leak in the meter box. Leaks must be corrected. (Note: If the dry-gas meter coefficient values obtained before and after a test series differ by >5 percent, either the test series must be voided or calculations for test series must be performed using whichever meter coefficient value (i.e., before or after) gives the lower value of total sample volume.)

10.4 Probe Heater: The probe heating system must be calibrated before its initial use in the field according to the procedure outlined in APTD–0576. Probes constructed according to APTD–0581 need not be calibrated if the calibration curves in APTD–0576 are used.

10.5 Temperature gauges: Use the procedure in section 4.3 of USEPA Method 2 to calibrate in-stack temperature gauges. Dial thermometers such as are used for the dry gas meter and condenser outlet, shall be calibrated against mercury-in-glass thermometers.

10.6 Barometer: Adjust the barometer initially and before each test series to agree to within ± 2.5 mm Hg (0.1 in Hg) of the mercury barometer or the correct barometric pressure value reported by a nearby National Weather Service Station (same altitude above sea level).

10.7 Balance: Calibrate the balance before each test series, using Class S standard weights. The weights must be within ± 0.5 percent of the standards, or the balance must be adjusted to meet these limits.

11.0 *Procedure for Analysis.*

a. The working formaldehyde standards (0.25, 0.50, 1.0, 2.0, and 3.0 µg/ml) are analyzed and a calibration curve is calculated for each day's analysis. The standards should be analyzed first to ensure that the method is working properly prior to analyzing the

samples. In addition, a sample of the high-purity water should also be analyzed and used as a ''0'' formaldehyde standard.

b. The procedure for analysis of samples and standards is identical: Using the pipet set to 2.50 ml, pipet 2.50 ml of the solution to be analyzed into a polystyrene cuvette. Using the 250 µl pipet, pipet 250 µl of the pararosaniline reagent solution into the cuvette. Seal the top of the cuvette with a Parafilm square and shake at least 30 seconds to ensure the solution in the cuvette is well-mixed. Peel back a corner of the Parafilm so the next reagent can be added. Using the 250 µl pipet, pipet 250 µl of the sodium sulfite reagent solution into the cuvette. Reseal the cuvette with the Parafilm, and again shake for about 30 seconds to mix the solution in the cuvette. Record the time of addition of the sodium sulfite and let the color develop at room temperature for 60 minutes. Set the spectrophotometer to 570 nm and set to read in Absorbance Units. The spectrophotometer should be equipped with a holder for the 1-cm pathlength cuvettes. Place cuvette(s) containing high-purity water in the spectrophotometer and adjust to read 0.000 AU.

c. After the 60 minutes color development period, read the standard and samples in the spectrophotometer. Record the Absorbance reading for each cuvette. The calibration curve is calculated by linear regression, with the formaldehyde concentration as the ''x'' coordinate of the pair, and the absorbance reading as the ''y'' coordinate. The procedure is very reproducible, and typically will yield values similar to these for the calibration curve:

Correlation Coefficient: 0.9999
Slope: 0.50
Y-Intercept: 0.090

d. The formaldehyde concentration of the samples can be found by using the trend-line feature of the calculator or computer program used for the linear regression. For example, the TI–55 calculators use the ''X'' key (this gives the predicted formaldehyde concentration for the value of the absorbance you key in for the sample). Multiply the formaldehyde concentration form the sample by the dilution factor, if any, for the sample to give the formaldehyde concentration of the original, undiluted, sample (units will be micrograms/ml).

11.1 Notes on the Pararosaniline Procedure.

11.1.1 The pararosaniline method is temperature-sensitive. However, the small fluctuations typical of a laboratory will not significantly affect the results.

11.1.2 The calibration curve is linear to beyond 4 µg/ml formaldehyde, however, a research-grade spectrophotometer is required to reproducibly read the high absorbance values. Consult your instrument manual to evaluate the capability of the spectrophotometer.

11.1.3 The quality of the laboratory water used to prepare standards and make dilutions is critical. It is important that the cautions given in the Reagents section be observed. This procedure allows quantitation of formaldehyde at very low levels, and thus it is imperative to avoid contamination from other sources of formaldehyde and to exercise the degree of care required for trace analyses.

11.1.4 The analyst should become familiar with the operation of the Oxford or equivalent pipettors before using them for an analysis. Follow the instructions of the manufacturer; one can pipet water into a tared container on any analytical balance to check pipet accuracy and precision. This will also establish if the proper technique is being used. Always use a new tip for each pipetting operation.

11.1.5 This procedure follows the recommendations of ASTM Standard Guide D 3614, reading all solutions versus water in the reference cell. This allows the absorbance of the blank to be tracked on a daily basis. Refer to ASTM D 3614 for more information.

12.0 *Calculations.*

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculations.

12.1 Calculations of Total Formaldehyde.

12.1.1 To determine the total formaldehyde in mg, use the following equation if biocide was not used:

Total mg formaldehyde=

$$C_d \times V \times DF \times 0.001 \text{ mg}/\mu\text{g}$$

Where:
$C_d$=measured conc. formaldehyde, ''µg/ml;
V=total volume of stack sample, ml;
DF=dilution factor.

12.1.2 To determine the total formaldehyde in mg, use the following equation if biocide was used:

Total mg formaldehyde=

$$\frac{C_d \times V}{(V - B) \times DF \times 0.001 \text{ mg}/\mu\text{g}}$$

Where:
$C_d$=measured conc. formaldehyde, µg/ml;
V=total volume of stack sample, ml;
B=total volume of biocide added to sample, ml;
DF=dilution factor.

12.2 Formaldehyde concentration (mg/m$^3$) in stack gas. Determine the formaldehyde concentration (mg/m$^3$) in the stack gas using the following equation:

Formaldehyde concentration (mg/m$^3$)=

$$\frac{K \times [\text{total formaldehyde, mg}]}{V_m(\text{std})}$$

Where:
K=35.31 cu ft/m$^3$ for $V_m$(std) in English units, or
K=1.00 m$^3$/m$^3$ for $V_m$(std) in metric units;
$V_m$(std)=volume of gas sample measured by a dry gas meter, corrected to standard conditions, dscm (dscf).

12.3 Average Dry Gas Meter Temperature and Average Orifice Pressure Drop are obtained from the data sheet.

12.4 Dry Gas Volume: Calculate $V_m$(std) and adjust for leakage, if necessary, using the equation in Section 6.3 of EPA Method 5, 40 CFR part 60, appendix A.

12.5 Volume of Water Vapor and Moisture Content: Calculated the volume of water vapor and moisture content from equations 5–2 and 5–3 of EPA Method 5.

13.0 *Method Performance.*

The precision of this method is estimated to be better than ± 5 percent, expressed as ± the percent relative standard deviation.

14.0 *Pollution Prevention.* (Reserved)

15.0 *Waste Management.* (Reserved)

16.0 *References.*

US EPA 40 CFR, Part 60, Appendix A, Test Methods 1–5

*Method 318—Extractive FTIR Method for the Measurement of Emissions from the Mineral Wool and Wool Fiberglass Industries*

1. *Scope and Application*

1.1 Scope. The analytes measured by this method and their CAS numbers are:

Carbon Monoxide: 630–08–0
Carbonyl Sulfide: 463–58–1
Formaldehyde: 50–00–0
Methanol: 1455–13–6
Phenol: 108–95–2

1.2 Applicability.

1.2.1 This method is applicable for the determination of formaldehyde, phenol, methanol, carbonyl sulfide (COS) and carbon monoxide (CO) concentrations in controlled and uncontrolled emissions from manufacturing processes using phenolic resins. The compounds are analyzed in the mid-infrared spectral region (about 400 to 4000 cm$^{-1}$ or 25 to 2.5 µm). Suggested analytical regions are given below (Table 1). Slight deviations from these recommended regions may be necessary due to variations in moisture content and ammonia concentration from source to source.

1.2.2 This method does not apply when: (a) polymerization of formaldehyde occurs, (b) moisture condenses in either the sampling system or the instrumentation, and (c) when moisture content of the gas stream is so high relative to the analyte concentrations that it causes severe spectral interference.

TABLE 1.—EXAMPLE ANALYTICAL REGIONS

| Compound | Analytical Region ($cm^{-1}$) $FL_m$–$FU_m$ | Potential interferants |
|---|---|---|
| Formaldehyde | 2840.93–2679.83 | Water, Methane. |
| Phenol | 1231.32–1131.47 | Water, Ammonia, Methane. |
| Methanol | 1041.56–1019.95 | Water, Ammonia. |
| COS[a] | 2028.4–2091.9 | Water, $CO_2$, CO. |
| CO[a] | 2092.1–2191.8 | Water, $CO_2$, COS. |

[a] Suggested analytical regions assume about 15 percent moisture and $CO_2$, and that COS and CO have about the same absorbance (in the range of 10 to 50 ppm. If CO and COS are hundreds of ppm or higher, then $CO_2$ and moisture interference is reduced. If CO or COS is present at high concentration and the other at low concentration, then a shorter cell pathlength may be necessary to measure the high concentration component.

1.3 Method Range and Sensitivity.

1.3.1 The analytical range is a function of instrumental design and composition of the gas stream. Theoretical detection limits depend, in part, on (a) the absorption coefficient of the compound in the analytical frequency region, (b) the spectral resolution, (c) interferometer sampling time, (d) detector sensitivity and response, and (e) absorption pathlength.

1.3.2 Practically, there is no upper limit to the range. The practical lower detection limit is usually higher than the theoretical value, and depends on (a) moisture content of the flue gas, (b) presence of interferants, and (c) losses in the sampling system. In general, a 22 meter pathlength cell in a suitable sampling system can achieve practical detection limits of 1.5 ppm for three compounds (formaldehyde, phenol, and methanol) at moisture levels up to 15 percent by volume. Sources with uncontrolled emissions of CO and COS may require a 4 meter pathlength cell due to high concentration levels. For these two compounds, make sure absorbance of highest concentration component is <1.0.

1.4 Data Quality Objectives.

1.4.1 In designing or configuring the system, the analyst first sets the data quality objectives, i.e., the desired lower detection limit ($DL_i$) and the desired analytical uncertainty ($AU_i$) for each compound. The instrumental parameters (factors b, c, d, and e in Section 1.3.1) are then chosen to meet these requirements, using Appendix D of the FTIR Protocol.

1.4.2 Data quality for each application is determined, in part, by measuring the RMS (Root Mean Square) noise level in each analytical spectral region (Appendix C of the FTIR Protocol). The RMS noise is defined as the RMSD (Root Mean Square Deviation) of the absorbance values in an analytical region from the mean absorbance value of the region. Appendix D of the FTIR Protocol defines the $MAU_{im}$ (minimum analyte uncertainty of the $i^{th}$ analyte in the $m^{th}$ analytical region). The MAU is the minimum analyte concentration for which the analytical uncertainty limit ($AU_i$) can be maintained: If the measured analyte concentration is less than $MAU_i$, then data quality is unacceptable. Table 2 gives some example DL and AU values along with calculated areas and MAU values using the protocol procedures.

TABLE 2.—EXAMPLE PRE-TEST PROTOCOL CALCULATIONS

| Protocol value | Form | Phenol | Methanol | Protocol appendix |
|---|---|---|---|---|
| Reference concentration[a] (ppm-meters)/K | 3.016 | 3.017 | 5.064 | |
| Reference Band Area | 8.2544 | 16.6417 | 4.9416 | B |
| DL (ppm-meters)/K | 0.1117 | 0.1117 | 0.1117 | B |
| AU | 0.2 | 0.2 | 0.2 | B |
| CL | 0.02234 | 0.02234 | 0.02234 | B |
| FL | 2679.83 | 1131.47 | 1019.95 | B |
| FU | 2840.93 | 1231.32 | 1041.56 | B |
| FC | 2760.38 | 1181.395 | 1030.755 | B |
| AAI (ppm-meters)/K | 0.18440 | 0.01201 | 0.00132 | B |
| RMSD | 2.28E–03 | 1.21E–03 | 1.07E–03 | C |
| MAU (ppm-meters)/K | 4.45E–02 | 7.26E–03 | 4.68E–03 | D |
| MAU (ppm at 22) | 0.0797 | 0.0130 | 0.0084 | D |

[a] Concentration units are: ppm concentration of the reference sample (ASC), times the path length of the FTIR cell used when the reference spectrum was measured (meters), divided by the absolute temperature of the reference sample in Kelvin (K), or (ppm-meters)/K.

2.0 *Summary of Method.*

2.1 Principle.

2.1.1 Molecules are composed of chemically bonded atoms, which are in constant motion. The atomic motions result in bond deformations (bond stretching and bond-angle bending). The number of fundamental (or independent) vibrational motions depends on the number of atoms (N) in the molecule. At typical testing temperatures, most molecules are in the ground-state vibrational state for most of their fundamental vibrational motions. A molecule can undergo a transition from its ground state (for a particular vibration) to the first excited state by absorbing a quantum of light at a frequency characteristic of the molecule and the molecular motion. Molecules also undergo rotational transitions by absorbing energies in the far-infrared or microwave spectral regions. Rotational transition absorbencies are superimposed on the vibrational absorbencies to give a characteristic shape to each rotational-vibrational absorbance ''band.''

2.1.2 Most molecules exhibit more than one absorbance band in several frequency regions to produce an infrared spectrum (a characteristic pattern of bands or a ''fingerprint'') that is unique to each molecule. The infrared spectrum of a molecule depends on its structure (bond lengths, bond angles, bond strengths, and atomic masses). Even small differences in structure can produce significantly different spectra.

2.1.3 Spectral band intensities vary with the concentration of the absorbing compound. Within constraints, the relationship between absorbance and sample concentration is linear. Sample spectra are compared to reference spectra to determine the species and their concentrations.

2.2 Sampling and Analysis.

2.2.1 Flue gas is continuously extracted from the source, and the gas or a portion of the gas is conveyed to the FTIR gas cell, where a spectrum of the flue gas is recorded.

Absorbance band intensities are related to sample concentrations by Beer's Law.

$$A_v = \sum a_i b c_i \qquad (1)$$

where:

$A_v$ = absorbance of the $i^{th}$component at the given frequency, Y

a = absorption coefficient of the $i^{th}$ component at the frequency, Y

b = path length of the cell.

c = concentration of the $i^{th}$ compound in the sample at frequency Y

2.2.2 After identifying a compound from the infrared spectrum, its concentration is determined by comparing band intensities in the sample spectrum to band intensities in ''reference spectra'' of the formaldehyde, phenol, methanol, COS and CO. These reference spectra are available in a permanent soft copy from the EPA spectral library on the EMTIC bulletin board. The source may also prepare reference spectra according to Section 4.5 of the FTIR Protocol. (Note: Reference spectra not prepared according to the FTIR Protocol are not acceptable for use in this test method. Documentation detailing the FTIR Protocol steps used in preparing any non-EPA reference spectra shall be included in each test report submitted by the source.)

2.2.3 Analyte spiking is used for quality assurance. Analyte spiking shall be carried out before the first run (a test consists of three runs) and after the third run. Unless otherwise specified in the applicable regulation, a run shall consist of 8 discrete readings taken by the FTIR over an hour. Therefore, a test shall consist of two analyte spike interferograms (assuming a mixture of compounds was introduced simultaneously for the analyte spike; if each compound was introduced individually, two analyte spike interferograms would be recorded for each target compound), 24 stack sample interferograms, and their corresponding background readings.

2.3 Operator Requirements. The analyst must have some knowledge of source sampling and of infrared spectral patterns to operate the sampling system and to choose a suitable instrument configuration. The analyst should also understand FTIR instrument operation well enough to choose an instrument configuration consistent with the data quality objectives.

3.0 *Definitions.*

See Appendix A of the FTIR Protocol.

4.0 *Interferences.*

4.1 Analytical (or Spectral) Interferences. Water vapor. High concentrations of ammonia (hundreds of ppm) may interfere with the analysis of low concentrations of methanol (1 to 5 ppm). For CO, carbon dioxide and water may be interferants. In cases where COS levels are low relative to CO levels, CO and water may be interferants.

4.2 Sampling System Interferences. Water, if it condenses, and ammonia, which reacts with formaldehyde.

5.0 *Safety.*

5.1 Formaldehyde is a suspect carcinogen; therefore, exposure to this compound must be limited. Proper monitoring and safety precautions must be practiced in any atmosphere with potentially high concentrations of CO.

5.2 This method may involve sampling at locations having high positive or negative pressures, high temperatures, elevated heights, high concentrations of hazardous or toxic pollutants, or other diverse sampling conditions. It is the responsibility of the tester(s) to ensure proper safety and health practices, and to determine the applicability of regulatory limitations before performing this test method.

6.0 *Equipment and Supplies.*

The equipment and supplies are based on the schematic of a sampling train shown in Figures 1 and 2. Either the evacuated or purged sampling technique may be used with this sampling train. Alternatives may be used, provided that the data quality objectives are met as determined in the post-analysis evaluation (see Section 13.0).

6.1 Sampling Probe. Glass, stainless steel, or other appropriate material of sufficient length and physical integrity to sustain heating, prevent adsorption of analytes, and to reach gas sampling point.

6.2 Particulate Filters. A glass wool plug (optional) inserted at the probe tip (for large particulate removal) and a filter rated at 1-micron (e.g., Balston ™) for fine particulate removal, placed immediately after the heated probe.

6.3 Sampling Line/Heating System. Heated (sufficient to prevent sample condensation) stainless steel, Teflon, or other inert material that does not adsorb the analytes, to transport the sample to analytical system.

6.4 Stainless Steel Tubing. Type 316, e.g., ⅜ in. diameter, and appropriate length for heated connections.

6.5 Calibration/Analyte Spike Assembly. A three way valve assembly (or equivalent) to introduce methanol spikes into the sampling system at the outlet of the probe before the out-of-stack particulate filter and just before the FTIR analytical system. See Figure 1.

6.6 Mass Flow Meters. To accurately measure analyte spiking flow rate, calibrated from 0 to 2 L/min (±2 percent).

6.7 Gas Regulators. Appropriate for individual gas cylinders.

6.8 Teflon Tubing. Diameter (e.g., ⅜ in.) and length suitable to connect cylinder regulators.

6.9 Sample Pump. A leak-free pump (e.g., KNF™), with by-pass valve, capable of pulling sample through entire sampling system at a rate of about 10 to 20 L/min. If placed before the analytical system, heat the pump and use a pump fabricated from materials non-reactive to the target pollutants. If the pump is located after the instrument, systematically record the sample pressure in the gas cell.

6.10 Gas Sample Manifold. A heated manifold that diverts part of the sample stream to the analyzer, and the rest to the by-pass discharge vent or other analytical instrumentation.

6.11 Rotameter. A calibrated 0 to 20 L/min range rotameter.

6.12 FTIR Analytical System. Spectrometer and detector, capable of measuring formaldehyde, phenol, methanol, COS and CO to the predetermined minimum detectable level. The system shall include a personal computer with compatible software that provides real-time updates of the spectral profile during sample collection and spectral collection.

6.13 FTIR Cell Pump. Required for the evacuated sampling technique, capable of evacuating the FTIR cell volume within 2 minutes. The FTIR cell pump should allow the operator to obtain at least 8 sample spectra in 1 hour.

6.14 Absolute Pressure Gauge. Heatable and capable of measuring pressure from 0 to 1000 mmHg to within ±2.5 mmHg (e.g., Baratron ™).

6.15 Temperature Gauge. Capable of measuring the cell temperature to within ±2°C.

7.0 *Reagents and Standards.*

7.1 Methanol/Sulfur Hexafluoride. Obtain a gas cylinder mixture of 100 ppm methanol and 2 ppm $SF_6$ in $N_2$. This gas mixture need not be certified.

7.2 Ethylene (Calibration Transfer Standard). Obtain NIST traceable (or Protocol) cylinder gas.

7.3 Nitrogen. Ultra high purity (UHP) grade.

7.4 Reference Spectra. Obtain reference spectra for the target pollutants at concentrations that bracket (in ''ppm-meter/K) the emission source levels. Also, obtain reference spectra for $SF_6$ and ethylene. Suitable concentrations are 0.0112 to 0.112 (ppm-meter)/K for $SF_6$ and 5.61 (ppm-meter)/K or less for ethylene. The reference spectra shall meet the criteria for acceptance outlined in Section 2.2.2.

8.0 *Sample Collection, Preservation, and Storage.*

Sampling should be performed in the following sequence: Collect background, collect CTS spectrum, QA spiking and direct-to-cell measurement of spike gas, collect samples, post-test QA spiking and direct-to-cell measurement, collect post-test CTS spectrum, verify that two copies of all data were stored on separate computer media.

8.1 Pretest Preparations and Evaluations. Using the procedure in Section 4.0 of the FTIR Protocol, determine the optimum sampling system configuration for sampling the target pollutants. Table 2 gives some example values for AU, DL, and MAU. Based on a study (Reference 1), an FTIR system using 1 $cm^{-1}$ resolution, 22 meter path length, and a broad band MCT detector was suitable for meeting the requirements in Table 2. Other factors that must be determined are:

a. Test requirements: $AU_i$, $CMAX_i$, $DL_i$, $OFU_i$, and $t_{AN}$ for each.

b. Inteferants: See Table 1.

c. Sampling system: $L_S'$, $P_{min}$, $P_S'$, $T_S'$, $t_{SS}$, $V_{SS}$; fractional error, MIL.

d. Analytical regions: 1 through $N_m$, $FL_m$, $FC_m$, and $FU_m$, plus interferants, $FFU_m$, $FFL_m$, wavenumber range FNU to FNL. See Tables 1 and 2.

8.1.1 If necessary, sample and acquire an initial spectrum. Then determine the proper operational pathlength of the instrument to obtain non-saturated absorbencies of the target analytes.

8.1.2 Set up the sampling train as shown in Figure 1.

8.2 Sampling System Leak-check. Leak-check from the probe tip to pump outlet as

follows: Connect a 0 to 250-mL/min rate meter (rotameter or bubble meter) to the outlet of the pump. Close off the inlet to the probe, and note the leakage rate. The leakage rate shall be ≤200 mL/min.

8.3 Analytical System Leak-check.

8.3.1 For the evacuated sample technique, close the valve to the FTIR cell, and evacuate the absorption cell to the minimum absolute pressure $P_{min}$. Close the valve to the pump, and determine the change in pressure $\Delta P_v$ after 2 minutes.

8.3.2 For both the evacuated sample and purging techniques, pressurize the system to about 100 mmHg above atmospheric pressure. Isolate the pump and determine the change in pressure $\Delta P_p$ after 2 minutes.

8.3.3 Measure the barometric pressure, $P_b$ in mmHg.

8.3.4 Determine the percent leak volume $\%V_L$ for the signal integration time $t_{SS}$ and for $\Delta P_{max}$, i.e., the larger of $\Delta P_v$ or $\Delta P_p$, as follows:

$$\%V_L = 50\ t_{SS} \frac{\Delta P_{max}}{P_{SS}} \qquad (2)$$

Where:

50=100% divided by the leak-check time of 2 minutes.

8.3.5 Leak volumes in excess of 4 percent of the sample system volume $V_{ss}$ are unacceptable.

8.4 Background Spectrum. Evacuate the gas cell to ≤5 mmHg, and fill with dry nitrogen gas to ambient pressure. Verify that no significant amounts of absorbing species (for example water vapor and $CO_2$) are present. Collect a background spectrum, using a signal averaging period equal to or greater than the averaging period for the sample spectra. Assign a unique file name to the background spectrum. Store the spectra of the background interferogram and processed single-beam background spectrum on two separate computer media (one is used as the back-up).

8.5 Pre-Test Calibration Transfer Standard. Evacuate the gas cell to ≤5 mmHg absolute pressure, and fill the FTIR cell to atmospheric pressure with the CTS gas. Or, purge the cell with 10 cell volumes of CTS gas. Record the spectrum.

8.6 Samples.

8.6.1 Evacuated Samples. Evacuate the absorbance cell to ≤5 mmHg absolute pressure before. Fill the cell with flue gas to ambient pressure and record the spectrum. Before taking the next sample, evacuate the cell until no further evidence of absorption exists. Repeat this procedure to collect at least 8 separate spectra (samples) in 1 hour.

8.6.2 Purge Sampling. Purge the FTIR cell with 10 cell volumes of flue gas and at least for about 10 minutes. Discontinue the gas cell purge, isolate the cell, and record the sample spectrum and the pressure. Before taking the next sample, purge the cell with 10 cell volumes of flue gas.

8.6.3 Continuous Sampling. Spectra can be collected continuously while the FTIR cell is being purged. The sample integration time, $t_{ss}$, the sample flow rate through the FTIR gas cell, and the total run time must be chosen so that the collected data consist of at least 10 spectra with each spectrum being of a separate cell volume of flue gas. More spectra can be collected over the run time and the total run time (and number of spectra) can be extended as well.

8.7 Sampling QA, Data Storage and Reporting.

8.7.1 Sample integration times should be sufficient to achieve the required signal-to-noise ratios. Obtain an absorbance spectrum by filling the cell with nitrogen. Measure the RMSD in each analytical region in this absorbance spectrum. Verify that the number of scans is sufficient to achieve the target MAU (Table 2).

8.7.2 Identify all sample spectra with unique file names.

8.7.3 Store on two separate computer media a copy of sample interferograms and processed spectra.

8.7.4 For each sample spectrum, document the sampling conditions, the sampling time (while the cell was being filled), the time the spectrum was recorded, the instrumental conditions (path length, temperature, pressure, resolution, integration time), and the spectral file name. Keep a hard copy of these data sheets.

8.8 Signal Transmittance. While sampling, monitor the signal transmittance through the instrumental system. If signal transmittance (relative to the background) drops below 95 percent in any spectral region where the sample does not absorb infrared energy, obtain a new background spectrum.

8.9 Post-run CTS. After each sampling run, record another CTS spectrum.

8.10 Post-test QA.

8.10.1 Inspect the sample spectra immediately after the run to verify that the gas matrix composition was close to the expected (assumed) gas matrix.

8.10.2 Verify that the sampling and instrumental parameters were appropriate for the conditions encountered. For example, if the moisture is much greater than anticipated, it will be necessary to use a shorter path length or dilute the sample.

8.10.3 Compare the pre-and post-run CTS spectra. They shall agree to within ±5 percent. See FTIR Protocol, Appendix E.

9.0 *Quality Control.*

Use analyte spiking to verify the validity of the sampling system for the analytes of interest. QA spiking shall be performed before the first run begins and again after the third run is completed. A direct-to-cell measurement of the spike gas should also be performed before and after sampling.

9.1 Spike Materials. Use Protocol or NIST traceable analyte gas standard, whenever possible. A vapor generation device may be used to prepare analyte spike from the neat or solid sample of formaldehyde and phenol (use this option only when certified cylinder gas standards cannot be obtained).

9.2 Spiking Procedure.

9.2.1 Introduce the spike/tracer gas at a constant (≤±2 percent) flow rate ≤10 percent of the total sample flow.

(**Note:** Use the rotameter at the end of the sampling train to estimate the required spike/tracer gas flow rate.) Use a mass flow controller to control and monitor the flow rate of the spike/tracer gas.

9.2.2 Determine the response time (RT) by continuously monitoring effluent until spike is equilibrated within the sampling/analytical system. Wait for a period of twice RT, then obtain at least two consecutive spectra of the spiked gas. Duplicate analyses of methanol and $SF_6$ shall be within ±5 percent of their mean value.

9.2.3 Calculate the dilution ratio using the tracer gas as follows:

$$DF = \frac{SF_{6[dir]}}{SF_{6[spk]}} \qquad (3)$$

where:

DF = Dilution factor of the spike gas; this value shall be ≥10.

$SF_{6[dir]}$ = $SF_6$ concentration measured directly in undiluted spike gas.

$SF_{6[spk]}$ = Diluted $SF_6$ concentration measured in a spiked sample.

9.3 Bias. Determine the bias (defined by EPA Method 301, Section 6.3.1) as follows:

Calculate the expected analyte concentration in the spiked samples, CS:

$$CS = \frac{A_{i\ dir}}{DF} \qquad (4)$$

where:

$A_{i\ dir}$ = Analyte concentration measured directly in undiluted spike gas.

DF = From equation 3.

$$B = S_m - M_m\left[1 - \frac{1}{DF}\right] - CS \qquad (5)$$

where:

B = Bias at spike level.

$S_m$ = Mean analyte concentration in the spiked samples.

$M_m$ = Mean analyte concentration in the unspiked samples.

CS = Expected analyte concentration in the spiked samples.

DF = Dilution factor from Equation 3.

9.4 Correction Factor.

9.4.1 Calculate the correction factor, CF, using the following equation:

$$CF = \frac{1}{1 + \frac{B}{CS}} \qquad (6)$$

9.4.2 If the CF is outside the range of 0.70 to 1.30, the data collected during the compliance test are unacceptable. For correction factors within the range, multiply all analytical results by the CF for that compound to obtain the final values.

10. *Calibration and Standardization.*

10.1 Signal-to-Noise Ratio (S/N). The S/N shall be sufficient to meet the MAU in each analytical region.

10.2 Absorbance Pathlength. Verify the absorbance path length by comparing CTS spectra to reference spectra of the calibration gas(es). See FTIR Protocol, Appendix E.

10.3 Instrument Resolution. Measure the line width of appropriate CTS band(s) and compare to reference CTS spectra to verify instrumental resolution.

10.4 Apodization Function. Choose appropriate apodization function. Determine any appropriate mathematical

transformations that are required to correct instrumental errors by measuring the CTS. Any mathematical transformations must be documented and reproducible.

10.5 FTIR Cell Volume. Evacuate the cell to ≤5 mmHg. Measure the initial absolute temperature ($T_i$) and absolute pressure ($P_i$). Connect a wet test meter (or a calibrated dry gas meter), and slowly draw room air into the cell. Measure the meter volume ($V_m$), meter absolute temperature ($T_m$), and meter absolute pressure ($P_m$), and the cell final absolute temperature ($T_f$) and absolute pressure ($P_f$). Calculate the FTIR cell volume $V_{SS}$, including that of the connecting tubing, as follows:

$$V_{SS} = \frac{V_m \frac{P_m}{T_m}}{\left[\frac{P_f}{T_f} - \frac{P_i}{T_i}\right]} \qquad (7)$$

11. *Procedure.*

Refer to Sections 4.6–4.11, Sections 5, 6, and 7, and the appendices of the FTIR Protocol.

12.0 *Data Analysis and Calculations.*

a. Data analysis is performed using appropriate reference spectra whose concentrations can be verified using CTS spectra. Various analytical programs are available to relate sample absorbance to a concentration standard. Calculated concentrations should be verified by analyzing spectral baselines after mathematically subtracting scaled reference spectra from the sample spectra. A full description of the data analysis and calculations may be found in the FTIR Protocol (Sections 4.0, 5.0, 6.0 and appendices).

b. Correct the calculated concentrations in sample spectra for differences in absorption pathlength between the reference and sample spectra by:

$$C_{corr} = \left[\frac{L_r}{L_s}\right]\left[\frac{T_s}{T_r}\right]C_{calc} \qquad (8)$$

where:

$C_{corr}$ = The pathlength corrected concentration.

$C_{calc}$ = The initial calculated concentration (output of the Multicomp program designed for the compound).

$L_r$ = The pathlength associated with the reference spectra.

$L_s$ = The pathlength associated with the sample spectra.

$T_s$ = The absolute temperature (K) of the sample gas.

$T_r$ = The absolute gas temperature (K) at which reference spectra were recorded.

13. *Reporting and Recordkeeping.*

All interferograms used in determining source concentration shall be stored for the period of time required in the applicable regulation. The Administrator has the option of requesting the interferograms recorded during the test in electronic form as part of the test report.

14. *Method Performance.*

Refer to the FTIR Protocol. This method is self-validating provided that the results meet the performance specification of the QA spike in Section 9.0.

15. *Pollution Prevention.* [Reserved]

16. *Waste Management.*

Laboratory standards prepared from the formaldehyde and phenol are handled according to the instructions in the materials safety data sheets (MSDS).

17. *References.*

(1) ''Field Validation Test Using Fourier Transform Infrared (FTIR) Spectrometry To Measure Formaldehyde, Phenol and Methanol at a Wool Fiberglass Production Facility.'' Draft. U.S. Environmental Protection Agency Report, Entropy, Inc., EPA Contract No. 68D20163, Work Assignment I–32, December 1994 (docket item II–A–13).

(2) ''Method 301—Field Validation of Pollutant Measurement Methods from Various Waste Media,'' 40 CFR part 63, appendix A.

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# Part III

# Federal Reserve System

**12 CFR Parts 208, 209, 216, and 250**
**State Banking Institutions Federal Reserve System Membership, Miscellaneous Interpretations; Federal Reserve Bank Capital Stock Issue and Cancellation; and Security Procedures; Proposed Rules**

**FEDERAL RESERVE SYSTEM**

**12 CFR Parts 208 and 250**

**[Regulation H; Docket No. R–0964]**

## Membership of State Banking Institutions in the Federal Reserve System; Miscellaneous Interpretations

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board of Governors of the Federal Reserve System is proposing to amend Subpart A of Regulation H, regarding the general provisions for membership in the Federal Reserve System, and Subpart E of Regulation H, regarding Interpretations, in order to reduce regulatory burden and simplify and update requirements. The proposal would also eliminate several obsolete interpretations. The Board is also reissuing existing Subparts B and C. Existing Subparts B and C would not be significantly amended but would be relettered (as Subparts D and E, respectively) to reflect the fact that existing Subpart A would be broken into four new Subparts (Subparts A, B, C and F). Existing Subpart D, regarding safety and soundness standards, would be incorporated into proposed Subpart A. The proposal would not amend in any way Appendices A through E to Part 208. This proposal to modernize Subpart A of Regulation H is in accordance with the Board's policy of reviewing its regulations as well as the Board's review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

**DATES:** Comments must be received by May 30, 1997.

**ADDRESSES:** Comments, which should refer to Docket No. R–0964, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board of Governors' Rules Regarding Availability of Information, 12 CFR 261.8.

**FOR FURTHER INFORMATION CONTACT:** Jean Anderson, Staff Attorney, Legal Division (202/452–3707). For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

**SUPPLEMENTARY INFORMATION:**

### Background

As part of its policy of reviewing its regulations, and consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), Pub. L. 103–328, the Board of Governors of the Federal Reserve System (Board) is proposing to amend Subpart A of Regulation H, regarding the general provisions for state bank membership in the Federal Reserve System (12 CFR part 208). Section 303 of the Riegle Act requires each Federal banking agency to review and streamline its regulations and written policies to improve efficiency, reduce unnecessary costs, and remove inconsistencies and outmoded and duplicative requirements. The proposed amendments are designed to reduce regulatory burden and simplify and update the Regulation.

The principal proposed amendments are described below. In general, the amendments serve to reorganize, clarify, and reduce the burden of compliance with Subpart A of Regulation H. The amendments delete application procedures no longer in effect, reflect the requirements of the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) in branch applications, provide for expedited procedures in certain membership and branch applications, and eliminate provisions that no longer have a significant effect. The Board also proposes to eliminate a number of interpretations in Regulation H and elsewhere; specifically, interpretations: 12 CFR 208.125, 208.126, 208.127, 208.128, 250.120, 250.121, 250.122, 250.123, 250.140, 250.161, 250.162, 250.220, 250.300, 250.301 and 250.302. The amended Regulation H, when fully effective, will replace the existing Regulation H in its entirety, except for the Appendices to Regulation H, which will remain unchanged by the proposal.

The Board is not proposing to modify substantively existing Subparts B and C of Regulation H. However, existing Subparts B and C would be reissued and relettered (Subparts D and E, respectively) to reflect the fact that Subpart A, as proposed, would be broken into four new Subparts (Subpart A, B, C, and F). In addition, a cross-reference to real estate appraisal standards in Regulation Y (Part 225—Bank Holding Companies and Change in Bank Control) would be moved from existing § 208.18 to proposed § 208.50 (Purpose and Scope), within proposed Subpart E, which would be renamed ''Real Estate Lending and Appraisal Standards.'' Existing Subpart D would be incorporated into Subpart A at proposed § 208.3(e), entitled ''Conditions of membership.'' The Board is proposing to amend existing Subpart E, which lists interpretations of Regulation H, in order to eliminate unnecessary or outdated interpretations and to incorporate certain interpretations, where noted, into the regulatory language of Subpart A of Regulation H. Existing Subpart E would be relettered as Subpart G. As noted above, a number of miscellaneous interpretations would also be deleted.

### Subpart A—General Membership and Branching Requirements

*Section 208.2 Definitions*

The definitions would be rearranged and placed in alphabetical order. The definition of *branch* would be taken out of footnote seven of existing § 208.9 and added to the definition section. The definition section would also include a proposed definition of *capital stock and surplus.* The Board is proposing to formalize in § 208.6 its expedited branch application procedures. Consequently, a definition of *eligible bank* is proposed for purposes of determining which banks may utilize the expedited branch application procedures. The definition of *eligible bank* would also be used for purposes of determining which banks may utilize the Board's newly proposed expedited membership procedures.

Definition of Branch

Section 9(3) of the Federal Reserve Act (12 U.S.C. 321) in essence provides that State member banks may establish domestic branches on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks. The definition of branch incorporates this concept by providing that a branch includes any branch bank, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money. A branch may include a temporary, seasonal, or mobile facility.

For purposes of this definition, the Board is proposing that a branch not include a loan origination facility where the proceeds of loans are not disbursed. In addition, pursuant to section 2204 of the Economic Growth and Regulatory

Paperwork Reduction Act of 1996, Pub. L. 104–208, 110 Stat. 3009, (Economic Growth Act), the definition excludes automated teller machines and remote service units as well as offices of an affiliated depository institution that provide services to customers of a State member bank on behalf of the State member bank. The Board seeks comment on whether it also would be appropriate to exclude from the definition of branch an office of an unaffiliated depository institution that provides services to customers of the State member bank on behalf of the State member bank.

The proposal also excludes from the definition of branch a facility that would otherwise qualify as a branch because it engages in one or more of these branching functions (receipt of deposits, payment of withdrawals, or making loans) but which prohibits access to members of the public for purposes of conducting one or more branching functions. For example, an office that receives deposits only through the mail (which does not offer a means to attract customers to the bank or provide in-person contact with the public) would be excluded. This exclusion is consistent with existing Board interpretations.

The Office of the Comptroller of the Currency (OCC) has also stated that it will decide on a case by case basis whether to treat as a branch a facility that generally provides services, on a nondiscriminatory basis, to accounts that its customers hold as well as accounts held by noncustomers in other banks and depository institutions. (Before the passage of the Economic Growth Act that excludes ATMs from the definition of a branch, an example of such a facility would have been ATMs that are linked to networks and thus provide services to bank customers and non-customers alike.) The Board would also consider on a case-by-case basis, based on the particular circumstances involved, whether such facilities constitute branches.

Definition of Capital Stock and Surplus

The Federal Reserve Act and the current version of Regulation H contain various references to a State member bank's ''capital.'' For example, the guidelines for determining the capital adequacy of State member banks for risk-based capital purposes and for leverage purposes are set out in appendices A and B to Regulation H, respectively (these measures would not change under the proposal). The Federal Reserve Act contains other references to a State member bank's *capital stock and surplus* (or similar terms) in numerous provisions, such as those related to purchases of investment securities (12 U.S.C. 335), loans on stock or bond collateral (12 U.S.C. 248(m)), deposits with nonmember banks (12 U.S.C. 463), bank acceptances (12 U.S.C. 372 and 373), and limits on the amount of paper of one borrower that may be discounted by a Federal Reserve Bank for any member bank (12 U.S.C. 330 and 345). The Board has issued interpretations on how to define ''capital stock and surplus'' for some of these purposes (12 CFR 250.161 and 250.162).

The Board is proposing to define *capital stock and surplus* in Regulation H to mean Tier 1 and Tier 2 capital, as calculated under the risk-based capital guidelines, plus any allowance for loan and lease losses not already included in Tier 2 capital. This definition would apply to all references to capital stock and surplus in the Federal Reserve Act and Regulation H, unless otherwise noted. The new definition would mirror the definition of capital stock and surplus that the Board adopted in April 1996 for purposes of section 23A of the Federal Reserve Act (which governs transactions between insured depository institutions and their affiliates). This definition is also used for purposes of Regulation O (12 CFR 215) (which governs insider lending) and the OCC's limits on loans by a national bank to a single borrower.[1] The Board proposes to rescind its current capital-related interpretations (12 CFR 250.161 and 250.162).

Definition of Eligible Bank

The proposal incorporates a new definition, *eligible bank*, to serve as the qualification for expedited treatment of membership and branch applications. Under the proposal, an eligible bank is a bank that: 1. is well capitalized; 2. has a Uniform Financial Institutions Rating System (CAMELS) rating of 1 or 2; 3. has a Community Reinvestment Act rating of ''Outstanding'' or ''Satisfactory;'' 4. has a compliance rating of 1 or 2; and 5. has no major unresolved supervisory issues outstanding as determined by the Board or the appropriate Federal Reserve Bank. The Board has long used similar criteria for expedited processing of branch applications. The proposal would incorporate these criteria into Regulation H and would expand the use to qualification for expedited processing of membership applications. The proposed definition of *eligible bank* is consistent with the definition of eligible bank adopted by the OCC.

[1] The proposed definition of capital stock and surplus would not apply to part 209 of this title (Regulation I).

Definition of Mutual Savings Bank and State Bank

The Board proposes deleting the definition of a mutual savings bank as unnecessary. The Board is proposing to amend the definition of state bank in order to track more closely the definition of state bank provided in Section 9 of the Federal Reserve Act.

*Section 208.3 Application and Conditions for Membership in Federal Reserve System*

Eligibility Requirements

The proposal eliminates existing § 208.2, entitled ''Eligibility Requirements,'' since its provisions have been incorporated into the factors considered in approving applications for membership. The proposal eliminates existing § 208.2(b), regarding minimum capital required for membership by national banks, and replaces it with a cross-reference to the statutory requirements applicable to national banks.

In addition, the proposal eliminates existing § 208.3, ''Insurance of Deposits.'' Existing § 208.3 reflects prior law that accorded insured bank status under the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 264, 1728, 1811 to 1831) to an uninsured bank upon becoming a State member bank. Under the Federal Deposit Insurance Act, banks must apply separately to the Federal Deposit Insurance Corporation for insured bank status.

Applications for Membership and Stock

The proposal amends existing § 208.4, entitled ''Application for membership,'' by summarizing in a more succinct fashion the Board's application procedures. It also provides a cross-reference to the Board's Rules of Procedure (12 CFR 262.3), which govern the submission of such applications. Existing § 208.5(b), which covers procedures for the payment for and issuance of Federal Reserve Bank stock to State member banks on approval of membership applications, duplicates Regulation I and, therefore is deleted. A proposed revision of Regulation I (12 CFR part 209) is published elsewhere in today's **Federal Register**.

Public comment on membership applications (including conversions) is not expressly required by statute and, since membership does not confer deposit insurance, the CRA does not, by its terms, apply to membership applications (state or national charters confer deposit-taking ability not Federal Reserve membership). Although the publication requirement imposes a

burden on prospective member banks, it may also lead to the Board obtaining additional information or views relevant to a membership application. Therefore, the Board solicits comment on whether publication should be required for membership applications.

If the Board determines publication is not necessary for membership applications, the final rule would provide that membership applications would be acted on promptly after receipt of the application.

Factors Considered in Approving Applications for Membership

The matters given special consideration in membership applications would be modified to reflect that insurance coverage under the Federal Deposit Insurance Act is no longer a requirement for membership. In addition, the membership considerations would be modified to clarify that the capital necessary for membership is that required under proposed § 208.4. If the proposed changes are adopted, the Board would change its Rules Regarding Delegation of Authority (Delegation Rules), at 12 CFR 265.11(e)(1), to reflect the changes to Regulation H since the Delegation Rules also list the factors the Board takes into consideration in approving membership applications.

Expedited Membership Approval for Eligible Banks and Bank Holding Companies

The Board's proposal would provide expedited treatment for membership applications from *de novo* state banks that are sponsored by bank holding companies that meet the criteria for expedited processing under § 225.14(c) of Regulation Y (12 CFR 225.14(c)). In addition, the Board's proposal would grant expedited treatment to state non-member banks applying for membership and national banks seeking to convert to State member banks if the applying bank is an *eligible bank*.[2]

An application for membership by an eligible bank would be deemed approved by the Board or the appropriate Reserve Bank five business days after the close of the public comment period, unless the Board or the appropriate Reserve Bank notifies the bank that the application is approved prior to that date (but in no case will an application be approved before the third day after the close of the public comment period) or that the bank is not eligible for expedited processing because: 1. The bank will offer banking services that are materially different from those presently offered by the bank, or those offered by affiliates in the case of membership applications by *de novo* banks; or 2. The existing bank is not an eligible bank or the bank holding company is not eligible for expedited treatment under § 225.14(c) of Regulation Y; or 3. The application contains a material error or is otherwise deficient; or 4. The application or notice required under the Board's Rules of Procedure (12 CFR 262.3), raises significant supervisory, Community Reinvestment Act, compliance, policy, or legal issues that have not been resolved, or a timely substantive adverse comment is submitted. If the proposed changes are adopted, the Board will amend it's Rules of Procedure accordingly.

If the Board determines publication is not necessary for membership applications, the final rule would provide that expedited membership applications are deemed approved 30 days after receipt of the application, unless the applicant is notified it is not eligible for expedited review.[3]

In addition, the Board will be eliminating the pre-acceptance period from its internal processing of all membership applications, which will generally reduce processing times. The Board believes that the expedited application procedures, by establishing criteria which, if met, presume approval, will provide greater assurance of the timing and outcome of membership applications. The Board solicits comments on the benefits of the proposed expedited membership application procedure.

Conditions of Membership

A new § 208.3(d) would combine and condense former §§ 208.6 and 208.7 concerning the general conditions and requirements of membership. The former requirement that the capital and surplus of a State member bank be adequate in relation to its existing and prospective deposit liabilities has been modified and placed in proposed § 208.4. Proposed § 208.3(d) would also incorporate the provisions of existing Subpart D, ''Standards for Safety and Soundness.''

Existing § 208.6(a), which points out that State member banks retain all charter and statutory rights under state law not preempted by Federal law, and § 208.6(b), which states that State member banks are entitled to all the privileges of membership afforded them under the Federal Reserve Act and other acts of Congress, and must observe all requirements of Federal law, would be deleted, as the Board believes these propositions to be self-evident and, therefore, do not need to be explicitly stated.

Existing § 208.7(b) requires specific notification to the appropriate Reserve Bank in the event a State member bank acquires the assets of another institution through merger, consolidation, or purchase, because the acquisition may result in a change in the general character of the bank's business or in the scope of its corporate powers. The Board proposes to delete this provision because the Bank Merger Act (12 U.S.C. 1828(c)) already requires an application under these circumstances. Filing an application under the Bank Merger Act (12 U.S.C. 1828(c)) fulfills the requirement to notify the appropriate Reserve Bank of any change requiring such a filing.

Waivers of Conditions of Membership

Existing § 208.8(b) provides for waivers of conditions contained within existing § 208.8 and existing § 208.10, provides for waivers of reports of affiliates. The proposal would provide for a waiver of any condition of membership upon a showing of good cause and for an automatic waiver of the requirement to file reports of affiliates, unless such reports are specifically requested by the Board.

Voluntary Withdrawal From Membership

The provisions of existing § 208.11, as they relate to the effective date of withdrawal from membership, would be moved to proposed § 208.3(f). The provisions in existing § 208.11, which relate to surrendering Reserve Bank stock, are duplicative of Regulation I (12 CFR part 209) and therefore would be eliminated, and instead, proposed § 208.3(f) would cross-reference Regulation I.

*Section 208.4 Capital Adequacy*

Existing § 208.13, entitled ''Capital adequacy,'' and other provisions concerning capital requirements, would be moved to proposed § 208.4. The substance of existing requirements would not change but the language would be amended to provide greater clarity to State member banks regarding

[2] The OCC provides expedited treatment for *de novo* national bank charters for affiliates of lead banks that are eligible national banks (12 CFR 5.20(j)) as well as for eligible State member banks seeking to convert to national banks 12 CFR 5.24(d)(4)).

[3] In addition, if publication for membership applications is retained, the Board will be proposing amendments to its Rules of Procedure in the future to allow banks to submit membership applications within 15 days of publication, rather than the current 7 day requirement. This would provide greater consistency in the processing procedures under Regulation H and Regulation Y (12 CFR part 225).

their ongoing obligation to ensure that the bank's capital is adequate. The Board will be considering streamlining amendments to Appendices A and B separately from this proposal.

*Section 208.5 Dividends and Other Distributions*

Proposed § 208.5 revises the existing provisions concerning payment of dividends and withdrawal of capital, currently found at § 208.19, in order to clarify the application of these requirements to State member banks. The interpretations currently found at § 208.125 through § 208.127 would be incorporated into proposed § 208.5.

*Section 208.6 Establishment and Maintenance of Branches*

The proposal would restructure existing § 208.9 and replace it with proposed new § 208.6 which is designed to improve clarity and provide more streamlined procedures.

Branching

Existing § 208.9(a) states that State member banks may establish domestic branches subject to the same limitations and restrictions as applied to national banks, unless restrained by State law, and contains a detailed summary of geographic restrictions on branching within a State, which generally restrict national banks to the same rules as those that apply to State banks under state law. Statewide branching is now permitted in many States under State law; interstate branching through acquisition is now permitted for national banks except in a few States which have opted out; and interstate branching *de novo* is now permitted in States in which out-of-state banks generally are permitted to establish branches. Rather than summarizing the underlying statutes, proposed § 208.6(a)(1) provides cross-references to the statutes governing branching.

Branch Applications Generally

Proposed § 208.6(a)(2) contains a condensed version of existing § 208.9(e), which refers State member banks to the Board's Regulation K (12 CFR part 211) for matters related to branches in foreign countries, their dependencies and possessions, dependencies and possessions of the United States, and the Commonwealth of Puerto Rico. For matters related to domestic branch applications, proposed § 208.6(a)(2) contains a cross-reference to the Board's Rules of Procedure (12 CFR 262.3) which govern the submission of domestic branch applications. The Board is requesting comment on whether it should shorten the public comment period applicable to branch applications from the 30 days that is currently required to 15 days.[4]

Proposed § 208.6(b) modifies the Board's requirements for approving branch applications currently contained within the Board's Delegation Rules (12 CFR 265.11(e)(3)). Proposed § 208.6(b) eliminates consideration of factors found at § 265.11(e)(3)(iv), regarding the competitive situation and § 265.11(e)(3)(v), regarding the branch's prospects for profitable operation, and adds to the factors for consideration the bank's performance under the CRA in cases where the bank is establishing a branch with deposit-taking ability. If the proposed changes are adopted the Board will amend its Delegation Rules accordingly.

Expedited Branch Applications

Existing § 208.9(b) would be replaced by proposed § 208.6(c), which sets forth the Board's expedited procedures for eligible banks establishing branches.[5] Under the proposed procedures, which modify slightly the Board's existing procedures, located in Administrative Letter 92–82 (November 5, 1992), a branch application by an eligible bank would be deemed approved by the Board or the appropriate Reserve Bank five business days after the close of the public comment period, unless the Board or the appropriate Reserve Bank notifies the bank that the application is approved prior to that date (but in no case will an application be approved before the third day after the close of the public comment period) or that the bank is not eligible for expedited processing because: (1) It is not an eligible bank; (2) The application contains a material error or is otherwise deficient; or (3) The application or notice required under the Board's Rules of Procedure (12 CFR 262.3), raises significant supervisory, Community Reinvestment Act, compliance, policy or legal issues that have not been resolved, or a timely substantive adverse comment is submitted. If the proposed changes are adopted the Board will amend its Rules of Procedure accordingly.

Consolidated Branch Applications

Proposed § 208.6(d) would authorize explicitly a single consolidated application for branches that a State member bank plans to establish in a one-year period. At present, such an application is permissible because the Board's branch approvals are valid for one year, provided the bank notifies the appropriate Reserve Bank before opening any branch covered by the approval. Moreover, there is no requirement that a particular branch be opened once it is approved. Under the proposal to codify such procedures, approvals would remain valid for one year unless the Board notifies the bank of the approval's suspension as a result of a change in the bank's condition.

Branch Closings

Proposed § 208.6(e) is a new section requiring branch closings to comply with section 42 of the FDI Act (12 U.S.C. 1831r–1), which requires notice to both customers and, in the case of insured State member banks, the Board, of proposed branch closings. A branch relocation is not a closing for purposes of § 42(e) of the FDI Act. Under section 42(e) of the FDI Act, a branch relocation is a movement that occurs within the immediate neighborhood and that does not substantially affect the nature of the business or customers served.

Branch Relocations

Currently § 208.9(b)(7) of Regulation H states that no branch application is required for a relocation of an existing branch. A branch relocation, for purposes of filing a branch application, is a movement that does not substantially affect the nature of the branch's business or customers served. Proposed § 208.6(f) would continue this standard.

*Section 208.7 Prohibition Against Using Interstate Branches Primarily for Deposit Production*

The proposal includes a place holder for existing § 208.28. The Board requested public comment on existing § 208.28 on March 17, 1997 (62 FR 12730). Existing § 208.28 will be incorporated at proposed § 208.7 once it is finalized.

**Subpart B Investments and Loans**

*Section 208.21 Investments in Premises and Securities*

A new proposed § 208.21, entitled ''Investments in Premises and Securities,'' would be created to provide guidance to State member banks with regard to investments in bank premises and securities. Existing interpretation § 208.124, entitled, ''Purchase of investment company stock by a State member bank,'' would remain as an interpretation of Regulation H but would be renumbered as § 208.102 and entitled ''Investments in Shares of an Investment Company.''

[4] The Board could shorten the comment period either by amending Regulation H or by amending the Board's Rules of Procedure.

[5] The Board's Rules of Procedure (12 CFR part 262) set forth general procedures for applications at 12 CFR 262.3.

Existing interpretation 12 CFR 208.128, entitled ''Commodity- or equity-linked transactions,'' would be eliminated under the proposal. Since the adoption of the interpretation found at § 208.128, in which the Board determined that certain commodity- and equity-linked transactions constituted a change in the nature of a bank's business for which Board approval was required under Regulation H, more comprehensive examination guidance and procedures have been developed to address trading activities and market risk. For this reason, the Board no longer believes it is necessary to treat commodity- and equity-linked transactions differently from transactions involving interest rate or foreign exchange risk.

*Section 208.22 Community Development and Public Welfare Investments*

Section 208.21 of Regulation H (proposed to be renumbered as § 208.22, within proposed Subpart B) contains limitations and procedures regarding public welfare investments by State member banks. Among other things, the regulation sets out the conditions under which a State member bank may make public welfare investments without prior Board approval. One of those conditions is that any investment in a particular project may not exceed 2 percent of the bank's capital stock and surplus. The Board is proposing to eliminate the 2 percent limit. (The OCC eliminated a similar 2 percent limit for national banks, 61 FR 49654, September 23, 1996.) The aggregate public welfare investments of a State member bank would continue to be limited to 5 percent of the bank's capital stock and surplus.

In addition, to make a public welfare investment without prior approval, a State member bank must have an overall rating of ''at least satisfactory'' as of its most recent consumer compliance examination. The term ''at least satisfactory'' equates to a rating of ''1'' or ''2'' in the consumer compliance examination rating system. The Board is proposing to substitute the numerical ratings for the term ''at least satisfactory.''

The final paragraph of the public welfare investment section sets out procedures regarding preexisting public welfare investments as of the effective date of the rule (January 9, 1995). The latest date for complying with any action required by this paragraph was January 9, 1996. As this paragraph is now obsolete, the Board is proposing to delete it.

Finally, as discussed above, the Board is proposing to define ''capital stock and surplus'' for purposes of Regulation H. The proposed definition would also apply to the capital limitations associated with public welfare investments.

*Section 208.23 Agricultural Loan Loss Amortization*

Proposed § 208.23 would have a sunset date of January 1, 1999, because the enabling statute provides that banks may only use this amortization provision through 1998.[6] Because the terms of proposed § 208.23 expire on January 1, 1999, banks are no longer able to establish new capital restoration plans. Since the terms of § 208.23 apply only to existing capital restoration plans, proposed § 208.23 eliminates all references relating to establishing new capital restoration plans, such as the requirements for submitting proposals to establish capital restoration plans and the eligibility requirements for establishing plans.

*Section 208.24 Letters of Credit and Acceptances*

The proposal does not substantively amend existing § 208.8(d), entitled ''Letters of credit and acceptances.''

*Section 208.25 Loans in Areas having Special Flood Hazards*

Existing § 208.23, relating to loans by State member banks in identified flood hazard areas, was recently amended by the Board and issued as a joint final rule on August 16, 1996.[7] The current proposal does not propose to modify the language of the flood insurance provisions. The sample form of notice included in the final rule will be located at the end of Subpart B as Appendix A to proposed § 208.25.

**Subpart C Bank Securities and Securities-Related Activities**

*Section 208.31 State Member Banks as Transfer Agents*

Current § 208.8(f) would be revised and replaced by proposed § 208.31. Proposed § 208.31 incorporates by reference the rules of the Securities and Exchange Commission (SEC) prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (12 CFR 240.17Ac2–1). Although section 17(a)(d)(1) of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 78q-l(d)(1)) generally subjects all transfer agents to SEC rules, section 17A(c) (15 U.S.C. 78q-1(c)) provides that transfer agents shall register with their appropriate regulatory agencies. Current § 208.8(f) sets forth procedural requirements for State member banks that register as transfer agents, which are virtually identical to the SEC's registration rules. Because the Board does not need to maintain separate procedures, the proposal incorporates, by reference, the SEC's rule, substituting the ''Board'' for the ''SEC'' or ''Commission.'' The proposal also clarifies that State member bank transfer agents must comply with the SEC's rules prescribing operational and reporting requirements applicable to all transfer agents (17 CFR 240.17Ac2–2 and 240.17Ad-1 *et seq.*), adopted by the SEC pursuant to section 17A of the 1934 Act (15 U.S.C. 78q-1).

*Section 208.32 Notice of Disciplinary Sanctions Imposed by Registered Clearing Agency*

Existing § 208.8(g) is renumbered as proposed § 208.32, with minor clarifications and subheadings added. The 1934 Act requires the registration of clearing agencies and authorizes a registered clearing agency to deny participation in the clearing agency or to impose certain disciplinary sanctions upon participants, including limiting access to the clearing agency's services. 15 U.S.C. 78q-1(b)(3)(G) and (b)(5)(C). Proposed § 208.32 covers notices by registered clearing agencies of such adverse actions. The Board considered incorporating the SEC's regulations by reference but decided instead to retain its existing regulation because it is limited to State member banks and their subsidiaries, which makes it simpler and clearer than the corresponding SEC rule.

*Section 208.33 Application for Stay or Review of Disciplinary Sanctions Imposed by Registered Clearing Agency*

Under the proposal, § 208.8(h) and § 208.8(i) would be revised and replaced by proposed § 208.33. The resulting new section would incorporate, by reference, the SEC's rules regarding applications by persons for whom the SEC is the appropriate regulatory agency for stays and reviews of disciplinary sanctions, thereby making these rules applicable to such applications by State member banks and their subsidiaries. Persons aggrieved by clearing agency action that denies them participation in the

[6] The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) have adopted this same sunset date for their agricultural loan loss rules (60 FR 27401, May 24, 1995)(OCC); (61 FR 33842, July 1, 1996)(FDIC).

[7] 61 FR 45683 (August 29, 1996). The final rule, which became effective October 1, 1996, replaced the provisions of § 208.8(e) with a new § 208.23 (now proposed § 208.25).

clearing agency or imposes certain disciplinary sanctions upon participants, including limiting access to the clearing agency's services, may request a stay of such action or appeal such action to the appropriate regulatory agency. The Board is the appropriate regulatory agency with respect to State member banks that are clearing agencies. The Board's current rules on stays in § 208.8(h) and on review in § 208.8(i) are virtually identical to the SEC's rules. Therefore, the Board does not need to maintain separate rules. The proposal simply incorporates the SEC's rules, with the Board substituted for the SEC.

*Section 208.34 Recordkeeping and Confirmation of Certain Securities Transactions Effected by State Member Banks*

The proposal includes a place holder for existing § 208.24 at proposed new § 208.34. Existing § 208.24 was issued as a final rule on March 5, 1997 (62 FR 9909), with an effective date of April 1, 1997. The text of existing § 208.24 will be incorporated in its entirety at § 208.34 when this proposal is issued as a final rule.

*Section 208.35 Qualification Requirements for the Recommendation or Sale of Certain Securities*

The proposal includes a place holder for proposed new § 208.35. The Board is seeking public comment on proposed § 208.35 separately from this proposal.

*Section 208.36 Reporting Requirements for State Member Banks Subject to the Securities Exchange Act of 1934*

Existing § 208.16 has not been substantively modified but has been moved to proposed § 208.36.

*Section 208.37 Government Securities Sales Practices*

The proposal includes a place holder for § 208.25 at proposed § 208.37. Section 208.25 was issued as a final rule on March 19, 1997 (62 FR 13276). The text of existing § 208.25 will be incorporated in its entirety at § 208.37 when this proposal is issued as a final rule.

**Subpart D Prompt Corrective Action**

The proposal does not significantly amend the terms of existing Subpart B other than to redesignate it as Subpart D and to amend § 208.41 to provide the Federal Reserve with the option of using period-end total assets rather than average total assets for purposes of defining total assets. This option will allow the use, in certain circumstances, of a definition of *total assets* that more accurately reflects the true asset base of an institution for determining whether it is critically undercapitalized. This should be helpful in working with banks with rapidly shrinking asset bases.

**Subpart E Real Estate Lending and Appraisal Standards**

The proposal does not substantively amend the terms of existing Subpart C but merely redesignates Subpart C as Subpart E. In addition, existing § 208.18 of existing Subpart A would not be substantively amended but would be added to proposed Subpart E as new § 208.50, entitled ''Real Estate Lending and Appraisal Standards.''

**Subpart F Miscellaneous Requirements**

*Section 208.61 Bank Security Procedures*

Regulation P (12 CFR part 216), as amended by the Board on May 1, 1991, is proposed to be incorporated into Regulation H at § 208.61. A proposed rule to remove 12 CFR part 216 is found elsewhere in today's **Federal Register**.

*Section 208.62 Suspicious Activity Reports*

Existing § 208.20 was amended by the Board and was issued as a final rule on February 5, 1996; therefore, it would not be amended substantively by this proposal but would be moved to new § 208.62.

*Section 208.63 Procedures for Monitoring Bank Secrecy Act Compliance*

Existing § 208.14 is not being substantively amended under the proposal, but is being redesignated as § 208.63.

*Section 208.64 Frequency of examination*

The proposal includes a place holder for existing § 208.26. The Board issued existing § 208.26 as an interim rule with request for public comment on February 12, 1997 (62 FR 6449). Existing § 208.26 will be incorporated in its entirety at proposed § 208.64 once it is finalized.

**Subpart G Interpretations**

The proposal eliminates interpretations 208.125–208.128, reletters existing Subpart E as Subpart G, and renumbers the remaining interpretations. In addition, the Board is seeking comment as to whether it should amend proposed interpretation § 208.102, entitled ''Investments in Shares of an Investment Company,'' to provide for an alternative limit for diversified investment companies. The Board is seeking comment on whether, like the OCC, it should allow a bank to elect not to combine its pro rata interest in a particular security in an investment company with the bank's direct holdings of that security if: (1) The investment company's holdings of the securities of any one issuer do not exceed 5 percent of its total portfolio; and (2) if the bank's total holdings of the investment company's shares do not exceed the most stringent investment limitation that would apply to any of the securities in the company's portfolio if those securities were purchased directly by the bank.

The proposal also deletes three miscellaneous interpretations (12 CFR 250.300–250.302) under the Bank Service Company Act (12 U.S.C. 1861 *et seq.*). The Board believes that these interpretations are no longer necessary because the substance of the interpretations is now covered by the express requirements of the Bank Service Company Act.

In addition, the proposal includes a place holder for § 208.129, an interpretation, entitled ''Obligations concerning institutional customers.'' Section 208.129 was issued as a final rule on March 19, 1997 (62 FR 13276). The text of existing § 208.129 will be incorporated in its entirety at § 208.103 when this proposal is issued as a final rule.

*Sections Proposed To Be Eliminated*

Banking Practices

Existing § 208.8 is proposed to be eliminated in its current form. The parts of existing § 208.8 that address the requirements of State member banks as transfer agents (existing § 208.8(f)) and registered clearing agencies (existing § 208.8(g)–(i)), along with the corresponding recordkeeping rules (existing § 208.8(k)), would be amended (except for 208.8(g)) and relocated to proposed Subpart C, entitled ''Bank Securities and Securities Related Activities.'' Existing § 208.8(j), relating to municipal securities dealers, would be deleted in its entirety. This amendment is described in greater detail below. The requirements for letters of credit and acceptances, existing § 208.8(d), would not be significantly amended but would be moved to proposed new § 208.24, entitled ''Letters of Credit and Acceptances,'' located within proposed Subpart B, entitled ''Investments and Loans.''

The general requirements of existing § 208.8(a), which requires State member banks to conduct their business in a safe and sound manner, would be amended to provide greater clarity and moved to

proposed new § 208.3(e), entitled ''Conditions of Membership.'' Existing § 208.8(b), which addresses the conditions under which the Board will waive conditions of membership, is proposed to be relocated to new § 208.3(f). Existing § 208.8(c) is proposed to be eliminated. It states the general requirement that banks shall not engage in unsafe or unsound practices, which is proposed to be incorporated in new § 208.3(e). Existing § 208.8(c) also states the Board's authority to designate practices as unsafe or unsound in the future. The Board considers it unnecessary to state that Regulation H does not limit in any way the Board's enforcement authority.

Board Forms

Existing § 208.12, making all forms referred to in existing Regulation H a part of the regulation, would be deleted. The proposal would eliminate most references to specific forms.

Disclosure of Financial Condition

Existing § 208.17 requires a State member bank to: 1. Make year-end Call Reports or other alternative information available to shareholders, customers, and the general public upon request; 2. furnish a written announcement to shareholders advising them of the availability of this information; and 3. use reasonable means at their disposal to inform the public of the availability of this information. The Board previously indicated in the Joint Report to Congress on Streamlining Regulatory Requirements (September 23, 1996) that it would reconsider the need for this provision when Call Reports, or other financial information on State member banks, become more readily available electronically. Since summary financial information derived from Call Reports is now available through the Internet (from the FDIC for all insured depository institutions, including State member banks [8]), the Board is requesting comment as to whether existing § 208.17 should be eliminated.

If the Board chooses not to eliminate § 208.17, the Board would amend the language of § 208.17 to provide greater clarity as to the information that must be disclosed to the public by State member banks and to incorporate in Regulation K the portions of existing § 208.17 that relate to foreign banks or state licensed branches of foreign banks.

Municipal Securities Dealers

Existing § 208.8(j) would be deleted under the proposal. Section 15B(b) of the 1934 Act (15 U.S.C. 78o–4(b)) creates the Municipal Securities Rulemaking Board (MSRB) and requires MSRB regulations to mandate standards of training, experience, competence, and other qualifications for municipal securities brokers and dealers and any natural persons associated with them. The MSRB has issued Rule G–7 (Information Concerning Associated Persons) requiring principals and representatives associated with bank municipal securities dealers to file Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) with the dealer. In turn, the dealer shall verify the accuracy and completeness of such form and file it with the appropriate regulatory authority. If a principal or representative is terminated, the broker or dealer must file Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) with the appropriate regulatory authority.

Section 208.8(j) contains a Board rule virtually identical to the MSRB rule in these matters. As such, it is duplicative and unnecessary, and the Board proposes to remove it. The Board notes that section 15B(a) of the 1934 Act (15 U.S.C. 78o–4(a)) and the rules of the SEC thereunder (17 CFR 240.15Ba2–1) similarly require municipal securities dealers that are banks, or separately identifiable departments or divisions of banks (as defined by the MSRB), to register with the SEC on Form MSD. The Board has never found a need to duplicate these SEC regulations, and proposes to follow the same approach for principals and representatives as for dealers.

**Initial Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. The initial regulatory flexibility analysis (5 U.S.C. 603(b)) requires an agency to describe the reasons why the proposed rule is being considered and a statement of the objectives of, and legal basis for, the proposed rule. The ''Supplementary Information,'' above, contains this information. The proposed rules require no additional reporting or recordkeeping requirements and do not overlap with other federal rules.

The initial regulatory flexibility analysis also requires a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposal will apply to all depository institutions regardless of size. The proposal will apply to all State member banks, which numbered 1,021 as of September 30, 1996.

The Board expects that the proposed changes will reduce regulatory filings, reduce the paperwork burden and processing time associated with regulatory filings, reduce the costs associated with complying with regulation, and improve the ability of banks to conduct business on a more cost-efficient basis. For example, the proposal is generally designed to reduce burden by removing out-dated material and by re-organizing the remaining material so it is easier to locate and to read.

The proposal also seeks to reduce burden by incorporating expedited procedures for membership and branch applications for certain banks and by reducing the processing period for expedited applications from 5 to 3 days after the close of the public comment period. In addition, the proposal expands the circumstances under which the Board will consider waivers of conditions of membership, eliminates existing requirements regarding disclosure of financial condition, and eliminates the requirement that banks obtain deposit insurance in order to become State member banks. The proposal also provides for an alternate definition of *total assets* for institutions with rapidly declining asset bases. The Board invites public comment on whether the proposal serves to reduce regulatory burden.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0046, 7100–0091, 7100–0097, 7100–0112, 7100–0139, 7100–0196, 7100–0212, 7100–0250, 7100–0261, 7100–0264, 7100–0278, or 7100–0280), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR part 208.

[8] Additionally, the Board anticipates that more comprehensive public Call Report data will become available through the Internet in the future.

The respondents and recordkeepers are state member banks.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless they display currently valid OMB control numbers.

The following table shows the current Regulation H burden by Federal Reserve report, along with a notation on whether and how the burden might be affected by the proposed changes. Based on an hourly cost of $20 for the H reports, the FR 2230, and the FR 4004, and $30 for the remaining FR reports, the annual cost to the public is estimated to be $5,378,650. The Federal Reserve believes that the proposed changes would result in a net decrease in annual burden for this regulation of less than 100 hours.

BURDEN FOR REGULATION H: STATE MEMBER BANKS (SMBS)

| Report | OMB No. (7100–_____) | Report name | Annual burden hours | Burden type | Effect of proposed Reg H changes on burden |
|---|---|---|---|---|---|
| H1 | 0091 | Securities Activities of SMBs | 2,835 | Reporting | None. |
| H2 | 0280 | Loans Secured by Real Estate in Flood Hazard Areas. | 17,172 | Reporting | None. |
| | | | 8,586 | Disclosure | None. |
| | | | 1,042 | Recordkeeping | None. |
| H3 | 0196 | Securities Transactions made Pursuant to Section 208.8(k)(2,3,&5). | 165,520 | Recordkeeping and disclosure. | None. |
| H4 | 0250 | Real Estate Appraisal Standards for Federally Related Transactions. | [1] 29,710 | Recordkeeping | None. |
| H5 | 0261 | Real Estate Lending Standards | 39,000 | Recordkeeping | None. |
| H6 | 0278 | Public Welfare Investments of SMBs | 118 | Recordkeeping and disclosure. | No effect on burden/respondent. Total burden would increase by an estimated 10% resulting from the proposal to liberalize the limitation on a project's value as a percent of capital & surplus. |
| FR 2083 | 0046 | Membership Application | 1,988 | Reporting | Minimal burden reduction from broadened authority of Board to grant waivers. |
| FR 2230 | 0212 | Suspicious Activity Report | [2] 7,200 | Reporting and recordkeeping. | None. |
| FR 4001 | 0097 | Domestic Branch Notification | 415 | Reporting | Burden reduction estimated at 20% if branch applications are no longer required for ATMs, remote service units, offices of affiliated depository institutions, or for loan origination facilities where the proceeds of the loan are not disbursed. Also, fewer notifications may be submitted, for 2 reasons: the clarification of the interpretation of ''relocation,'' and the single notification for all branches SMBs plan to establish in a 1-year period. |
| FR 4004 | 0112 | Written Security Program for SMBs | 484 | Recordkeeping | No effect on the burden for this information collection; however, burden would be transferred from Regulation P. |
| FR 4014 | 0139 | Investment in Bank Premises | 75 | Reporting | None. |
| FR 4031 | 0264 | Branch Closing Notification | 612 | Reporting | None. |
| | | | 307 | Disclosure | None. |
| | | | 280 | Recordkeeping | None. |
| Total | | | 275,344 | | |

[1] 8250 hours (27.8%) of this burden is attributable to Regulation Y.

[2] In addition to the burden for SMBs and their nonbank affiliates, the burden for this report includes burden for Edge corporations (Regulation K), bank holding companies and their nonbank subsidiaries (Regulation Y), and branches, agencies, and nonbank subsidiaries of foreign banks (Regulation K).

No issues of confidentiality under the provisions of the Freedom of Information Act normally arise for any of these information collections other than for FR 2230; however, that report is not affected by these proposed changes.

Comments are invited on: a. whether the collections of information are necessary for the proper performance of the Federal Reserve's functions;

including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the information collections, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DERIVATION TABLE

[This table directs readers to the provision(s) of existing Regulation H, if any, upon which the proposed provision is based.]

| Revised provision | Original provision |
|---|---|
| 208.1 | None. |
| 208.2 | 208.1. |
| 208.3(a) | 208.2. |
| 208.3(b) | 208.4, 208.5. |
| 208.3(c) | 208.5. |
| 208.3(d) | Added. |
| 208.3(e) | 208.7. |
| 208.3(f) | 208.10. |
| 208.3(g) | 208.11. |
| 208.4 | 208.13. |
| 208.5 | 208.19. |
| 208.6(a) | 208.9. |
| 208.6(b) | None. |
| 208.6(c) | None. |
| 208.6(d) | None. |
| 208.6(e) | 208.9(b)(7). |
| 208.6(f) | None. |
| 208.7 | 208.28. |
| 208.20 | None. |
| 208.21 | None. |
| 208.22 | 208.21. |
| 208.23 | 208.15. |
| 208.24 | 208.8(d). |
| 208.25 | 208.23. |
| 208.30 | None. |
| 208.31 | 208.8(f). |
| 208.32 | 208.8(h), 208.8(i). |
| 208.33 | 208.8(g). |
| 208.34 | 208.24. |
| 208.35 | None. |
| 208.36 | 208.16. |
| 208.37 | 208.25. |
| 208.40 | 208.30. |
| 208.41 | 208.31. |
| 208.42 | 208.32. |
| 208.43 | 208.33. |
| 208.44 | 208.34. |
| 208.45 | 208.35. |
| 208.50 | 208.51. |
| 208.51 | 208.52. |
| 208.60 | None. |
| 208.61 | None. |
| 208.62 | 208.20. |
| 208.63 | 208.14. |
| 208.64 | 208.26. |
| 208.100 | 208.116. |
| 208.101 | None. |
| 208.102 | 208.124. |
| 208.103 | 208.129. |

**List of Subjects**

*12 CFR Part 208*

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 250*

Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

## PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 is revised to read as follows:

**Authority:** 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. The table of contents to part 208 is revised to read as follows:

**Subpart A—General Membership and Branching Requirements**

Sec.
208.1 Authority, purpose, and scope.
208.2 Definitions.
208.3 Application and conditions for membership in the Federal Reserve System.
208.4 Capital adequacy.
208.5 Dividends and other distributions.
208.6 Establishment and maintenance of branches.
208.7 Prohibition against use of interstate branches primarily for deposit production. [Reserved]

**Subpart B—Investments and Loans**

208.20 Authority, purpose, and scope.
208.21 Investments in premises and securities.
208.22 Community development and public welfare investments.
208.23 Agricultural loan loss amortization.
208.24 Letters of credit and acceptances.
208.25 Loans in areas having special flood hazards.

**Subpart C—Bank Securities and Securities-Related Activities**

208.30 Authority, purpose, and scope.
208.31 State member banks as transfer agents.
208.32 Notice of disciplinary sanctions imposed by registered clearing agency.
208.33 Application for stay or review of disciplinary sanctions imposed by registered clearing agency.
208.34 Recordkeeping and confirmation of certain securities transactions effected by State member banks. [Reserved]
208.35 Qualification requirements for transactions in certain securities. [Reserved]
208.36 Reporting requirements for State member banks subject to the Securities Exchange Act of 1934.
208.37 Government securities sales practices. [Reserved]

**Subpart D—Prompt Corrective Action**

208.40 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.
208.41 Definitions for purposes of this subpart.
208.42 Notice of capital category.
208.43 Capital measures and capital category definitions.
208.44 Capital restoration plans.
208.45 Mandatory and discretionary supervisory actions under section 38.

**Subpart E—Real Estate Lending and Appraisal Standards**

208.50 Authority, purpose, and scope.
208.51 Real estate lending standards.

**Subpart F—Miscellaneous Requirements**

208.60 Authority, purpose, and scope.
208.61 Bank security procedures.
208.62 Suspicious activity reports.
208.63 Procedures for monitoring Bank Secrecy Act compliance.
208.64 Frequency of examination. [Reserved]

**Subpart G—Interpretations**

208.100 Sale of bank's money orders off premises as establishment of branch office.
208.101 Investments in Federal Agricultural Mortgage Corporation (Farmer Mac) stock.
208.102 Investments in shares of an investment company.
208.103 Obligations concerning institutional customers. [Reserved]

**Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure**

**Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure**

**Appendix C to Part 208—Interagency Guidelines for Real Estate Lending Policies**

**Appendix D to Part 208—Interagency Guidelines Establishing Standards for Safety and Soundness**

**Appendix E to Part 208—Capital Adequacy Guidelines for State Member Banks; Market Risk Measure**

3. Subparts A through E are revised and subparts F and G are added to read as follows:

## Subpart A—General Membership and Branching Requirements

### § 208.1 Authority, purpose, and scope.

(a) *Authority.* Subpart A of Regulation H (12 CFR part 208, Subpart A) is issued by the Board of Governors of the Federal Reserve System (Board) under 12 U.S.C. 24, 36; sections 9, 11, 21, 25 and 25A of the Federal Reserve Act (12 U.S.C. 321–338a, 248(a), 248(c), 481–486, 601 and 611); sections 1814, 1816, 1818, 1820(d)(8), 1831o, 1831p–1, 1831r–1 and 1835a of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1818, 1831o, 1831p–1, 1831r–1, and 1835); and 12 U.S.C. 3906–3909.

(b) *Purpose and Scope.* (1) The requirements of this part 208 govern State member banks and state banks eligible for admission to membership in the Federal Reserve System (System) under section 9 of the Federal Reserve Act (Act). This part 208 does not govern banks eligible for membership under section 2 or 19 of the Act.[1] Any bank desiring to be admitted to the System under the provisions of section 2 or 19 should communicate with the Federal Reserve Bank with which it desires to do business.

(2) This subpart A describes the eligibility requirements for membership of state-chartered banking institutions in the System, the general conditions imposed upon members, including capital and dividend requirements, as well as the requirements for establishing and maintaining branches.

### § 208.2 Definitions.

For the purposes of this part:

(a) *Board of Directors* means the governing board of any institution performing the usual functions of a board of directors.

(b) *Board* means the Board of Governors of the Federal Reserve System.

(c) *Branch* (1) Branch includes any branch bank, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money. A branch may include a temporary, seasonal, or mobile facility that meets these criteria.

(2) *Branch* does not include:

(i) A loan origination facility where the proceeds of loans are not disbursed;

(ii) An office of an affiliated depository institution that provides services to customers of the member bank on behalf of the member bank;

(iii) An automated teller machine;

(iv) A remote service unit;

(v) A facility to which the bank does not permit members of the public to have physical access for purposes of making deposits, paying checks, or borrowing money (such as an office established by the bank that receives deposits only through the mail); or

(vi) A facility that is located at the site of, or is an extension of, an approved main office or branch. The Board determines whether a facility is an extension of an existing main or branch office on a case-by-case basis.

(d) *Capital stock and surplus* means, unless otherwise provided in this part, or by statute, Tier 1 and Tier 2 capital included in a member bank's risk-based capital (under the guidelines in appendix A of this part) and the balance of a member bank's allowance for loan and lease losses not included in its Tier 2 capital for calculation of risk-based capital, based on the bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 324.

(e) *Eligible bank* means a member bank that:

(1) Is well-capitalized as defined in Subpart D of this part;

(2) Has a composite Uniform Financial Institutions Rating System (CAMELS) rating of 1 or 2;

(3) Has a Community Reinvestment Act (CRA) (12 U.S.C. 2906) rating of ''Outstanding'' or ''Satisfactory;''

(4) Has a compliance rating of 1 or 2; and

(5) Has no major unresolved supervisory issues outstanding (as determined by the Board and appropriate Federal Reserve Bank in its discretion).

(f) *State bank* means any bank incorporated by special law of any State, or organized under the general laws of any State, or of the United States, including a Morris Plan bank, or other incorporated banking institution engaged in a similar business.

(g) *State member bank or member bank* means a state bank that is a member of the Federal Reserve System.

### § 208.3 Application and conditions for membership in the Federal Reserve System.

(a) *Applications for membership and stock*—(1) State banks applying for membership in the Federal Reserve System shall file with the appropriate Federal Reserve Bank an application for membership in the Federal Reserve System and for stock in the Reserve Bank[2] in accordance with the Rules of Procedure governing such applications, located at 12 CFR 262.3.

(2) *Board approval.* If an applying bank conforms to all the requirements of the Federal Reserve Act and this section, and is otherwise qualified for membership, the Board may approve its application subject to such conditions as the Board may prescribe.

(3) *Effective date of membership.* A State bank becomes a member of the Federal Reserve System on the date its Federal Reserve Bank stock is credited to its account (or its deposit is accepted, if it is a mutual savings bank not authorized to purchase Reserve Bank stock) in accordance with the Board's Regulation I (12 CFR part 209).

(b) *Factors considered in approving applications for membership.* Factors given special consideration by the Board in passing upon an application are:

(1) *Financial condition and management.* The financial history and condition of the applying bank and the general character of its management.

(2) *Capital.* The adequacy of the bank's capital in accordance with § 208.4, and its future earnings prospects.

(3) *Convenience and needs.* The convenience and needs of the community.

(4) *Corporate powers.* Whether the bank's corporate powers are consistent with the purposes of the Federal Reserve Act.

(c) *Expedited approval for eligible banks and bank holding companies*—(1) *Availability of expedited treatment.* The expedited membership procedures described in paragraph (c)(2) of this section are available to:

(i) An existing state bank seeking membership, or national bank converting to a state bank and seeking membership, if the existing bank is an eligible bank; and to

(ii) A *de novo* state bank seeking membership if the bank holding company meets the criteria for expedited processing under § 225.14(c) of Regulation Y (12 CFR 225.14(c)).

(2) *Expedited procedures.* The membership application of a bank will be deemed approved on the fifth day after the close of the comment period, required by the Board's Rules of Procedure (12 CFR 262.3), unless the Board or the appropriate Federal Reserve Bank notifies the bank that the

[1] Under section 2 of the Federal Reserve Act, every national bank in any state shall, upon commencing business, or within 90 days after admission into the Union of the State in which it is located, become a member of the System. Under section 19 of the Federal Reserve Act, national banks and banks organized under local laws, located in a dependency or insular possession or any part of the United States outside of the States of the United States and the District of Columbia, are not required to become members of the System but may, with the consent of the board, become members of the System.

[2] A mutual savings bank not authorized to purchase Federal Reserve Bank stock may apply for membership evidenced initially by a deposit, but if the laws under which the bank is organized are not amended at the first session of the legislature after its admission to authorize the purchase, or if the bank fails to purchase the stock within six months of the amendment, its membership shall be terminated.

application is approved prior to that date or that it is not eligible for expedited review for any reason, including, without limitation, that:

(i) The bank will offer banking services that are materially different from those currently offered by the bank, or by the affiliates of the proposed bank;

(ii) The bank is not an eligible bank under § 208.2(e) or the Bank Holding Company does not meet the criteria for expedited processing under 12 CFR 225.14(c);

(iii) The application contains a material error or is otherwise deficient; or

(iv) The application or notice required under the Board's Rules of Procedure (12 CFR 262.3), raises significant supervisory, Community Reinvestment Act, compliance, policy or legal issues that have not been resolved, or a timely substantive adverse comment is submitted.

(d) *Conditions of membership*—(1) *Safety and soundness.* (i) Each member bank shall at all times conduct its business and exercise its powers with due regard to safety and soundness. (The Interagency Guidelines Establishing Standards for Safety and Soundness prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1), as set forth as appendix D to this part apply to all member banks.)

(2) *General character of bank's business.* A member bank may not, without the permission of the Board, cause or permit any change in the general character of its business or in the scope of the corporate powers it exercises at the time of admission to membership.

(3) *Compliance with conditions of membership.* Each member bank shall comply at all times with this Regulation H (12 CFR part 208) and any other conditions of membership prescribed by the Board.

(e) *Waivers*—(1) *Conditions of membership.* A member bank may petition the Board to waive a condition of membership. The Board may grant a waiver of a condition of membership upon a showing of good cause and, in its discretion, may limit, among other items, the scope, duration, and timing of the waiver.

(2) *Reports of affiliates.* Pursuant to section 21 of the Federal Reserve Act (12 U.S.C. 486), the Board waives the requirement for the submission of reports of affiliates of member banks, unless such reports are specifically requested by the Board.

(f) *Voluntary withdrawal from membership.* Voluntary withdrawal from membership becomes effective upon cancellation of the Federal Reserve Bank stock held by the member bank, and after the bank has made due provision to pay any indebtedness due or to become due to the Federal Reserve Bank in accordance with the Board's Regulation I (12 CFR part 209).

**§ 208.4 Capital adequacy.**

(a) *Adequacy.* A member bank's capital, as defined in Section II of Appendix A to this part, shall be at all times adequate in relation to the character and condition of its assets and to its existing and prospective liabilities and other corporate responsibilities. If at any time, in light of all the circumstances, the bank's capital appears inadequate in relation to its assets, liabilities, and responsibilities, the bank shall increase the amount of its capital, within such period as the Board deems reasonable, to an amount which, in the judgement of the Board, shall be adequate.

(b) *Standards for evaluating capital adequacy.* Standards and guidelines by which the Board evaluates the capital adequacy of member banks include those in appendices A and E to this part for risk-based capital purposes and appendix B to this part for leverage measurement purposes.

**§ 208.5 Dividends and other distributions.**

(a) *Definitions.* For the purposes of this section:

(1) *Capital surplus* means the total of surplus as reportable in the bank's Reports of Condition and Income and surplus on perpetual preferred stock.

(2) *Permanent capital* means the total of the bank's perpetual preferred stock and related surplus, common stock and surplus, and minority interest in consolidated subsidiaries, as reportable in the Reports of Condition and Income.

(b) *Limitations.* The limitations in this section on the payment of dividends and withdrawal of capital apply to all cash and property dividends or distributions on common or preferred stock. The limitations do not apply to dividends paid in the form of common stock.

(c) *Earnings limitations on payment of dividends.* (1) A member bank may not declare or pay a dividend if the total of all dividends declared during the calendar year, including the proposed dividend, exceeds the sum of the bank's net income (as reportable in its Reports of Condition and Income) during the current calendar year and the retained net income of the prior two calendar years, unless the dividend has been approved by the Board.

(2) ''Retained net income'' is equal to the bank's reported net income, less any dividends declared during the period. The bank's net income during the current year and its retained net income from the prior two calendar years is reduced by any net losses incurred in the current or prior two years and any required transfers to surplus or to a fund for the retirement of preferred stock.[3]

(d) *Limitation on withdrawal of capital by dividend or otherwise.* (1) A member bank may not declare or pay a dividend if the dividend would exceed the bank's undivided profits as reportable on its Reports of Condition and Income, unless the bank has received the prior approval of the Board and of at least two-thirds of the shareholders of each class of stock outstanding.

(2) A member bank may not permit any portion of its permanent capital to be withdrawn unless the withdrawal has been approved by the Board and by at least two-thirds of the shareholders of each class of stock outstanding.

(3) If a member bank has capital surplus in excess of that required by law, the excess amount may be transferred to the bank's undivided profits account and be available for the payment of dividends if:

(i) The amount transferred came from the earnings of prior periods, excluding earnings transferred as a result of stock dividends;

(ii) The bank's board of directors approves the transfer of funds; and

(iii) The transfer has been approved by the Board.

(e) *Payment of capital distributions.* All member banks also are subject to the restrictions on payment of capital distributions contained in subpart D of this part.

(f) *Compliance.* A member bank shall use the date a dividend is declared to determine compliance with this section.

**§ 208.6 Establishment and maintenance of branches.**

(a) *Branching.* (1) To the extent authorized by state law, a member bank may establish and maintain branches (including inter-state branches) subject to the same limitations and restrictions that apply to the establishment and maintenance of national bank branches (12 U.S.C. 36 and 1831u), except that approval of such branches shall be

[3] State member banks are required to comply with state law provisions concerning the maintenance of surplus funds in addition to common capital. Where the surplus of a State member bank is less than what applicable state law requires the bank to maintain relative to its capital stock account, the bank may be required to transfer amounts from its undivided profits account to surplus.

obtained from the Board rather than from the Comptroller of the Currency.

(2) *Branch applications.* A State member bank wishing to establish a branch in the United States or its territories must file an application in accordance with the Board's Rules of Procedure (12 CFR 262.3). Branches of member banks located in foreign nations, in the overseas territories, dependencies, and insular possessions of those nations and of the United States, and in the Commonwealth of Puerto Rico, are subject to 12 CFR part 211 (Regulation K).

(b) *Factors considered in approving domestic branch applications.* Factors given special consideration by the Board in passing upon a branch application are:

(1) *Financial condition and management.* The financial history and condition of the applying bank and the general character of its management;

(2) *Capital.* The adequacy of the bank's capital in accordance with § 208.4, and its future earnings prospects;

(3) *Convenience and needs.* The convenience and needs of the community to be served by the branch;

(4) *CRA performance.* In the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*); and

(5) *Investment in bank premises.* Whether the bank's investment in bank premises in establishing the branch will comply with § 208.21.

(c) *Expedited approval for eligible banks.* An application by an eligible bank to establish a domestic branch is deemed approved on the fifth day after the close of the comment period, required by the Board's Rules of Procedure (12 CFR 262.3), unless the Board or the appropriate Federal Reserve Bank notifies the bank that the application is approved prior to that date or that it is not eligible for expedited review for any reason, including, without limitation, that:

(1) The bank is not an eligible bank as defined by § 208.2(e);

(2) The application contains a material error or is otherwise deficient; or

(3) The application or notice required under the Board's Rules of Procedure (12 CFR 262.3), raises significant supervisory, Community Reinvestment Act, compliance, policy or legal issues that have not been resolved, or a timely substantive adverse comment is submitted.

(d) *Consolidated applications*—(1) *Proposed branches; prior notice of branch opening.* A member bank may seek approval in a single application or notice for any branches that it proposes to establish within one year after the approval date. The bank shall, unless notification is waived, notify the appropriate Reserve Bank one week before opening any branch approved under a consolidated application. A bank is not required to open a branch approved under either a consolidated or single branch application.

(2) *Duration of branch approval.* Branch approvals remain valid for one year unless the Board or the appropriate Reserve Bank notifies the bank that in its judgement, based on reports of condition, examinations, or other information, there has been a change in the bank's condition, financial or otherwise, that warrants reconsideration of the approval.

(e) *Branch closings.* A member bank shall comply with section 42 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831r–1, with regard to branch closings.

(f) *Branch relocations.* A relocation of an existing branch does not require filing a branch application. A relocation of an existing branch, for purposes of determining whether to file a branch application, is a movement that does not substantially affect the nature of the branch's business or customers served.

### § 208.7 Prohibition against use of interstate branches primarily for deposit production. [Reserved]

## Subpart B—Investments and Loans

### § 208.20 Authority, purpose, and scope.

(a) *Authority.* Subpart B of Regulation H (12 CFR part 208, subpart B) is issued by the Board of Governors of the Federal Reserve System under 12 U.S.C. 24; sections 9, 11 and 21 of the Federal Reserve Act (12 U.S.C. 321–338a, 248(a), 248(c), and 481–486); sections 1814, 1816, 1818, 1823(j), 1831o, 1831p–1 and 1831r–1 of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1818, 1823(j), 1831o, 1831p–1 and 1831r–1); and the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(b) *Purpose and scope.* This subpart B describes certain investment limitations on member banks, statutory requirements for amortizing losses on agricultural loans and extending credit in areas having special flood hazards, as well as the requirements for issuing letters of credit and acceptances.

### § 208.21 Investments in premises and securities.

(a) *Investment in bank premises.* No state member bank shall invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or make loans to or upon the security of any such corporation unless:

(1) The bank receives the prior approval of the Board;

(2) The aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank (as defined in section 2 of the Banking Act of 1933, as amended, 12 U.S.C. 221a), is less than or equal to the amount of the capital stock and surplus of such bank; or

(3)(i) The aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to 150 percent of the capital stock and surplus of the bank; and

(ii) The bank:

(A) Has a CAMELS composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of the most recent examination of the bank;

(B) Is well-capitalized and will continue to be well-capitalized, in accordance with subpart D of this part, after the investment or loan; and

(C) Provides notification to the Board not later than 30 days after making the investment or loan.

(b) *Investments in securities.* Member banks are subject to the same limitations and conditions with respect to purchasing, selling, underwriting, and holding investment securities and stocks as are national banks under 12 U.S.C. 24, ¶ 7th.[4]

### § 208.22 Community development and public welfare investments.

(a) *Definitions.* For purposes of this section:

(1) *Low- or moderate-income area* means:

(i) One or more census tracts in a Metropolitan Statistical Area where the median family income adjusted for family size in each census tract is less than 80 percent of the median family income adjusted for family size of the Metropolitan Statistical Area; or

(ii) If not in a Metropolitan Statistical Area, one or more census tracts or block-numbered areas where the median family income adjusted for family size in each census tract or block-numbered

[4] A member bank, acting as executor or trustee, may hold the stock of any corporation so long as the bank will not vote any of the shares or control in any manner the election of any directors, trustees, or other persons exercising similar functions.

area is less than 80 percent of the median family income adjusted for family size of the State.

(2) *Low- and moderate-income persons* has the same meaning as low- and moderate-income persons as defined in 42 U.S.C. 5302(a)(20)(A).

(3) *Small business* means a business that meets the size-eligibility standards of 13 CFR 121.802(a)(2).

(b) *Investments not requiring prior Board approval.* Notwithstanding the provisions of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) made applicable to member banks by paragraph 20 of section 9 of the Federal Reserve Act (12 U.S.C. 335), a member bank may make an investment, without prior Board approval, if the following conditions are met:

(1) The investment is in a corporation, limited partnership, or other entity, and:

(i) The Board has determined that an investment in that entity or class of entities is a public welfare investment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), or a community development investment under Regulation Y (12 CFR 225.25(b)(6)); or

(ii) The Comptroller of the Currency has determined, by order or regulation, that an investment in that entity by a national bank is a public welfare investment under section 5136 of the Revised Statutes (12 U.S.C. 24 (Eleventh)); or

(iii) The entity is a community development financial institution as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)); or

(iv) The entity, directly or indirectly, engages solely in or makes loans solely for the purposes of one or more of the following community development activities:

(A) Investing in, developing, rehabilitating, managing, selling, or renting residential property if a majority of the units will be occupied by low- and moderate-income persons, or if the property is a ''qualified low-income building'' as defined in section 42(c)(2) of the Internal Revenue Code (26 U.S.C. 42(c)(2));

(B) Investing in, developing, rehabilitating, managing, selling, or renting nonresidential real property or other assets located in a low- or moderate-income area and targeted towards low- and moderate-income persons;

(C) Investing in one or more small businesses located in a low- or moderate-income area to stimulate economic development;

(D) Investing in, developing, or otherwise assisting job training or placement facilities or programs that will be targeted towards low- and moderate-income persons;

(E) Investing in an entity located in a low- or moderate-income area if the entity creates long-term employment opportunities, a majority of which (based on full-time equivalent positions) will be held by low- and moderate-income persons; and

(F) Providing technical assistance, credit counseling, research, and program development assistance to low- and moderate-income persons, small businesses, or nonprofit corporations to help achieve community development;

(2) The investment is permitted by state law;

(3) The investment will not expose the member bank to liability beyond the amount of the investment;

(4) The aggregate of all such investments of the member bank does not exceed the sum of five percent of its capital stock and surplus;

(5) The member bank is well capitalized or adequately capitalized under §§ 208.43(b) (1) and (2);

(6) The member bank received a composite CAMELS rating of ''1'' or ''2'' under the Uniform Financial Institutions Rating System as of its most recent examination and an overall rating of ''1'' or ''2'' as of its most recent consumer compliance examination; and

(7) The member bank is not subject to any written agreement, cease-and-desist order, capital directive, prompt-corrective-action directive, or memorandum of understanding issued by the Board or a Federal Reserve Bank.

(c) *Notice to Federal Reserve Bank.* Not more than 30 days after making an investment under paragraph (b) of this section, the member bank shall advise its Federal Reserve Bank of the investment, including the amount of the investment and the identity of the entity in which the investment is made.

(d) *Investments requiring Board approval.* (1) With prior Board approval, a member bank may make public welfare investments under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), other than those specified in paragraph (b) of this section.

(2) Requests for Board approval under this paragraph (d) shall include, at a minimum:

(i) The amount of the proposed investment;

(ii) A description of the entity in which the investment is to be made;

(iii) An explanation of why the investment is a public welfare investment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a);

(iv) A description of the member bank's potential liability under the proposed investment;

(v) The amount of the member bank's aggregate outstanding public welfare investments under paragraph 23 of section 9 of the Federal Reserve Act;

(vi) The amount of the member bank's capital stock and surplus; and

(vii) If the bank investment is not eligible under paragraph (b) of this section, explain the reason or reasons why it is ineligible.

(3) The Board shall act on a request under this paragraph (d) within 60 calendar days of receipt of a request that meets the requirements of paragraph (d)(2) of this section, unless the Board notifies the requesting member bank that a longer time period will be required.

(e) *Divestiture of investments.* A member bank shall divest itself of an investment made under paragraph (b) or (d) of this section to the extent that the investment exceeds the scope of, or ceases to meet, the requirements of paragraphs (b)(1) through (b)(4) or paragraph (d) of this section. The divestiture shall be made in the manner specified in 12 CFR 225.140, Regulation Y, for interests acquired by a lending subsidiary of a bank holding company or the bank holding company itself in satisfaction of a debt previously contracted.

**§ 208.23 Agricultural loan loss amortization.**

(a) *Definitions.* For purposes of this section:

(1) *Accepting official* means:

(i) The Reserve Bank in whose district the bank is located; or

(ii) The Director of the Division of Banking Supervision and Regulation in cases in which the Reserve Bank cannot determine that the bank qualifies.

(2) *Agriculturally related other property* means any property, real or personal, that the bank owned on January 1, 1983, and any additional property that it acquired prior to January 1, 1992, in connection with a qualified agricultural loan. For the purposes of paragraph (d) of this section, the value of such property shall include the amount previously charged off as a loss.

(3) *Participating bank* means an agricultural bank (as defined in 12 U.S.C. 1823(j)(4)(A)) that, as of January 1, 1992, had a proposal for a capital restoration plan accepted by an accepting official and received permission from the accepting official, subject to paragraphs (d) and (e) of this

section, to amortize losses in accordance with paragraphs (b) and (c) of this section.

(4) *Qualified agricultural loan* means:

(i) Loans that finance agricultural production or are secured by farm land for purposes of Schedule RC–C of the FFIEC Consolidated Report of Condition or such other comparable schedule;

(ii) Loans secured by farm machinery;

(iii) Other loans that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Board; and

(iv) The remaining unpaid balance of any loans described in paragraphs (a)(4)(i), (ii) and (iii) of this section that have been charged off since January 1, 1984, and that qualify for deferral under this section.

(b)(1) Provided there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, the officers, directors, or principal shareholders, a participating bank may amortize in its Reports of Condition and Income:

(i) Any loss on a qualified agricultural loan that the bank would be required to reflect in its financial statements for any period between and including 1984 and 1991; or

(ii) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1983 and 1991 resulting from a reappraisal or sale of agriculturally-related other property.

(2) Amortization under this section shall be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loan was or is charged off so as to be fully amortized not later than December 31, 1998.

(c) *Accounting for amortization.* Any bank that is permitted to amortize losses in accordance with paragraph (b) of this section may restate its capital and other relevant accounts and account for future authorized deferrals and authorizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in qualifying capital pursuant to Appendix A of this part.

(d) *Conditions of participation.* In order for a bank to maintain its status as a participating bank, it shall:

(1) Adhere to the approved capital plan and obtain the prior approval of the accepting official before making any modifications to the plan;

(2) Maintain accounting records for each asset subject to loss deferral under the program that document the amount and timing of the deferrals, repayments, and authorizations;

(3) Maintain the financial condition of the bank so that it does not deteriorate to the point where it is no longer a viable, fundamentally sound institution;

(4) Make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans, including agriculturally-related other property, not less than the percentage of such loans in its loan portfolio on January 1, 1986; and

(5) Provide the accepting official, upon request, with any information the accepting official deems necessary to monitor the bank's amortization, its compliance with the conditions of participation, and its continued eligibility.

(e) *Revocation of eligibility for loss amortization.* The failure to comply with any condition in an acceptance, with the capital restoration plan, or with the conditions stated in paragraph (d) of this section, is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 U.S.C. 1818(b). In addition, acceptance of a bank for loss amortization shall not foreclose any administrative action against the bank that the Board may deem appropriate.

(f) *Expiration date.* The terms of this section will no longer be in effect as of January 1, 1999.

**§ 208.24 Letters of credit and acceptances.**

(a) *Standby letters of credit.* For the purpose of this section, standby letters of credit include every letter of credit (or similar arrangement however named or designated) that represents an obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by or advanced to or for the account of the account party; or

(2) To make payment on account of any evidence of indebtedness undertaken by the account party; or

(3) To make payment on account of any default by the party procuring the issuance of the letter of credit in the performance of an obligation.[5]

(b) *Ineligible acceptance.* An ineligible acceptance is a time draft accepted by a bank, which does not meet the requirements for discount with a Federal Reserve Bank.

(c) *Bank's lending limits.* Standby letters of credit and ineligible acceptances count toward member banks' lending limits imposed by state law.

(d) *Exceptions.* A standby letter of credit or ineligible acceptance is not subject to the restrictions set forth in paragraph (c) of this section if prior to or at the time of issuance of the credit:

(1) The issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit; or

(2) The party procuring the issuance of a letter of credit or ineligible acceptance has set aside sufficient funds in a segregated, clearly earmarked deposit account to cover the bank's maximum liability under the standby letter of credit or ineligible acceptance.

**§ 208.25 Loans in areas having special flood hazards.**

(a) *Purpose and scope*—(1) *Purpose.* The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(2) *Scope.* This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions.* For purposes of this section:

(1) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(2) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(3) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(4) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(5) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(6) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to

[5] A standby letter of credit does not include: (1) Commercial letters of credit and similar instruments, where the issuing bank expects the beneficiary to draw upon the issuer, and which do not guaranty payment of a money obligation; or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of 12 CFR part 211 (Regulation K).

the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this section, the term *mobile home* means a mobile home on a permanent foundation. The term mobile home includes a manufactured home as that term is used in the National Flood Insurance Program.

(7) *NFIP* means the National Flood Insurance Program authorized under the Act.

(8) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(9) *Servicer* means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(10) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(11) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(c) *Requirement to purchase flood insurance where available.*—(1) *In general.* A member bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(2) *Table funded loans.* A member bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this section.

(d) *Exemptions.* The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

(e) *Escrow requirement.* If a member bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed after October 1, 1996, the member bank shall also require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section. The member bank, or a servicer acting on its behalf, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(f) *Required use of standard flood hazard determination form.*—(1) *Use of form.* A member bank shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(2) *Retention of form.* A member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

(g) *Forced placement of flood insurance.* If a member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the member bank or its servicer shall purchase insurance on the borrower's behalf. The member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

(h) *Determination fees.*—(1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(2) *Borrower fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the borrower if the determination:

(i) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(ii) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(iii) Reflects the Director of FEMA's publication of a notice or compendium that:

(A) Affects the area in which the building or mobile home securing the loan is located; or

(B) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area;

(iv) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance.* When a member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a

special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(1) *Contents of notice.* The written notice must include the following information:

(i) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(ii) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(iii) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(iv) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

(2) *Timing of notice.* The member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(3) *Record of receipt.* The member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(4) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a member bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(5) *Use of prescribed form of notice.* A member bank will be considered to be in compliance with the requirement for notice to the borrower of this paragraph (i) by providing written notice to the borrower containing the language presented in appendix A of this section within a reasonable time before the completion of the transaction. The notice presented in appendix A of this section satisfies the borrower notice requirements of the Act.

(j) *Notice of servicer's identity*—(1) *Notice requirement.* When a member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the member bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(2) *Transfer of servicing rights.* The member bank shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) shall transfer to the transferee servicer.

## Appendix A to § 208.25 Sample Form of Notice

*Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance*

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal balance of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

## Subpart C—Bank Securities and Securities-Related Activities

### § 208.30 Authority, purpose, and scope.

(a) *Authority.* Subpart C of Regulation H (12 CFR part 208, subpart C) is issued by the Board of Governors of the Federal Reserve System under 12 U.S.C. 24, 92a, 93a; sections 1818 and 1831p–1(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818, 1831p–1(a)(2)); and sections 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78o–5, 78q, 78q–1, and 78w of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78o–5, 78q, 78q–1, 78w).

(b) *Purpose and scope.* This subpart C describes the requirements imposed upon member banks acting as transfer agents, registered clearing agencies, or sellers of securities under the Securities Exchange Act of 1934. This subpart C also describes the reporting requirements imposed on member banks whose securities are subject to registration under the Securities Exchange Act of 1934.

**§ 208.31 State member banks as transfer agents.**

(a) The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (17 CFR 240.17Ac2–1) apply to member bank transfer agents. References to the ''Commission'' are deemed to refer to the Board.

(b) The rules adopted by the SEC pursuant to section 17A prescribing operational and reporting requirements for transfer agents (17 CFR 240.17Ac2–2 and 240.17Ad–1 through 240.17Ad–16) apply to member bank transfer agents.

**§ 208.32 Notice of disciplinary sanctions imposed by registered clearing agency.**

(a) *Notice requirement.* Any member bank or any of its subsidiaries that is a registered clearing agency pursuant to section 17A(b) of the Securities Exchange Act of 1934 (the Act), and that:

(1) Imposes any final disciplinary sanction on any participant therein;

(2) Denies participation to any applicant; or

(3) Prohibits or limits any person in respect to access to services offered by the clearing agency, shall file with the Board (and the appropriate regulatory agency, if other than the Board, for a participant or applicant) notice thereof in the manner prescribed in this section.

(b) *Notice of final disciplinary actions.* (1) Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final disciplinary action with respect to any participant shall promptly file a notice thereof with the Board in accordance with paragraph (c) of this section. For the purposes of this paragraph (b), *final disciplinary action* means the imposition of any disciplinary sanction pursuant to section 17A(b)(3)(G) of the Act, or other action of a registered clearing agency which, after notice and opportunity for hearing, results in final disposition of charges of:

(i) One or more violations of the rules of the registered clearing agency; or

(ii) Acts or practices constituting a statutory disqualification of a type defined in paragraph (iv) or (v) (except prior convictions) of section 3(a)(39) of the Act.

(2) However, if a registered clearing agency fee schedule specifies certain charges for errors made by its participants in giving instructions to the registered clearing agency which are *de minimis* on a per error basis, and whose purpose is, in part, to provide revenues to the clearing agency to compensate it for effort expended in beginning to process an erroneous instruction, such error charges shall not be considered a final disciplinary action for purposes of this paragraph (b).

(c) *Contents of final disciplinary action notice.* Any notice filed pursuant to paragraph (b) of this section shall consist of the following, as appropriate:

(1) The name of the respondent and the respondent's last known address, as reflected on the records of the clearing agency, and the name of the person, committee, or other organizational unit that brought the charges. However, identifying information as to any respondent found not to have violated a provision covered by a charge may be deleted insofar as the notice reports the disposition of that charge and, prior to the filing of the notice, the respondent does not request that identifying information be included in the notice;

(2) A statement describing the investigative or other origin of the action;

(3) As charged in the proceeding, the specific provision or provisions of the rules of the clearing agency violated by the respondent, or the statutory disqualification referred to in paragraph (b)(2) of this section, and a statement describing the answer of the respondent to the charges;

(4) A statement setting forth findings of fact with respect to any act or practice in which the respondent was charged with having engaged in or omitted; the conclusion of the clearing agency as to whether the respondent violated any rule or was subject to a statutory disqualification as charged; and a statement of the clearing agency in support of its resolution of the principal issues raised in the proceedings;

(5) A statement describing any sanction imposed, the reasons therefor, and the date upon which the sanction became or will become effective; and

(6) Such other matters as the clearing agency may deem relevant.

(d) *Notice of final denial, prohibition, termination or limitation based on qualification or administrative rules.* (1) Any registered clearing agency, for which the Board is the appropriate regulatory agency, that takes any final action that denies or conditions the participation of any person, or prohibits or limits access, to services offered by the clearing agency, shall promptly file notice thereof with the Board (and the appropriate regulatory agency, if other than the Board, for the affected person) in accordance with paragraph (e) of this section; but such action shall not be considered a final disciplinary action for purposes of paragraph (b) of this section where the action is based on an alleged failure of such person to:

(i) Comply with the qualification standards prescribed by the rules of the registered clearing agency pursuant to section 17A(b)(4)(B) of the Act; or

(ii) Comply with any administrative requirements of the registered clearing agency (including failure to pay entry or other dues or fees, or to file prescribed forms or reports) not involving charges of violations that may lead to a disciplinary sanction.

(2) However, no such action shall be considered final pursuant to this paragraph (d) that results merely from a notice of such failure to comply to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted the administrative remedies within the registered clearing agency with respect to such a matter.

(e) *Contents of notice required by paragraph (d) of this section.* Any notice filed pursuant to paragraph (d) of this section shall consist of the following, as appropriate:

(1) The name of each person concerned and each person's last known address, as reflected in the records of the clearing agency;

(2) The specific grounds upon which the action of the clearing agency was based, and a statement describing the answer of the person concerned;

(3) A statement setting forth findings of fact and conclusions as to each alleged failure of the person to comply with qualification standards or administrative obligations, and a statement of the clearing agency in support of its resolution of the principal issues raised in the proceeding;

(4) The date upon which such action became or will become effective; and

(5) Such other matters as the clearing agency deems relevant.

(f) *Notice of final action based on prior adjudicated statutory disqualifications.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action shall promptly file notice thereof with the Board (and the appropriate regulatory agency, if other than the Board, for the affected person) in accordance with paragraph (g) of this section, where the final action:

(1) Denies or conditions participation to any person, or prohibits or limits access to services offered by the clearing agency; and

(2) Is based upon a statutory disqualification of a type defined in paragraph (A), (B) or (C) of section 3(a)(39) of the Act, consisting of a prior

conviction, as described in subparagraph (E) of section 3(a)(39) of the Act. However, no such action shall be considered final pursuant to this paragraph (f) that results merely from a notice of such disqualification to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted the administrative remedies within the clearing agency with respect to such a matter.

(g) *Contents of notice required by paragraph (f) of this section.* Any notice filed pursuant to paragraph (f) of this section shall consist of the following, as appropriate:

(1) The name of each person concerned and each person's last known address, as reflected in the records of the clearing agency;

(2) A statement setting forth the principal issues raised, the answer of any person concerned, and a statement of the clearing agency in support of its resolution of the principal issues raised in the proceeding;

(3) Any description furnished by or on behalf of the person concerned of the activities engaged in by the person since the adjudication upon which the disqualification is based;

(4) A copy of the order or decision of the court, appropriate regulatory agency, or self-regulatory organization that adjudicated the matter giving rise to the statutory disqualification;

(5) The nature of the action taken and the date upon which such action is to be made effective; and

(6) Such other matters as the clearing agency deems relevant.

(h) *Notice of summary suspension of participation.* Any registered clearing agency for which the Board is the appropriate regulatory agency that summarily suspends or closes the accounts of a participant pursuant to the provisions of section 17A(b)(5)(C) of the Act shall, within one business day after such action becomes effective, file notice thereof with the Board and the appropriate regulatory agency for the participant, if other than the Board, of such action in accordance with paragraph (i) of this section.

(i) *Contents of notice of summary suspension.* Any notice pursuant to paragraph (h) of this section shall contain at least the following information, as appropriate:

(1) The name of the participant concerned and the participant's last known address, as reflected in the records of the clearing agency;

(2) The date upon which the summary action became or will become effective;

(3) If the summary action is based upon the provisions of section 17A(b)(5)(C)(i) of the Act, a copy of the relevant order or decision of the self-regulatory organization, if available to the clearing agency;

(4) If the summary action is based upon the provisions of section 17A(b)(5)(C)(ii) of the Act, a statement describing the default of any delivery of funds or securities to the clearing agency;

(5) If the summary action is based upon the provisions of section 17A(b)(5)(C)(iii) of the Act, a statement describing the financial or operating difficulty of the participant based upon which the clearing agency determined that the suspension and closing of accounts was necessary for the protection of the clearing agency, its participants, creditors, or investors;

(6) The nature and effective date of the suspension; and

(7) Such other matters as the clearing agency deems relevant.

**§ 208.33 Application for stay or review of disciplinary sanctions imposed by registered clearing agency.**

(a) *Stays.* The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for stays of disciplinary sanctions or summary suspensions imposed by registered clearing agencies (17 CFR 240.19d–2) apply to applications by member banks. References to the ''Commission'' are deemed to refer to the Board.

(b) *Reviews.* The regulations adopted by the Securities and Exchange Commission pursuant to section 19 of the Securities and Exchange Act of 1934 (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for reviews of final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by registered clearing agencies (17 CFR 240.19d–3 (a)–(f)) apply to applications by member banks. References to the ''Commission'' are deemed to refer to the Board. The Board's Uniform Rules of Practice and Procedure (12 CFR part 263) apply to review proceedings under this § 208.33 to the extent not inconsistent with this § 208.33.

**§ 208.34 Recordkeeping and confirmation of certain securities transactions effected by State member banks. [Reserved]**

**§ 208.35 Qualification requirements for transactions in certain securities. [Reserved]**

**§ 208.36 Reporting requirements for State member banks subject to the Securities Exchange Act of 1934.**

(a) *Filing requirements.* Except as otherwise provided in this section, a member bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 78l (b) and (g)) shall comply with the rules, regulations, and forms adopted by the Securities and Exchange Commission (Commission) pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act (15 U.S.C. 78l, 78m, 78n (a), (c), (d), (f) and 78p). The term ''Commission'' as used in those rules and regulations shall with respect to securities issued by member banks be deemed to refer to the Board unless the context otherwise requires.

(b) *Elections permitted for member banks with total assets of $150 million or less.* (1) Notwithstanding paragraph (a) of this section or the rules and regulations promulgated by the Commission pursuant to the 1934 Act a member bank that has total assets of $150 million or less as of the end of its most recent fiscal year, and no foreign offices, may elect to substitute for the financial statements required by the Commission's Form 10–Q, the balance sheet and income statement from the quarterly report of condition required to be filed by the bank with the Board under section 9 of the Federal Reserve Act (12 U.S.C. 324) (Federal Financial Institutions Examination Council Form 033 or 034).

(2) A member bank qualifying for and electing to file financial statements from its quarterly report of condition pursuant to paragraph (b)(1) of this section in its form 10–Q shall include earnings per share or net loss per share data prepared in accordance with GAAP and disclose any material contingencies, as required by Article 10 of the Commission's Regulation S–X (17 CFR 210.10–01), in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of Form 10–Q.

(c) *Required filings*—(1) *Place and timing of filing.* All papers required to be filed with the Board, pursuant to the 1934 Act or regulations thereunder, shall be submitted to the Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and

Constitution Avenue, NW., Washington, DC 20551. Material may be filed by delivery to the Board, through the mails, or otherwise. The date on which papers are actually received by the Board shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(2) *Filing fees.* No filing fees specified by the Commission's rules shall be paid to the Board.

(3) *Public inspection.* Copies of the registration statement, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this section (exclusive of exhibits) shall be available for public inspection at the Board's offices in Washington, DC, as well as at the Federal Reserve Banks of New York, Chicago, and San Francisco and at the Reserve Bank in the district in which the reporting bank is located.

(d) *Confidentiality of filing.* Any person filing any statement, report, or document under the 1934 Act may make written objection to the public disclosure of any information contained therein in accordance with the following procedure:

(1) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that the person desires to keep undisclosed (hereinafter called the confidential portion). The person shall indicate at the appropriate place in the statement, report, or document that the confidential portion has been omitted and filed separately with the Board.

(2) The person shall file the following with the copies of the statement, report, or document filed with the Board:

(i) As many copies of the confidential portion, each clearly marked ''CONFIDENTIAL TREATMENT,'' as there are copies of the statement, report, or document filed with the Board. Each copy of the confidential portion shall contain the complete text of the item and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in case the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the statement, report, or document; and

(ii) An application making objection to the disclosure of the confidential portion. The application shall be on a sheet or sheets separate from the confidential portion, and shall:

(A) Identify the portion of the statement, report, or document that has been omitted;

(B) Include a statement of the grounds of objection; and

(C) Include the name of each exchange, if any, with which the statement, report, or document is filed.

(3) The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked ''CONFIDENTIAL TREATMENT,'' and addressed to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551.

(4) Pending determination by the Board on the objection filed in accordance with this paragraph, the confidential portion shall not be disclosed by the Board.

(5) If the Board determines to sustain the objection, a notation to that effect shall be made at the appropriate place in the statement, report, or document.

(6) If the Board determines not to sustain the objection because disclosure of the confidential portion is in the public interest, a finding and determination to that effect shall be entered and notice of the finding and determination sent by registered or certified mail to the person.

(7) If the Board determines not to sustain the objection, pursuant to paragraph (d)(6) of this section, the confidential portion shall be made available to the public:

(i) 15 days after notice of the Board's determination not to sustain the objection has been given, as required by paragraph (d)(6) of this section, provided that the person filing the objection has not previously filed with the Board a written statement that he intends, in good faith, to seek judicial review of the finding and determination; or

(ii) 60 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (d)(6) of this section and the person filing the objection has filed with the Board a written statement of intent to seek judicial review of the finding and determination, but has failed to file a petition for judicial review of the Board's determination; or

(iii) Upon final judicial determination, if adverse to the party filing the objection.

(8) If the confidential portion is made available to the public, a copy thereof shall be attached to each copy of the statement, report, or document filed with the Board.

**§ 208.37 Government securities sales practices. [Reserved]**

## Subpart D—Prompt Corrective Action

**§ 208.40 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.**

(a) *Authority.* Subpart D of Regulation H (12 CFR part 208, subpart D) is issued by the Board of Governors of the Federal Reserve System (Board) under section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose and scope.* This subpart D defines the capital measures and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act. (Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized.) This subpart also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38. Certain of the provisions of this subpart apply to officers, directors, and employees of state member banks. Other provisions apply to any company that controls a member bank and to the affiliates of the member bank.

(c) *Other supervisory authority.* Neither section 38 nor this subpart in any way limits the authority of the Board under any other provision of law to take supervisory actions to address unsafe or unsound practices or conditions, deficient capital levels, violations of law, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the Board, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(d) *Disclosure of capital categories.* The assignment of a bank under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the Board or otherwise required by law, no bank may state in any advertisement or promotional material its capital category under this subpart or that the Board or any other Federal banking agency has assigned the bank to a particular capital category.

**§ 208.41 Definitions for purposes of this subpart.**

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in section 38 and section 3 of the FDI Act.

(a) *Control*—(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term *controlled* shall be construed consistently with the term *control*.

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect to the shares.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate Federal banking agency for up to three one-year periods.

(b) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(c) *Leverage ratio* means the ratio of Tier 1 capital to average total consolidated assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure (Appendix B to this part).

(d) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank, or related overhead expenses, including payments related to supervisory, executive, managerial, or policy making functions, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

(e) *Risk-weighted assets* means total weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

(f) *Tangible equity* means the amount of core capital elements in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part), plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets except mortgage servicing rights to the extent that the Board determines that mortgage servicing rights may be included in calculating the bank's Tier 1 capital.

(g) *Tier 1 capital* means the amount of Tier 1 capital as defined in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

(h) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

(i) *Total assets* means quarterly average total assets as reported in a bank's Report of Condition and Income (Call Report), minus intangible assets as provided in the definition of tangible equity. At its discretion the Federal Reserve may calculate total assets using a bank's period-end assets rather than quarterly average assets.

(j) *Total risk-based capital ratio* means the ratio of qualifying total capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

**§ 208.42 Notice of capital category.**

(a) *Effective date of determination of capital category.* A member bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A member bank shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Report of Condition and Income (Call Report) is required to be filed with the Board;

(2) A final report of examination is delivered to the bank; or

(3) Written notice is provided by the Board to the bank of its capital category for purposes of section 38 of the FDI Act and this subpart or that the bank's capital category has changed as provided in paragraph (c) of this section or § 208.43(c).

(c) *Adjustments to reported capital levels and capital category*—(1) *Notice of adjustment by bank.* A member bank shall provide the Board with written notice that an adjustment to the bank's capital category may have occurred no later than 15 calendar days following the date that any material event occurred that would cause the bank to be placed in a lower capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination.

(2) *Determination by Board to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the Board shall determine whether to change the capital category of the bank and shall notify the bank of the Board's determination.

**§ 208.43 Capital measures and capital category definitions.**

(a) *Capital measures.* For purposes of section 38 and this subpart, the relevant capital measures are:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and

(3) The leverage ratio.

(b) *Capital categories.* For purposes of section 38 and this subpart, a member bank is deemed to be:

(1) ''Well capitalized'' if the bank:

(i) Has a total risk-based capital ratio of 10.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) ''Adequately capitalized'' if the bank:

(i) Has a total risk-based capital ratio of 8.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and

(iii) Has:

(A) A leverage ratio of 4.0 percent or greater; or

(B) A leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth; and

(iv) Does not meet the definition of a ''well capitalized'' bank.

(3) ''Undercapitalized'' if the bank has:

(i) A total risk-based capital ratio that is less than 8.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) Except as provided in paragraph (b)(iii)(B) of this section, has a leverage ratio that is less than 4.0 percent; or

(iv) A leverage ratio that is less than 3.0 percent, if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth.

(4) ''Significantly undercapitalized'' if the bank has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) ''Critically undercapitalized'' if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Reclassification based on supervisory criteria other than capital.* The Board may reclassify a well-capitalized member bank as adequately capitalized and may require an adequately-capitalized or an undercapitalized member bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the Board may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are hereinafter referred to generally as ''reclassifications'') in the following circumstances:

(1) *Unsafe or unsound condition.* The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that, in the most recent examination of the bank, the bank received and has not corrected, a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

**§ 208.44 Capital restoration plans.**

(a) *Schedule for filing plan*—(1) *In general.* A member bank shall file a written capital restoration plan with the appropriate Reserve Bank within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the Board notifies the bank in writing that the plan is to be filed within a different period. An adequately capitalized bank that has been required, pursuant to § 208.43(c), to comply with supervisory actions as if the bank were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 208.43(c), unless the Board notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate Reserve Bank within 45 days of receiving such notice, unless the Board notifies the bank in writing that the plan is to be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the Board instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A bank that is required to submit a capital restoration plan as the result of a reclassification of the bank pursuant to § 208.43(c) shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of that Act by each company that controls the bank.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the Board shall provide written notice to the bank of whether the plan has been approved. The Board may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If the Board does not approve a capital restoration plan, the bank shall submit a revised capital restoration plan within the time specified by the Board. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized member bank (as defined in § 208.43(b)(3)) shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as the Board approves a new or revised capital restoration plan submitted by the bank.

(e) *Failure to submit capital restoration plan.* A member bank that is undercapitalized (as defined in § 208.43(b)(3)) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(f) *Failure to implement capital restoration plan.* Any undercapitalized member bank that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(g) *Amendment of capital plan.* A bank that has filed an approved capital restoration plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* Within 45 days of the effective date of Board approval of a capital restoration plan, or any amendment to a capital restoration plan, the Board shall provide a copy of the plan or amendment to the Federal Deposit Insurance Corporation.

(i) *Performance guarantee by companies that control a bank*—(1) *Limitation on Liability*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific member bank that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the bank's total assets at the time the bank was notified or deemed to have notice that the bank was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the bank to the levels required for the bank to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the bank initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the Board notifies the bank that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment

by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same bank after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a bank shall be jointly and severally liable for the guarantee for such bank as required under section 38 and this subpart, and the Board may require and collect payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a bank that is controlled by a company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the bank shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart that are applicable to banks that have not submitted an acceptable capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank shall be subject to the provisions of section 38 and this subpart that are applicable to banks that have failed in a material respect to implement a capital restoration plan.

**§ 208.45 Mandatory and discretionary supervisory actions under section 38.**

(a) *Mandatory supervisory actions*—(1) *Provisions applicable to all banks.* All member banks are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks.* Immediately upon receiving notice or being deemed to have notice, as provided in § 208.42 or § 208.44, that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the Board monitor the condition of the bank (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) Restricting the growth of the bank's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 3(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 208.42 or § 208.44, that the bank is significantly undercapitalized, or critically undercapitalized, or that the bank is subject to the provisions applicable to institutions that are significantly undercapitalized because the bank failed to submit or implement in any material respect an acceptable capital restoration plan, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (a)(3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 208.32, that the bank is critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting the activities of the bank (section 38(h)(1)); and

(ii) Restricting payments on subordinated debt of the bank (section 38(h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the Board's discretion to take in connection with: A member bank that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized, or significantly undercapitalized; an officer or director of such bank; or a company that controls such bank, the Board shall follow the procedures for issuing directives under 12 CFR 263.202 and 263.204, unless otherwise provided in section 38 or this subpart.

## Subpart E—Real Estate Lending and Appraisal Standards

**§ 208.50 Authority, purpose, and scope.**

(a) *Authority.* Subpart E of Regulation H (12 CFR part 208, subpart E) is issued by the Board of Governors of the Federal Reserve System under section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o) and Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331–3351).

(b) *Purpose and scope.* This subpart E prescribes standards for real estate lending to be used by member banks in adopting internal real estate lending policies. The standards applicable to appraisals rendered in connection with federally related transactions entered into by member banks are set forth in 12 CFR part 225, subpart G (Regulation Y).

**§ 208.51 Real estate lending standards.**

(a) *Adoption of written policies.* Each state bank that is a member of the Federal Reserve System shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b) *Requirements of lending policies.* (1) Real estate lending policies adopted pursuant to this section shall be:

(i) Consistent with safe and sound banking practices;

(ii) Appropriate to the size of the institution and the nature and scope of its operations; and

(iii) Reviewed and approved by the bank's board of directors at least annually.

(2) The lending policies shall establish:

(i) Loan portfolio diversification standards;

(ii) Prudent underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) Loan administration procedures for the bank's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the bank's real estate lending policies.

(c) *Monitoring conditions.* Each member bank shall monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

(d) *Interagency guidelines.* The real estate lending policies adopted pursuant to this section should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies (contained in Appendix C of this part) established by the Federal bank and thrift supervisory agencies.

## Subpart F—Miscellaneous Requirements

**§ 208.60 Authority, purpose, and scope.**

(a) *Authority.* Subpart F of Regulation H (12 CFR part 208, subpart F) is issued

by the Board of Governors of the Federal Reserve System under sections 9, 11, 21, 25 and 25A of the Federal Reserve Act (12 U.S.C. 321–338a, 248(a), 248(c), 481–486, 601 and 611), section 7 of the International Banking Act (12 U.S.C. 3105), section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882), sections 1814, 1816, 1818, 1820(d)(9), 1831o, 1831p–1 and 1831r–1 of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1818, 1831o, 1831p–1 and 1831r–1), and the Bank Secrecy Act (31 U.S.C. 5318).

(b) *Purpose and scope.* This subpart F describes a member bank's obligation to disclose its financial condition to the public, to implement security procedures to discourage certain crimes, to file suspicious activity reports, and to comply with the Bank Secrecy Act's requirements for reporting and recordkeeping of currency and foreign transactions. It also describes the examination schedule for certain small insured member banks.

**§ 208.61 Bank security procedures.**

(a) *Authority, purpose, and scope.* Pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882), member banks are required to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies, and to assist in the identification and prosecution of persons who commit such acts. It is the responsibility of the member bank's board of directors to comply with the provisions of this section and ensure that a written security program for the bank's main office and branches is developed and implemented.

(b) *Designation of security officer.* Upon becoming a member of the Federal Reserve System, a member bank's board of directors shall designate a security officer who shall have the authority, subject to the approval of the board of directors, to develop, within a reasonable time, but no later than 180 days, and to administer a written security program for each banking office.

(c) *Security program.* (1) The security program shall:

(i) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(ii) Establish procedures that will assist in identifying persons committing crimes against the institution and that will preserve evidence that may aid in their identification and prosecution. Such procedures may include, but are not limited to: maintaining a camera that records activity in the banking office; using identification devices, such as prerecorded serial-numbered bills, or chemical and electronic devices; and retaining a record of any robbery, burglary, or larceny committed against the bank;

(iii) Provide for initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a burglary, robbery, or larceny; and

(iv) Provide for selecting, testing, operating, and maintaining appropriate security devices, as specified in paragraph (c)(2) of this section.

(2) *Security devices.* Each member bank shall have, at a minimum, the following security devices:

(i) A means of protecting cash and other liquid assets, such as a vault, safe, or other secure space;

(ii) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(iii) Tamper-resistant locks on exterior doors and exterior windows that may be opened;

(iv) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary; and

(v) Such other devices as the security officer determines to be appropriate, taking into consideration: the incidence of crimes against financial institutions in the area; the amount of currency and other valuables exposed to robbery, burglary, or larceny; the distance of the banking office from the nearest responsible law enforcement officers; the cost of the security devices; other security measures in effect at the banking office; and the physical characteristics of the structure of the banking office and its surroundings.

(d) *Annual reports.* The security officer for each member bank shall report at least annually to the bank's board of directors on the implementation, administration, and effectiveness of the security program.

(e) *Reserve Banks.* Each Reserve Bank shall develop and maintain a written security program for its main office and branches subject to review and approval of the Board.

**§ 208.62 Suspicious Activity Reports.**

(a) *Purpose.* This section ensures that a member bank files a Suspicious Activity Report when it detects a known or suspected violation of Federal law, or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act. This section applies to all member banks.

(b) *Definitions.* For the purposes of this section:

(1) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(2) *Institution-affiliated party* means any institution-affiliated party as that term is defined in 12 U.S.C. 1786(r), or 1813(u) and 1818(b) (3), (4) or (5).

(3) *SAR* means a Suspicious Activity Report on the form prescribed by the Board.

(c) *SARs required.* A member bank shall file a SAR with the appropriate Federal law enforcement agencies and the Department of the Treasury in accordance with the form's instructions by sending a completed SAR to FinCEN in the following circumstances:

(1) *Insider abuse involving any amount.* Whenever the member bank detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.

(2) *Violations aggregating $5,000 or more where a suspect can be identified.* Whenever the member bank detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating $5,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an ''alias,'' then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported.

(3) *Violations aggregating $25,000 or more regardless of a potential suspect.* Whenever the member bank detects any known or suspected Federal criminal

violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating $25,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(4) *Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.* Any transaction (which for purposes of this paragraph (c)(4) means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the member bank and involving or aggregating $5,000 or more in funds or other assets, if the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under federal law;

(ii) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(d) *Time for reporting.* A member bank is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a member bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations requiring immediate attention, such as when a reportable violation is on-going, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and the Board in addition to filing a timely SAR.

(e) *Reports to state and local authorities.* Member banks are encouraged to file a copy of the SAR with state and local law enforcement agencies where appropriate.

(f) *Exceptions.* (1) A member bank need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(2) A member bank need not file a SAR for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(g) *Retention of records.* A member bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of the filing of the SAR. Supporting documentation shall be identified and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A member bank must make all supporting documentation available to appropriate law enforcement agencies upon request.

(h) *Notification to board of directors.* The management of a member bank shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section.

(i) *Compliance.* Failure to file a SAR in accordance with this section and the instructions may subject the member bank, its directors, officers, employees, agents, or other institution affiliated parties to supervisory action.

(j) *Confidentiality of SARs.* SARs are confidential. Any member bank subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed citing this section, applicable law (e.g., 31 U.S.C. 5318(g)), or both, and notify the Board.

(k) *Safe harbor.* The safe harbor provisions of 31 U.S.C. 5318(g), which exempts any member bank that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, covers all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this section or are filed on a voluntary basis.

### § 208.63 Procedures for monitoring Bank Secrecy Act compliance.

(a) *Purpose.* This section is issued to assure that all state member banks establish and maintain procedures reasonably designed to assure and monitor their compliance with the provisions of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103, requiring recordkeeping and reporting of currency transactions.

(b) *Establishment of compliance program.* On or before April 27, 1987, each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(c) *Contents of compliance program.* The compliance program shall, at a minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

### § 208.64 Frequency of examination. [Reserved]

## Subpart G—Interpretations

### § 208.100 Sale of bank's money orders off premises as establishment of branch office.

(a) The Board of Governors has been asked to consider whether the appointment by a member bank of an agent to sell the bank's money orders, at a location other than the premises of the bank, constitutes the establishment of a branch office.

(b) Section 5155 of the Revised Statutes (12 U.S.C. 36), which is also applicable to member banks, defines the term branch as including ''any branch bank, branch office, branch agency,

additional office, or any branch place of business * * * at which deposits are received, or checks paid, or money lent.'' The basic question is whether the sale of a bank's money orders by an agent amounts to the receipt of deposits at a branch place of business within the meaning of this statute.

(c) Money orders are classified as deposits for certain purposes. However, they bear a strong resemblance to traveler's checks that are issued by banks and sold off premises. In both cases, the purchaser does not intend to establish a deposit account in the bank, although a liability on the bank's part is created. Even though they result in a deposit liability, the Board is of the opinion that the issuance of a bank's money orders by an authorized agent does not involve the receipt of deposits at a ''branch place of business'' and accordingly does not require the Board's permission to establish a branch.

**§ 208.101 Investments in Federal Agricultural Mortgage Corporation (Farmer Mac) stock.**

(a) Member banks may purchase and hold for their own account common stock in the Federal Agricultural Mortgage Corporation (Farmer Mac) incidental to their participation in the secondary market for agricultural real estate. Although banks are generally prohibited from owning stock (*See* section 5136 of the Revised Statutes (12 U.S.C. 24)), they are not prohibited from holding stock where Congress has evidenced a clear intention that they be allowed to hold such stock in order to achieve a legislative purpose.

(b) The legislative history and provisions of the statute creating Farmer Mac indicate that Congress envisioned the development of secondary markets through the creation of private entities owned entirely by institutions involved in lending in the particular market under consideration. It is clear from the explicit provisions of the enabling statute as well as from the legislative history that Congress contemplated that banks, including member banks, would purchase and hold stock in Farmer Mac. Member banks are therefore not prohibited from purchasing such shares in nominal amounts consistent with safe and sound banking practices and state law.

**§ 208.102 Investments in shares of an investment company.**

(a) A member bank may purchase and hold for its own account stock of any investment company (including a money market mutual fund) provided that:

(1) The investment company only has the authority, as stated in the investment objectives of its current prospectus, to invest in the following securities and no others: United States Treasury and agency obligations, general obligations of states and municipalities, corporate debt securities, and any other securities designated in 12 U.S.C. 24(7) as eligible for purchase by national banks that member banks are authorized to purchase directly. The investment company may have authority, as stated in the investment objectives of its current prospectus, to enter into futures, forwards and option contracts relating to the above securities when those futures, forwards and option contracts are to be used solely to reduce interest rate risk and not for speculation. The investment company may also have authority, as stated in the investment objectives of its current prospectus, to enter into repurchase agreements and securities lending contracts relating to the securities designated above if those contracts comply with policy statements adopted by the Federal Financial Institutions Examination Council (FFIEC). *See* Federal Reserve Regulatory Service 3–1579.1 (Nov. 12, 1985).

(i) If the portfolio of the investment company in which a member bank may invest consists solely of obligations that the bank could purchase without restriction as to amount, or solely of those obligations and futures, forwards, options, repurchase agreements and securities lending contracts relating solely to those obligations, no express limit is placed on investment.

(ii) If the portfolio of the investment company in which a member bank may invest includes any securities that the bank could purchase subject to a restriction as to amount, the pro-rata share of holdings of such securities of an issuer indirectly held by a member bank through its holdings of investment company stock (including money market mutual funds), when aggregated with the direct investment in securities of that issuer by the bank, must not exceed the investment limit.

(2) The investment company whose stock is purchased by a member bank must register with the Securities and Exchange Commission under the Investment Company Act of 1940 and the Securities Act of 1933, unless the conditions of paragraph (a)(3) of this section are met.

(3) The stock purchased may be of a privately offered fund if the sponsor of the fund is a subsidiary of a bank holding company, and if the stock of the fund is held solely by subsidiaries of the bank holding company.

(4) The stock purchased must represent an equitable, equal, and proportionate undivided interest in the underlying assets of the investment company.

(5) The stockholders must be shielded from personal liability for acts and obligations of the investment company.

(6) The member bank's investment policy and procedures, as formally approved by its board of directors, must specifically provide for investment in investment company stock. The investment policy must establish procedures, standards, and controls that relate specifically to investments in investment company stock and must provide that prior approval of the board of directors of the bank is necessary for investment in a specific investment company and that this approval be recorded in the official board minutes. Furthermore, the bank must review its holdings of investment company stock at least quarterly to ensure that investments have been made in accordance with the policy and legal requirements, unless the investment objectives of the investment companies, as stated in their current prospectuses, restrict investments to those obligations that the member bank could purchase without restriction as to amount.

(b) The interpretation in this section does not exempt member banks from any provision of state law.

**§ 208.103 Obligations concerning institutional customers. [Reserved]**

## PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

**Authority:** 12 U.S.C. 78, 248(i) and 371c(e).

**§§ 250.120 through 250.123, 250.140, 250.161, 250.162, 250.220. [Removed]**

2. Sections 250.120, 250.121, 250.122, 250.123, 250.140, 250.161, 250.162, 250.220 are removed.

**§§ 250.300 through 250.302. [Removed]**

3. The undesignated centerheading preceding § 250.300 and §§ 250.300 through 250.302 are removed.

By order of the Board of Governors of the Federal Reserve System, March 20, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–7585 Filed 3–28–97; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 209

**[Regulation I; Docket No. R–0966]**

## Issue and Cancellation of Federal Reserve Bank Capital Stock

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board of Governors of the Federal Reserve System is proposing to amend its Regulation I regarding the issue and cancellation of Federal Reserve Bank Capital Stock in order to reduce regulatory burden and simplify and update requirements. This proposal to modernize Regulation I is in accordance with the Board's policy of regular review of its regulations and the Board's review of its regulations pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

**DATES:** Comments must be received by May 30, 1997.

**ADDRESSES:** Comments, which should refer to Docket No. R–0966, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street N.W. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

**FOR FURTHER INFORMATION CONTACT:** Rick Heyke, Staff Attorney (202/452–3688), Legal Division, Board of Governors; Elizabeth Tacik, Accountant (202/452–2303), Division of Reserve Bank Operations and Payment Systems, Board of Governors; or Anthony Scafide, Manager (215/574–6546), Wholesale Payments Division, Federal Reserve Bank of Philadelphia. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

**SUPPLEMENTARY INFORMATION:**

### Background

As part of its policy of regular review of its regulations, and consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), the Board of Governors of the Federal Reserve System (Board) is proposing to amend its Regulation I regarding issue and cancellation of Federal Reserve Bank capital stock (12 CFR part 209). Section 303 of the Riegle Act requires each federal banking agency to review and streamline its regulations and written policies to improve efficiency, reduce unnecessary costs, and remove inconsistencies and outmoded and duplicative requirements. The proposed amendments are designed to reduce regulatory burden and simplify and update the Regulation.

The principal amendments being proposed are described below. In general, the amendments simplify, modernize, and condense the Regulation, and reflect the replacement of share certificates by a book-entry system. The amendments also codify Board and staff interpretations. Finally, the amendments delete the many references to specific forms. Many of these references are incorrect because the forms no longer exist or no longer have the same identification numbers.

### Banks Desiring To Become Member Banks

Proposed § 209.2 combines and condenses existing §§ 209.1 and 209.2 regarding national and state bank applications. Existing § 209.1 also specifies the amount of Reserve Bank stock for which national banks should apply, but the proposal combines all references to amount in proposed § 209.4 and deletes repetitive explanations. Proposed § 209.2 also includes a subsection (c) that will specify the Reserve Bank of which a bank may become a member and that is the subject of a separate request for comment. *See* 62 FR 11117.

*Cessation of Membership*

Proposed § 209.3 combines and simplifies existing §§ 209.5(b) (merger of a member bank into a state nonmember bank), 209.6 (conversion of a national bank into a state nonmember bank), 209.7 (insolvency), 209.8 (voluntary liquidation), 209.9(b) (national bank in the hands of a conservator to be liquidated), 209.10 (closed state member banks not in liquidation), 209.11 (voluntary withdrawal from membership by state bank), and 209.12 (involuntary termination of state bank membership).

The Regulation previously distinguished between insolvency and voluntary liquidation (where the bank or receiver was required to file for cancellation of Reserve Bank stock within three months), other cessation of business by state member banks (where failure by the bank to file for cancellation within 60 days commenced a process whereby the Board might order termination of membership), and other cases such as voluntary withdrawal, merger into a nonmember bank, or conversion of a national bank into a nonmember state bank (where the regulation imposed no specific timing requirement for filing an application for cancellation of Reserve Bank stock). Proposed 209.3(a) provides instead that all such banks (or receivers) shall file promptly for cancellation of Reserve Bank stock, failing which the Board may order the membership of the bank terminated under 209.3(b).

Section 6(2) of the Act (12 U.S.C. 288) provides that the Comptroller of the Currency may appoint a receiver for a national bank that has discontinued banking operations for 60 days but has not gone into liquidation, if the Comptroller deems it advisable. The existing regulation includes in § 209.9(a) a provision for the appropriate Reserve Bank to notify the Office of the Comptroller of the Currency in the event a national bank has ceased business for 60 days but has not gone into liquidation, together with a statement of reasons why a receiver should be appointed. The proposal omits this provision. The appropriate procedures for communication among the Board, the Reserve Bank, and the Comptroller's office in such a case would depend on the facts and circumstances of the particular case.

*Amounts and Payments*

Proposed § 209.4(a) combines in one section the requirement for amount of total subscription for Reserve Bank stock (other than for a mutual savings bank) on becoming a member or on a change in capital stock and surplus. The Federal Reserve Act (the Act) requires member banks (other than mutual savings banks) to subscribe for Reserve Bank capital stock in an amount equal to 6 percent of their capital stock and surplus. Member banks are required to pay in half this amount and half is subject to call by the Reserve Bank.

Proposed § 209.4(b) defines member bank capital stock and surplus as capital stock and paid-in surplus. Retained earnings continue to be generally excluded from this definition, thereby minimizing member banks' adjustments in their Reserve Bank stock holdings. The Federal Reserve System experienced approximately 1500 adjustments in Reserve Bank capital stock as a result of changes in member bank capital stock and surplus in 1992.

The Board estimates that this number would increase substantially if it were necessary to adjust for changes in retained earnings of member banks. Although retained earnings are generally excluded from the definition, the regulation incorporates previous guidance requiring a deficit in retained earnings to be subtracted from capital stock and surplus unless the deficit is relatively small and the appropriate Reserve Bank is satisfied that it will be extinguished by accumulation of earnings or formal reduction of surplus, in which case the adjustment of Reserve Bank stock may be deferred until the end of the quarter in which the deficit arises.

Section 5 of the Act provides that Federal Reserve Bank stock shall be adjusted from time to time as member banks increase or decrease capital stock and surplus. The Act does not specify whether this adjustment must be done immediately or can be done periodically after a number of changes in a member bank's capital stock and surplus have occurred or when such changes become in the aggregate significant. There is a burden associated with adjusting banks' Reserve Stock positions to reflect small changes in the banks' capital accounts. The Board seeks comment on how frequently, or after how much cumulative dollar or percentage change, member banks should be required to adjust their Reserve Bank capital stock holdings.

Proposed § 209.4(c) is a condensed version of existing § 209.4 specifying that mutual savings banks are required to subscribe for Reserve Bank stock in an amount equal to 0.6 percent of total deposits rather than 6 percent of capital and surplus. Mutual savings banks not permitted to hold Reserve Bank stock are required to maintain a deposit at the Reserve Bank in the same amount pending a change in state law to permit purchase of the stock.

Proposed §§ 209.4 (d) and (e) specify that transactions in Reserve Bank capital stock between member banks and the Reserve Bank take place at the subscription price plus accrued dividends at the rate of one-half of one percent per month (provided that the total price paid on redemption of Reserve Bank stock does not exceed the book value of such stock). Under section 5 of the Act (12 U.S.C. 287), banks applying for Reserve Bank capital stock are required to pay the subscription price plus accrued dividends for such stock. Under sections 5, 6, and 9(10) of the Act (12 U.S.C. 287, 288 and 328), Reserve Banks redeeming their capital stock from member banks which are in voluntary liquidation or which have been declared insolvent and for which a receiver has been appointed, or from state member banks on voluntary withdrawal from or involuntary termination of membership, are required to pay a price equal to the cash subscription price originally paid plus accrued dividends, but may not pay a price exceeding the book value of the Reserve Bank stock. The Act is silent on whether accrued dividends are payable by Reserve Banks in other cases such as merger into nonmember banks. In cases where the Act requires accrued dividends, it specifies that they shall accrue at one-half percent per completed month but is silent on whether dividends should be prorated to accrue within a month.

In practice, Reserve Banks have included accrued dividends in both purchases and redemptions, including intra-month accrued dividends, and the proposal applies the concept of accrued dividends to all transactions in Reserve Bank capital stock.[1] The proposal also continues the Board's practice of accruing dividends within a month.

The Board seeks comment on the appropriate method of computing accrued dividends. Generally the Reserve Banks have accrued intra-month dividends on the basis of the actual number of days elapsed within a month divided by the number of actual days in the month. This method results in different daily accruals depending on the number of days in the month for which intra-month accrued dividends are calculated. The Board requests comment on whether adopting another method, such as use of a standard 30-day month, would simplify the computation.

Proposed § 209.4(e)(2) specifies that in the case of any cancellation of Reserve Bank stock under Regulation I, the Reserve Bank may first apply the proceeds to any liability of the member bank to the Reserve Bank, and pay over the remainder to the bank or receiver as appropriate. This replaces a similar requirement in existing § 209.5(b), and clarifies that the principle may apply to partial as well as total cancellations.

*The Share Register*

Proposed § 209.5 revises the share register provision of the Regulation to reflect the modern book-entry and electronic records systems the Reserve Banks have implemented. This change permits eliminating the numerous and confusing provisions of the existing Regulation that deal with the circumstances under which share certificates may be retained or must be submitted for reissue. For example, existing § 209.13(a) requires a member bank to surrender its certificate in the event of a change in name for the Reserve Bank to issue a new certificate in the new name. Existing § 209.5(a) includes a lengthy footnote explaining the difference between transfer of Reserve Bank stock certificates by purchase and by operation of law, because a new certificate is not required in the case of transfer by operation of law. Under the proposal, the Reserve Bank in each case need merely change the name of the stockholder in its records.

[1] Under sections 6 and 9(10) of the Act, the Board is under no obligation to pay unearned accrued dividends on redemption of Reserve Bank capital stock from insolvent member banks for which a receiver has been appointed or from state member banks on voluntary withdrawal from or involuntary termination of membership. *See, e.g.,* Board Interpretation of April 17, 1925, X–4322, and related note, published in Federal Reserve Regulatory Service at 3–500.

**Initial Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b))—a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are contained in ''Background'' above. The proposed rules do not overlap with other federal rules.

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposal will apply to all member banks regardless of size.

The amendments are burden-reducing. Therefore, the Board believes that the amendments will not have a significant adverse economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act notice of 1995 (44 U.S.C. Ch. 3506; 5 CFR Part 1320, Appendix A.1), the Board has reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

**List of Subjects in 12 CFR Part 209**

Banks and banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

## Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to revise part 209 of chapter II of title 12 to read as follows:

## PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

Sec.
209.1 Authority, purpose, and scope.
209.2 Banks desiring to become member banks.
209.3 Cessation of membership.
209.4 Amounts and payments.
209.5 The share register.

**Authority:** 12 U.S.C. 248, 321–338, 466, 486.

### § 209.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 248, 321–338, 466, and 486.

(b) *Purpose.* The purpose of this part is to implement the provisions of the Federal Reserve Act relating to the issuance and cancellation of Federal Reserve Bank stock upon becoming or ceasing to be a member bank, or upon changes in the capital and surplus of a member bank, of the Federal Reserve System.

(c) *Scope.* This part applies to member banks of the Federal Reserve System, to national banks in process of organization, and to state banks applying for membership. National banks and locally-incorporated banks located in United States dependencies and possessions are eligible (with the consent of the Board) but not required to apply for membership under section 19(h) of the Federal Reserve Act, 12 U.S.C. 466.[1]

### § 209.2 Banks desiring to become member banks.

(a) *Application for stock or deposit.* Each national bank in process of organization,[2] each nonmember state bank converting into a national bank, and each nonmember state bank applying for membership in the Federal Reserve System under Regulation H, 12 CFR part 208, shall file with the Federal Reserve Bank in whose district it is located an application for stock (or deposit in the case of mutual savings banks not authorized to purchase Reserve Bank stock[3]) in the Reserve Bank. The bank shall pay for the stock (or deposit) in accordance with § 209.4.

(b) *Issuance of stock; acceptance of deposit.* Upon authorization to commence business by the Comptroller of the Currency in the case of a national bank in organization or upon approval of conversion by the Comptroller of the Currency in the case of a state nonmember bank converting to a national bank, and when all applicable requirements have been complied with in the case of a state bank approved for membership, the Reserve Bank shall issue the appropriate number of shares by crediting the bank with the appropriate number of shares on its books. In the case of a mutual savings bank not authorized to purchase Reserve Bank shares, the Reserve Bank shall accept the deposit in place of issuing shares. The bank's membership shall become effective on the date of such issuance or acceptance.

(c) *Location of bank.* Placeholder for location of bank.

### § 209.3 Cessation of membership.

(a) *Application for cancellation.* Any bank that desires to withdraw from membership in a Federal Reserve Bank, voluntarily liquidates or ceases business, is merged or consolidated into a nonmember bank, or is involuntarily liquidated by a receiver or conservator or otherwise, shall promptly file with its Reserve Bank an application for cancellation of all its Reserve Bank stock (or withdrawal of its deposit, as the case may be) and payment therefor in accordance with § 209.4.

(b) *Involuntary termination of membership.* If an application is not filed promptly after a cessation of business by a state member bank, a vote to place a member bank in voluntary liquidation, or the appointment of a receiver for (or a determination to liquidate the bank by a conservator of) a member bank, the Board may, after notice and an opportunity for hearing where required under Section 9(9) of the Federal Reserve Act (12 U.S.C. 327), order the membership of the bank terminated and all of its Reserve Bank stock canceled.

(c) *Effective date of cancellation.* Cancellation in whole of a bank's Reserve Bank capital stock shall be effective, in the case of:

(1) Voluntary withdrawal from membership by a state bank, as of the date of such withdrawal;

(2) Merger into, consolidation with, or (for a national bank) conversion into, a State nonmember bank, as of the effective date of the merger, consolidation, or conversion; and

(3) Involuntary termination of membership, as of the date the Board issues the order of termination.

(d) *Merger of member banks.* Upon a merger or consolidation of member banks, the surviving bank shall instruct the relevant Reserve Bank to cancel all the shares previously held by any nonsurviving bank. To the extent appropriate, proceeds payable under § 209.4 may be applied to purchase additional shares in the name of the surviving bank.

(e) *Voluntary withdrawal.* Any bank withdrawing voluntarily from membership shall give 6 months written notice, and shall not cause the withdrawal of more than 25 percent of any Reserve Bank's capital stock in any calendar year, without waivers of these requirements from the Board of Governors.

### § 209.4 Amounts and payments.

(a) *Amount of subscription.* The total subscription of a member bank (other than a mutual savings bank) shall equal six percent of its capital and surplus. Whenever any member bank (other than a mutual savings bank) experiences an increase or decrease in capital and surplus, it shall file with the appropriate Reserve Bank an application for issue or cancellation of Reserve Bank capital stock in order to adjust its Reserve Bank capital stock subscription to equal six percent of the member bank's capital and surplus.

(b) *Capital Stock and Surplus defined.* Capital stock and surplus of a member bank at the end of a quarter means the paid-up capital stock and surplus of the bank, less any deficit in its retained earnings account, all as shown on the bank's call report as of the end of the quarter. A Reserve Bank may permit a member bank to disregard a relatively small deficit in its retained earnings account until the end of the quarter in which the deficit arises if the Reserve Bank is satisfied that the deficit will be extinguished by accumulation of earnings or by a formal reduction of surplus.

[1] If such a bank desires to become a member bank under the provisions of section 19(h) of the Federal Reserve Act, it should communicate with the Federal Reserve Bank with which it desires to do business.

[2] A new national bank organized by the Federal Deposit Insurance Corporation under section 11(n) of the Federal Deposit Insurance Act (12 U.S.C. 1821(n)) should not apply until in the process of issuing stock pursuant to section 11(n)(15) of that act. Reserve Bank approval of such an application shall not be effective until the issuance of a certificate by the Comptroller of the Currency pursuant to section 11(n)(16)of that act.

[3] A mutual savings bank not authorized to purchase Federal Reserve Bank stock may apply for membership evidenced initially by a deposit. [*See* § 208.4(c) of Regulation H, 12 CFR 208.4(c), and §§ 208.3(a)(2) and 208.3(b) of Regulation H as proposed to be amended and published elsewhere in today's **Federal Register**.] The membership of the savings bank shall be terminated if the laws under which it is organized are not amended to authorize such purchase at the first session of the legislature after its admission, or if it fails to purchase such stock within six months after such an amendment.

(c) *Mutual savings banks.* The total subscription of a member bank that is a mutual savings bank shall equal six-tenths of 1 percent of its total deposit liabilities as shown on its most recent report of condition. Whenever any member bank that is a mutual savings bank experiences an increase or decrease in total deposit liabilities as shown on its most recent report of condition, it shall file with the appropriate Reserve Bank an application for issue or cancellation of Reserve Bank capital stock in order to adjust its Reserve Bank capital stock subscription to equal six-tenths of one percent of its total deposit liabilities. A mutual savings bank that is applying for or has a deposit with the appropriate Reserve Bank in lieu of Reserve Bank capital stock shall file for acceptance or adjustment of its deposit in a like manner.

(d) *Payment for subscriptions.* Upon approval by the Reserve Bank of an application for capital stock (or for a deposit in lieu thereof), the applying bank shall pay the Reserve Bank one-half of the subscription amount plus accrued dividends at the rate of one half of one percent per month. Upon payment (and in the case of a national banks in organization or state nonmember bank converting into a national bank, upon authorization or approval by the Comptroller of the Currency), the Reserve Bank shall issue the appropriate number of shares by crediting the bank with the appropriate number of shares on its books. In the case of a mutual savings bank not authorized to purchase Reserve Bank stock, the Reserve Bank will accept the deposit or addition to the deposit in place of issuing shares. The remaining half of the subscription or additional subscription (including subscriptions for deposits or additions to deposits) shall be subject to call by the Board.

(e) *Payment for cancellations.* (1) Upon approval of an application for cancellation of Reserve Bank capital stock, the Reserve Bank shall reduce the bank's shareholding on the Reserve Bank's books by the number of shares required to be canceled and shall pay therefor a sum equal to the cash subscription paid on the canceled stock plus accrued dividends at the rate of one half of one percent per month, such sum not to exceed the book value of the stock.[4]

(2) In the case of any cancellation of Reserve Bank stock under this Part, the Reserve Bank may first apply such sum to any liability of the bank to the Reserve Bank and pay over the remainder to the bank (or receiver or conservator, as appropriate).

**§ 209.5 The share register.**

(a) *Electronic or written record.* A member bank's holding of Reserve Bank capital stock shall be represented by one (or at the option of the Reserve Bank, more than one) notation on the Reserve Bank's books. Such books may be electronic or in writing. Upon any issue or cancellation of Reserve Bank capital stock, the Reserve Bank shall record the member bank's new share position in its books (or eliminate the bank's share position from its books, as the case may be).

(b) *Certification.* A Reserve Bank may certify on request as to the number of shares held by a member bank and purchased before March 28, 1942, or as to the purchase and cancellation dates and prices of shares cancelled, as the case may be.

By order of the Board of Governors of the Federal Reserve System, March 20, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–7587 Filed 3–28–97; 8:45 am]

BILLING CODE 6210–01–P

[4] Under sections 6 and 9(10) of the Act, the Board is under no obligation to pay unearned accrued dividends on redemption of Reserve Bank capital stock from insolvent member banks for which a receiver has been appointed or from state member banks on voluntary withdrawal from or involuntary termination of membership.

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## 12 CFR Part 216

**[Regulation P; Docket No. R–0965]**

## Security Procedures

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is proposing to remove Regulation P, which is no longer necessary since its provisions have been incorporated into Regulation H (Membership of State Banking Institutions in the Federal Reserve System), as proposed by the Board elsewhere in today's **Federal Register**. Regulation P requires each bank to adopt appropriate security procedures.

**DATES:** Comments must be received by May 30, 1997.

**ADDRESSES:** Comments, which should refer to Docket No. R–0965, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

**FOR FURTHER INFORMATION CONTACT:** Jean Anderson, Staff Attorney, Legal Division (202/452–3707). For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

**SUPPLEMENTARY INFORMATION:**

### Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the Board, as well as the other federal banking agencies, to review its regulations and written policies in order to streamline and modify these regulations and policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The Board has reviewed its Regulation P with this purpose in mind, and, is proposing to rescind Regulation P in order to meet the goals of section 303(a).

Regulation P implements the requirements of the Bank Protection Act of 1968 (BPA). The BPA requires the federal financial institution supervisory agencies to establish minimum standards for bank security devices and procedures to discourage bank crime and to assist in the identification of persons who commit such crimes. 12 U.S.C. 1882. To implement this statute a uniform regulation (Regulation P) was adopted in 1969 by each of the supervisory agencies—Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (now known as the Office of Thrift Supervision), and the Board. As originally proposed, Regulation P included a list of security devices that banks were required to adopt. On March 1, 1991 (55 FR 13069)(1991 Amendments), the supervisory agencies amended their rules to incorporate amendments made to the BPA by the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA) and to address the fact that many of the required security devices had been rendered obsolete by virtue of technological advances.

*Discussion*

The Board's proposal to rescind Regulation P and incorporate its provisions into Regulation H (12 CFR Part 208—Membership of State Banking Institutions in the Federal Reserve System) as proposed by the Board elsewhere in today's **Federal Register**, would not substantively amend the terms of Regulation P. The Board's proposal to incorporate Regulation P into Regulation H is designed to simplify compliance for State member banks, to the extent possible, by consolidating the regulatory requirements applying to State member banks into one regulation.

**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95–354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this proposal will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will remove a regulation and an interpretation that the Board believes are no longer necessary. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

**List of Subjects in 12 CFR Part 216**

Federal Reserve System, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 1882, the Board proposes to amend 12 CFR chapter II, as set forth below:

## PART 216—[REMOVED]

1. Part 216 is removed.

By order of the Board of Governors of the Federal Reserve System, March 20, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–7586 Filed 3–28–97; 8:45 am]

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## Part IV

# Environmental Protection Agency

**40 CFR Parts 52, 60, 264, and 265**
**Merck & Co., Inc. (Stonewall Plant) Project XL Site-Specific Rulemaking; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52, 60, 264 and 265**

**[FRL–5803–7]**

## Project XL Site-specific Rulemaking for Merck & Co., Inc. Stonewall Plant

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to implement a project under the Project XL program for the Merck & Co., Inc. (Merck) Stonewall Plant, in Elkton, Virginia. The terms of the project are defined in a proposed Final Project Agreement (FPA) which is being made available for public review and comment by this document. In addition, EPA is proposing today a site-specific rule, applicable only to the Merck Stonewall Plant, to facilitate implementation of the project. By this document, EPA solicits comment on the proposed rule, the proposed FPA, and the project generally.

This proposed site-specific rule is intended to provide regulatory changes under the Clean Air Act and the Resource Conservation and Recovery Act (RCRA) to implement Merck's XL project, which will result in superior environmental performance and, at the same time, provide Merck with greater operational flexibility. The proposed site-specific rule would change the Clean Air Act requirements which apply to the Merck Stonewall Plant for the prevention of significant deterioration of air quality and certain new source performance standards. EPA also proposes a site-specific rulemaking under RCRA to provide regulatory changes pertaining to air emissions standards to implement this XL project.

**DATES:** *Comments.* All public comments must be received on or before April 30, 1997. If a public hearing is held, the public comment period will remain open until May 15, 1997.

*Public Hearing.* A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning this proposed rule to implement Merck's XL project. If anyone contacts the EPA requesting to speak at a public hearing by April 10, 1997, a public hearing will be held on April 14, 1997. Additional information is provided in the section entitled **ADDRESSES.**

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact Ms. Robin Moran at the EPA by April 10, 1997. Additional information is provided in the section entitled **ADDRESSES.**

**ADDRESSES:** *Comments.* Written comments should be submitted in duplicate to: Ms. Robin Moran, U.S. Environmental Protection Agency, Region III, Air, Radiation & Toxics Division, 841 Chestnut Street (3AT23), Philadelphia, PA, 19107–4431, (215) 566–2064.

*Docket.* A docket containing supporting information used in developing this proposed rulemaking is available for public inspection and copying at U.S. EPA, Region III, 841 Chestnut Street, Philadelphia, PA, 19107–4431, (215) 566–2064, during normal business hours, and at EPA's Water docket (Docket name ''XL-Merck''); 401 M Street, SW, Washington, DC 20460. For access to the Water docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. (Eastern time) for an appointment. A reasonable fee may be charged for copying. A docket is also available for public inspection at the Virginia Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 1129, Harrisonburg, Virginia 22801–1129, (540) 574–7800.

*Public Hearing.* If a public hearing is held, it will be held at 7:00 p.m. at the following location: Virginia Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 1129, Harrisonburg, Virginia 22801–1129, (540) 574–7800. Persons interested in attending the hearing should notify Ms. Robin Moran, (215) 566–2064, to verify that a hearing will be held.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Moran, U.S. Environmental Protection Agency, Region III, Air, Radiation & Toxics Division, 841 Chestnut Street (3AT23), Philadelphia, PA, 19107–4431, (215) 566–2064.

**SUPPLEMENTARY INFORMATION:**

Outline of This Document

I. Authority
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C. Regulatory Flexibility
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## I. Authority

This regulation is being proposed under the authority of sections 101(b)(1), 110, 111, 161–169, 169A, and 301(a)(1) of the Clean Air Act, and sections 1006, 2002, 3001–3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6921–6927, 6930, and 6974). EPA has determined that this rulemaking is subject to the provisions of section 307(d) of the Clean Air Act.

## II. Background

### *A. Overview of Project XL*

This proposed site-specific rule is designed to implement a project developed under Project XL, an important EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—for ''excellence and leadership''—was announced on March 16, 1995, as a central part of the National Performance Review's and EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project, if any, should be more broadly applied to other regulated entities to the benefit of both the economy and the environment.

In Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility

to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria—superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden.[1] They must have full support of affected Federal, state and tribal agencies to be selected.

The XL program is intended to allow EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be required to undertake changes on a nationwide basis. As part of this experimentation, EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. EPA may also modify rules that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first finding out whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, the Agency expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as sections 101(b) and 103 of the Clean Air Act. In some cases, as in this XL project, such experimentation requires an alternative regulatory approach that, while permissible under the statute, was not the one adopted by EPA historically or for general purposes.

*B. Overview of the Merck XL Project*

1. Introduction

This proposed site-specific rule supports a draft permit and Project XL proposed Final Project Agreement (FPA) that have been developed by the Merck XL stakeholder group, namely Merck, EPA, Virginia Department of Environmental Quality (VADEQ), U.S. Department of the Interior (DOI)/ National Park Service (NPS), and community representatives. Several environmental organizations offered valuable input during the stakeholder process, including Southern Environmental Law Center, the Virginia Consortium for Clean Air, and the Natural Resources Defense Council. The proposed FPA and draft permit are available for review in the docket for today's action and also are available on the world wide web at http://www.epa.gov/ProjectXL. The proposed FPA outlines how the project addresses the eight Project XL criteria, in particular how the project will produce, measure, monitor, report, and demonstrate superior environmental benefits. In today's action, the Agency is soliciting comment on proposed site-specific regulatory changes to implement the project. The draft permit is available on the world wide web and in the docket file for today's action; however the draft permit is made available for informational purposes only. The Commonwealth of Virginia is conducting the official comment period for the draft permit, and initiated a public comment period for the draft PSD permit and a proposed variance on January 28, 1997.

EPA also seeks comment on the proposed FPA, which is available on the world wide web and in the docket file for today's action, in light of the criteria outlined in the Agency's May 23, 1995, **Federal Register** notice (60 FR 27282) regarding Regulatory Reinvention (XL) Pilot Projects. Those criteria are: (1) Environmental performance superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) cost savings or economic opportunity, and/or decreased paperwork burden; (3) stakeholder support; (4) test of innovative strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application; (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; and (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden).

2. Merck XL Project Description

The Merck Stonewall Plant is a pharmaceutical manufacturing facility, built in 1941, located near Elkton, Virginia. The facility is located approximately 2 kilometers from the Shenandoah National Park, a Federal Class I area under the Clean Air Act. Currently, the plant employs about 800 people in a range of pharmaceutical manufacturing activities such as fermentation, solvent extraction, organic chemical synthesis, and finishing operations. The facility's products include broad spectrum antibiotics, anti-parasitic drugs for human and animal health, a cholesterol lowering drug, a drug for the treatment of Parkinson's disease, and a new drug for the treatment of human immunodeficiency virus (HIV).

To remain competitive in the worldwide pharmaceutical industry, the Merck Stonewall Plant must respond rapidly to changing market conditions and product demands. To get new pharmaceutical products to market quickly, Merck requires flexible manufacturing operations that can make a broad range of products with the same manufacturing equipment using a wide array of raw materials and solvents. Merck also continually evaluates existing products for yield and process improvements, which results in a need for frequent manufacturing changes. Thus, Merck's facilities often modify environmental permits after a product line is first permitted.

The goal of this XL project is to develop a regulatory structure for the

[1] For more information about the XL criteria, readers should refer to the May 23, 1995 **Federal Register** notice (60 FR 27282) and the December 1, 1995 ''Principles for Development of Project XL Final Project Agreements'' document, both contained in the docket for this action.

Merck Stonewall Plant that both facilitates flexible manufacturing operations and achieves superior environmental performance. The existing preconstruction air permitting regulations that govern modifications at the facility, specifically the Prevention of Significant Deterioration (PSD) permitting regulations and the minor New Source Review (NSR) regulations, require that most changes to Merck's manufacturing processes must be reviewed and approved in advance by the VADEQ. In reviewing permit changes, the VADEQ consults with the Federal Land Manager (FLM) for Shenandoah National Park in accordance with the Memorandum of Understanding between the DOI/NPS and VADEQ. Typically, the more changes that are made or the larger the change, the more time and resources are necessary for permit review. The complexity of the regulations requires a considerable effort by the facility as well as the regulators to prepare and review permit applications for process modifications.

Merck's XL project seeks to replace this complex permitting system with a simpler system of compliance with criteria air pollutant regulations. Through a site-specific rulemaking and enforceable permit conditions, the facility's total emissions of criteria pollutants (except lead)[2] would be capped below the level at which the plant operated over recent years (at approximately 1500 tons per year (TPY)). Within the site-wide total emissions cap, the facility will also be subject to individual pollutant caps (subcaps), established near or below recent actual emission levels, for sulfur dioxide ($SO_2$), nitrogen oxides ($NO_X$), and particulate matter with an aerodynamic diameter less than 10 microns ($PM_{10}$). In addition to accepting these site-wide emissions caps, Merck will modify its existing coal-burning powerhouse to burn natural gas, a cleaner burning fuel that generates substantially fewer emissions than coal. Either propane or number 2 fuel oil would be used as a backup fuel. This multi-million dollar project is not otherwise required by regulations and the boilers do not need to be replaced for other reasons (e.g., operation, age or capacity). The powerhouse conversion would result in an up-front estimated reduction of over 900 TPY of actual criteria air pollutants, primarily $SO_2$ and $NO_X$ emissions. After this powerhouse conversion, Merck would reduce its total emissions cap by 20 percent, thereby permanently retiring at least 300 TPY of criteria pollutant emissions. Further, Merck also will reduce the pollutant-specific subcaps for $SO_2$ and $NO_X$ by 25 percent and 10 percent, respectively.

Merck's XL project would be implemented through issuance of a site-wide PSD permit, authorized by this proposed site-specific rulemaking. For the reader's convenience, a copy of the draft PSD permit is included in the docket for today's action. Under the site-specific rule and permit, the Merck Stonewall Plant would be required to maintain its emissions below the total emissions cap, as well as the subcaps for $SO_2$, $NO_X$ and $PM_{10}$. Under the site-wide emissions caps, changes or additions to facility operations would no longer need prior approval under PSD or NSR. The subcaps will keep $SO_2$ and $NO_X$ emissions below recent actual emission levels and $PM_{10}$ emissions will not significantly increase above the recent actual emissions level. The statutory PSD requirements for the VOC and CO emission increases that are possible under the total emissions cap will be satisfied pursuant to this site-specific rule and the PSD permit. So long as the facility complies with the total emissions cap, subcaps, and other permit requirements, it would have the flexibility to make modifications and to operate in a manner that supports Merck's objective to deliver high quality products quickly and efficiently to improve human and animal health without undergoing permit review for each modification.

As an alternative to the current PSD permitting system, the total emissions cap and subcaps will provide an incentive for Merck to identify and promptly implement ongoing emission reductions at the facility to provide operating room under the cap for future modifications and expansions. The XL project also provides an additional incentive for Merck to minimize emissions—a system of ''tiered'' monitoring, recordkeeping and reporting requirements. The draft permit provides that the monitoring, recordkeeping and reporting requirements become more stringent as the facility's actual emissions approach the total emissions cap. This tiered monitoring system provides Merck another built-in incentive to minimize emissions and to find opportunities to implement emission reductions.

3. Environmental Benefits

The Merck XL Project is designed to deliver superior environmental performance while allowing flexible operations at the facility. The site-specific rule and simplified air permit would provide significant benefits to the environment by substantially reducing pollutant emissions near the Shenandoah National Park and the surrounding community.

The Merck Stonewall Plant is located within 2 kilometers of Shenandoah National Park, a Federal Class I area. The facility's proximity to this nationally significant resource highlights the need for serious consideration of opportunities for better protection of the environment. Air quality is of special concern in Shenandoah National Park. Under the Clean Air Act, as amended in 1977, Shenandoah National Park was classified as a mandatory Federal Class I air quality area. Under the PSD program, the Federal Class I designation allows very little additional deterioration of the air quality from established baseline concentrations of certain air pollutants, and none of National Ambient Air Quality Standards (NAAQS) are to be exceeded. The DOI's Assistant Secretary for Fish and Wildlife and Parks is the Federal Land Manager (FLM) charged with direct responsibility to protect the air quality related values (AQRVs) of the Park. In 1990, the FLM for Shenandoah National Park notified the public that visibility is seriously degraded, that sensitive streams and watersheds are being acidified, and that park vegetation is being injured by ozone and sulfur dioxide levels. See 55 FR 38403–38408 (September 18, 1990).

Certain criteria pollutants have been demonstrated to have a significant adverse effect on the environmental quality of the Shenandoah National Park. In particular, $SO_2$ emissions contribute to visibility problems in the region, and $NO_X$ emissions combine with other chemicals in the atmosphere to form ground-level ozone, which has been determined to cause vegetation damage. Emissions of $SO_2$ and $NO_X$ also contribute to the formation of acid rain and associated adverse impacts. Merck's powerhouse conversion would achieve an up-front reduction of these pollutants—$SO_2$ emissions are expected to decrease by 679 TPY (94 percent) and $NO_X$ emissions are expected to decrease by 254 TPY (87 percent), from baseline

[2] The criteria pollutants included in the total emissions cap are sulfur dioxide, nitrogen oxides, carbon monoxide, ozone (using volatile organic compounds as a surrogate), and particulate matter with aerodynamic diameter less than 10 microns. Thus, the total emissions cap includes all existing criteria pollutants except lead. Merck will comply directly with any applicable requirements for the control of lead emissions. Merck currently emits a very low amount of lead emissions (0.3 tons per year), which will be virtually eliminated when the facility converts the coal-burning powerhouse to natural gas. Merck also will comply directly with any applicable requirements for new criteria pollutants which are not included in the total emissions cap.

actual emission levels. After the powerhouse conversion, the total emissions cap and subcaps would ensure a continuing, permanent reduction of these pollutants, as well as provide an ongoing incentive to minimize actual emissions to preserve the operating margin under the caps. Besides the significant reduction in criteria pollutants resulting from the project, the conversion to natural gas also will result in a reduction of about 47 TPY (65 percent) of hazardous air pollutants (HAPs), specifically hydrogen chloride and hydrogen fluoride. These two HAPs are generated by burning coal and are also associated with the formation of acid rain. Reducing emissions of these chemicals also will contribute to efforts to improve air quality in the Shenandoah National Park and the surrounding community.

Although the facility's VOC and CO emissions would be allowed to increase above recent actual emission levels (but within the total emissions cap), there are no identified adverse effects from the maximum allowable levels of these pollutants under the total emissions cap. Moreover, the statutory PSD requirements for VOC and CO will be satisfied pursuant to this proposed site-specific rulemaking and issuance of the PSD permit. Section III.B.1 of the preamble describes the analysis of possible VOC and CO emission increases.

4. Stakeholder Involvement

The Merck XL project enhances the involvement of the community and other stakeholders in understanding and evaluating environmental impacts of the facility. Stakeholders will have an unprecedented opportunity to participate in the ongoing evaluation of the project and to recommend any necessary changes to the project. The draft PSD permit provides that the stakeholders review and evaluate the project at least every five years. If the project signatories (i.e., signatories to the Final Project Agreement, namely EPA, VADEQ, Merck, DOI Federal Land Manager, and Rockingham County Board of Supervisors) give full consent to any necessary permit changes, the permitting authority may process a permit modification according to the requisite permit modification procedures (see Section III.B.2 of this preamble and proposed § 52.2454(n)). Any stakeholder may raise issues about the project at any time for discussion by the stakeholder group. The draft permit (Condition 6.1) identifies numerous issues that may be considered by the project stakeholders during each five year review, including: (1) Significant changes in emissions calculation methods; (2) changes in the list of criteria pollutants or the NAAQS; (3) review of example ''good environmental engineering practice'' control technologies required for significant new installations or modifications; (4) adequacy of the monitoring, recordkeeping and reporting requirements; (5) review procedure for compliance with newly-applicable criteria pollutant regulations; (6) review of the permit termination criteria; (7) review of ambient modeling for short-term $PM_{10}$ and $SO_2$ emissions; (8) review of the determination that the area is NOx-limited for ozone formation; and (9) review of the periodic review criteria. In addition to these five-year review criteria, the stakeholders, including the National Park Service, also will be involved in considering project changes based on the review of the effects of VOC emissions on AQRVs in Shenandoah National Park and the review of the public health effects of VOC emissions, if VOC emissions at the site reach specified threshold levels. See Condition 6.2 of the draft PSD permit. The review criteria related to VOC emissions are described in more detail in Section III.B.1 of the preamble.

The draft PSD permit (Condition 12.6) defines ''project stakeholders'' as the project signatories to the FPA (i.e., EPA, VADEQ, Merck, DOI Federal Land Manager, and Rockingham County Board of Supervisors), plus other parties as follows: (1) Up to three other community representatives shall be included as nominated by the Rockingham County Board of Supervisors, and agreed to by full consent of the project signatories to the FPA. Community representatives are defined as local government and/or community residents with an ongoing stake in the project; and (2) Up to one representative from a regional public interest group shall be included as nominated by any project signatory and agreed to by full consent of the project signatories. This group of stakeholders will convene every five years to review whether changes to the permit are required. As discussed above, the draft permit establishes that full consent from the project signatories, and not each member of the stakeholder group, is necessary before permit changes can be made. This stakeholder process for five-year reviews is consistent with the process used in the development of the proposed FPA and draft permit. The Chairman of the Rockingham County Board of Supervisors is the signatory to the FPA (i.e., a project signatory) representing community interests. The three additional members of the community team (two neighbors of the Merck Stonewall Plant and the Town Manger of Elkton) also actively participated in the stakeholder group. The County was designated as a project signatory at the request of the community team in order to insure long-term representation and continuity of community interests.[3] This model of stakeholder involvement provided all stakeholders with full information and ability to shape the development of the project. EPA believes that it is an appropriate model which should apply in the same manner for the future evaluation of the project.

EPA has received comments expressing concerns about the adequacy of the role of the stakeholders who are not also signatories—the regional public interest group and the three community representatives other than the Rockingham County Board of Supervisors.[4] As described above, the draft permit establishes that full consent from the project signatories is needed to make permit changes (i.e., to recommend that the permitting authority process a permit modification). EPA interprets the permit to be designed such that the non-signatory stakeholders will be fully involved in the deliberation of all permit issues, as in the development of the Merck XL project. During the development of the Merck XL project, all stakeholders, as well as several environmental groups that were not part of the stakeholder group, provided valuable comments on the draft permit. These comments were fully considered by the project signatories and helped to shape the project. EPA expects that the same interaction among stakeholders will occur during the five-year permit reviews, and that the project signatories will fully consider concerns and issues raised by all the stakeholders before reaching decisions on permit changes. EPA invites public comment on the approach to stakeholder involvement

[3] See July 1, 1996 letter from the Merck XL community representatives to the County Administrator and Members of the Rockingham County Board of Supervisors (contained in the docket).

[4] See December 18, 1996 letter from David W. Carr, Jr., Staff Attorney, Southern Environmental Law Center, to EPA Administrator Carol Browner and Deputy Assistant Administrator Richard D. Wilson; December 18, 1996 letter from Betty S. Sellers, Community Representative-Merck XL Project, to EPA Administrator Carol Browner and Regional Administrator Michael McCabe; and December 20, 1996 letter from Betty S. Sellers to EPA Administrator Carol Browner and Deputy Assistant Administrator Richard D. Wilson (contained in the docket).

during the implementation of this XL project.

This XL project also greatly improves the stakeholders' access to information about the site's environmental performance. Merck will provide the stakeholders, and other interested parties, an annual progress report that describes the site's environmental performance under the XL project. This report will include a summary of the site's actual emissions and the total emissions cap and subcaps, a description of emissions prevented as a result of operating under this proposed rule and the PSD permit, and other information about the site's operations.

5. Compliance

Under the terms of this proposed rule and the draft PSD permit, Merck's actual emissions of criteria pollutants cannot exceed the total emissions cap, and emissions of $SO_2$, NOx and $PM_{10}$ cannot exceed the individual subcaps for the life of the permit. Compliance with the site-wide total emissions cap and the subcaps will be determined by using a 12-month rolling total calculation of the site's actual emissions. The site-wide emissions will be calculated by using methods described in the permit. In addition to submitting to the project signatories semi-annual reports documenting the site's emissions, Merck will submit an annual progress report to the project stakeholders and other interested parties (as described in the previous section).

This proposed rule and draft permit will provide EPA and VADEQ with greater authority to enforce the terms of the permit. As with all permits, the permit terms can be enforced through standard procedures under the Clean Air Act (Act). In addition, unlike typical PSD permits, the draft permit expressly allows for termination of the permit under the following conditions: (1) If EPA or VADEQ determines that continuation of this permit is an imminent and substantial endangerment to public health or welfare, or the environment; (2) if Merck knowingly falsifies emissions data; (3) if Merck fails to implement the powerhouse conversion project within 30 months after the effective date of the PSD permit; (4) if Merck receives four consent orders or two judgments adverse to Merck arising from non-compliance with this permit in a five year period that are deemed material; (5) upon full consent of all project signatories; (6) if Merck's actual emissions exceed the total emissions cap; and (7) for other reasons for which the VADEQ has statutory authority to terminate the permit.

EPA and VADEQ will continue to possess all the administrative and judicial authority to enforce the provisions of the site-specific rule and permit that is currently available under sections 113 and 307 of the Act and under Virginia law.[5] This site-specific rule and the PSD permit would not limit the authority of EPA or VADEQ to take administrative enforcement measures or to seek legal or equitable relief to enforce the terms of this rule or the permit, including, but not limited to, the right to seek injunctive relief, and imposition of statutory penalties, fines and/or punitive damages. Further, this site-specific rule and the permit would not limit the authority of EPA or VADEQ to undertake any actions in response to conditions which present an imminent and substantial endangerment to public health or welfare, or the environment.

## III. Clean Air Act Requirements

### *A. Summary of Regulatory Requirements for the Merck XL Project*

The alternate regulatory system that would be established under this proposed site-specific rule and the draft permit addresses the existing criteria pollutants (and does not include lead). Merck will fully comply with all requirements for the control of HAPs, including the forthcoming Maximum Achievable Control Technology (MACT) standard for the pharmaceutical industry. Merck also will comply with all existing and future environmental requirements not specifically amended pursuant to EPA's site-specific rulemaking for this project or pursuant to the variance expected to be approved by the Commonwealth of Virginia.

In today's action, EPA proposes a site-specific PSD rule for the Merck Stonewall Plant in order to implement the proposed XL project for the site. See proposed § 52.2454. This site-specific rule would replace (in most circumstances) the existing PSD rules at 40 CFR 52.21 for the Merck Stonewall Plant only, and would establish the legal authority to issue the PSD permit to the Merck Stonewall Plant. The proposed site-specific PSD requirements are described in Section III.B.1 of this preamble.

EPA also proposes a site-specific rule which establishes an alternative means of compliance for the Merck Stonewall Plant for two New Source Performance Standards (NSPS)—Subpart Db (Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units) and Subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels). For NSPS other than Subpart Kb that may become applicable to the site in the future, EPA proposes an alternative compliance provision that would allow the facility the option of complying with the NSPS by reducing its site-wide emissions caps. However, under this latter approach, EPA has an opportunity to require Merck to comply directly with the applicable NSPS. These alternate compliance provisions are necessary to implement a simpler compliance approach for the facility that is more consistent with the principles of the site-wide emissions caps. The alternate compliance provisions are described further in Section III.D of this preamble.

On January 28, 1997, VADEQ initiated public comment on a proposed variance for the Merck Stonewall Plant, pursuant to section 10.1–1307 of the Virginia Air Pollution Control Law.[6] The VADEQ plans to request that the State Air Pollution Control Board approve the variance for Merck in April 1997. Among other things, the variance would provide Merck an alternate means of compliance with newly-applicable criteria pollutant regulations promulgated by the VADEQ. This alternate compliance option would allow Merck in most situations either to comply with new criteria pollutant regulations as written, or to reduce the total emissions cap (or subcaps, depending on the pollutant) by an equivalent amount of emission reductions. VADEQ also plans in the future to promulgate a source-specific regulation for the Merck XL project that would serve as an alternate to the regulations cited in the draft permit. EPA understands that VADEQ plans to submit this regulation to the EPA for approval as a source-specific SIP revision. EPA would then take action on the expected source-specific SIP revision in a future rulemaking action. This approach is described further in Section III.C of this preamble.

In addition to Clean Air Act requirements, the Merck XL project would establish alternate regulatory requirements for the Resource Conservation and Recovery Act (RCRA) air emission standards. These requirements are described in Section IV of the preamble.

[5] EPA plans to delegate the site-specific PSD rule (40 CFR 52.2454) to the VADEQ upon promulgation.

[6] This variance provision previously has been approved into the Virginia SIP at 40 CFR 52.2420(c)(15) and (89).

*B. Prevention of Significant Deterioration*

1. Requirements of the Clean Air Act

The NSR program is a preconstruction review and permitting program applicable to new or modified stationary sources of air pollutants regulated under the Act. In attainment areas (i.e., areas meeting the NAAQS), the NSR requirements for the prevention of significant deterioration of air quality (PSD) under part C of title I of the Act apply. The PSD provisions of the Act are a combination of air quality planning and air pollution control technology program requirements for new or modified stationary sources of air pollution. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect AQRVs (including visibility) in national parks and other natural areas of concern; to assure appropriate emission controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of all the consequences of such a decision. See sections 101(b)(1), 110(a)(2)(C) and 160 of the Act.

The Merck Stonewall Plant is located in an area that meets the NAAQS for all criteria air pollutants (attainment area) and, thus, the PSD program under part C of title I of the Act applies. Today, EPA proposes a site-specific PSD rule for the Merck Stonewall Plant in order to implement the proposed XL project for the site. Below, EPA describes how the proposed site-specific rule satisfies the statutory PSD permitting criteria in section 165(a) of the Act.

Sections 165(a)(1) and 169(2)(c) require Merck to obtain a permit for a proposed modification setting forth emission limitations which conform to the requirements of part C of title I of the Act. The proposed site-specific rule would authorize a permit to be issued to Merck based, in part, on the establishment of a site-wide emissions cap for criteria air pollutants (total emissions cap). The criteria pollutants included in the total emissions cap are $SO_2$, $NO_X$, $PM_{10}$, CO and ozone (using VOC as a surrogate). Thus, all existing criteria pollutants except lead are included in the total emissions cap. Merck would comply directly with any applicable requirements, including the existing PSD regulations at 40 CFR 52.21, for the control of lead emissions and any new criteria pollutants promulgated by EPA.[7] Further, Merck will comply with any applicable requirements, including the existing PSD regulations at 40 CFR 52.21 for emissions of non-criteria air pollutants (e.g., hydrogen sulfide, total reduced sulfur).[8]

This proposed rule would require the PSD permit to contain initial site-wide emissions caps based on the site's actual emissions during a time period, within five years of permit issuance, which represents normal site operation, or a different time period if it is more representative of normal source operation. The PSD permit that would be issued in accordance with the proposed site-specific rule would require the baseline for establishing the site-wide emissions caps to be the annual average of the facility's actual criteria pollutant emissions during 1992 and 1993, the recent years considered most representative of typical operations. Under the total emissions cap, emissions of $SO_2$, NOx and $PM_{10}$ would also be capped (subcaps) at the 1992–93 actual emissions baseline. After the facility converts its coal-burning powerhouse to natural gas, the total emissions cap would be reduced by 20% from the baseline level. This cap adjustment will result in a permanent retiring of approximately 300 tons per year (TPY) of total criteria pollutants. Similarly, the subcaps for $SO_2$ and NOx will be reduced by 25% and 10%, respectively, after the powerhouse conversion. Detailed information about the establishment of the emission caps, including documentation of the baseline emissions calculations, is contained in the docket for today's action.

Merck will be allowed to vary its emission levels under the total emissions cap, constrained by the individual pollutant subcaps. Modifications at the facility that normally would be considered to result in emission increases would no longer need prior approval by the permitting authority under PSD or minor NSR, based on the facility's site-wide, federally-enforceable emission limitations. The emission limitations would keep $SO_2$ and NOx emissions well below recent actual emissions. The emission limitations for $PM_{10}$ will not significantly increase above the recent actual emissions level. Emissions of VOC and CO will not have subcaps, however, the statutory PSD requirements for increases of VOC and CO will be satisfied pursuant to this site-specific rulemaking.

The individual pollutant subcaps for $SO_2$, NOx, and $PM_{10}$ function similarly to plantwide applicability limits (PALs),[9] but with important distinctions. A PAL is an emissions cap established for a particular pollutant for PSD (or nonattainment NSR) applicability purposes only. Under a PAL, a source could make modifications without triggering PSD as long as emissions remain below the PAL. If a source needed to make a modification that would increase emissions above the PAL, the source would be able to make the modification after undergoing PSD or NSR review and obtaining the necessary permits. Unlike a PAL, under the site-specific rule and permit Merck will no longer be able to obtain additional PSD permits to increase emissions above the caps. In fact, pursuant to this site-specific rule, if Merck's emissions were to exceed the site-wide total emissions cap, the EPA or VADEQ could terminate the permit (See section II.B.5 of this preamble).

Section 165(a)(2) of the Act requires the proposed permit to be subject to a review in accordance with section 165 of the Act, the required analysis to be conducted in accordance with regulations promulgated by the Administrator, and a public hearing to be held. This proposed site-specific rule would establish the applicable site-specific PSD regulations for the Merck Stonewall Plant, and would therefore form the basis for the analysis required by section 165(a)(2) of the Act. The draft PSD permit that would be issued to the Merck Stonewall Plant under the authority of the new site-specific PSD rule is available to the public and contained in the docket file for this rulemaking. While the Agency may receive public comments on the draft PSD permit during the public comment period for this proposed rulemaking, in many instances the Agency may simply forward any such comments to VADEQ which will conduct the official public comment period and public hearing for

[7] The Commonwealth of Virginia currently implements 40 CFR 52.21 under a delegation of authority from EPA. See 40 CFR 52.2451.

[8] If Merck were to emit significant quantities of non-criteria air pollutants regulated under 40 CFR 52.21, Merck would be required to comply directly with any applicable requirements for these pollutants. For the Merck Stonewall Plant only, EPA proposes in this rulemaking to extend the policy set forth in the October 16, 1995 policy memorandum entitled ''Definition of Regulated Pollutant for Particulate Matter for Purposes of Title V,'' which is contained in the docket for this rulemaking, to consider $PM_{10}$, and not particulate matter, as the regulated form of particulate matter for purposes of PSD applicability.

[9] See New Source Review Reform proposal, 61 FR 38264–38266 (July 23, 1996).

the proposed permit.[10] On January 28, 1997, the VADEQ began a public comment period for the proposed PSD permit and a proposed variance that will serve as the Commonwealth's legal mechanism to issue the PSD permit to Merck. The VADEQ plans to request that the Virginia State Air Pollution Control Board approve the variance in April 1997. Once EPA's final site-specific rule for the Merck Stonewall Plant is promulgated, EPA plans to delegate to VADEQ the authority to issue the permit pursuant to the site-specific PSD rule. The VADEQ will have authority to issue the PSD permit to Merck after the Virginia State Air Pollution Control Board approves the variance and after this delegation is complete.

Section 165(a)(3) of the Act requires the owner or operator of a proposed major emitting facility to demonstrate that emissions from construction or operation of the facility will not cause or contribute to air pollution in excess of any (a) maximum allowable increase (PSD increments), (b) national ambient air quality standards (NAAQS), or (c) any other applicable emission standard or standard of performance.

Under the existing PSD rules at 40 CFR 52.21 (k) and (m), the Merck permit would not need a PSD increment or NAAQS compliance analysis, since emissions of $SO_2$ and $NO_X$ will not be increased above baseline levels, and emissions of $PM_{10}$ will not be increased significantly above baseline levels. Further, the subcaps for $SO_2$ and $NO_X$ will be reduced by 25% and 10%, respectively, below baseline levels after completion of the powerhouse conversion. EPA proposes that this site-specific rule also not require a PSD increment or NAAQS compliance analysis for pollutants which will be capped near or below baseline emissions levels.[11] The draft PSD permit would not cause or contribute to emissions in excess of any other applicable emission standard or standard of performance. For more information, see the permit support document contained in the docket file and Sections III. C and D of this preamble.

To assure continued compliance with the NAAQS consistent with the minor NSR program, Merck conducted dispersion modeling to demonstrate that it does not cause or contribute to a violation of the short-term $PM_{10}$ and $SO_2$ NAAQS. This modeling was based on worst case emission rates. The modeling results added to background levels indicate that the short-term NAAQS for $PM_{10}$ and $SO_2$ would not be violated. Merck's maximum modeled impact was 15% of the 3-hour $SO_2$ NAAQS, 13% of the 24-hour $SO_2$ NAAQS, and 10% of the 24-hour $PM_{10}$ NAAQS. Merck also modeled the worst-case CO emissions that could be achieved under the total emissions cap. The modeling demonstrated that Merck's maximum modeled impact would not exceed 1% of the CO NAAQS. The permit support document contained in the docket includes a description of the modeling analysis.

Based on the modeling results and other information provided in support of the draft permit, EPA believes that modifications at the site occurring within the first five year period of the permit that comply with this proposed rule and the permit will not cause or contribute to a violation of the NAAQS for the criteria pollutants included in the total emissions cap. Merck's ambient impact will be reevaluated as prescribed in the permit during each five year periodic review. Condition 6.1.7 of the draft permit requires that Merck perform an updated modeling analysis for $SO_2$ and $PM_{10}$ at each five year review period, if requested by EPA or VADEQ, if major changes have been made at the site that are not reflected in the most recent modeling analysis. Merck must submit to the project stakeholders information necessary to determine whether additional modeling is required. Such information includes, but is not limited to, the following: (1) The current plant configuration, including building locations and dimensions; and (2) information on emission sources, including stack dimensions, operating parameters, and emission rates for actual operating conditions as well as worst case short-term (3 and 24-hour) operating conditions.

As Merck operates under the total emissions cap, it is permissible that over time VOC emissions will increase above the baseline VOC levels. The Merck Stonewall Plant is located in an area that is generally recognized to be $NO_X$-limited for ozone formation. The term ''$NO_X$-limited'' means that the amount of $NO_X$ available is generally the controlling factor in determining how much ozone will be formed. In a $NO_X$-limited area, reduced NOx emissions will result in reduced ozone formation, and increased $NO_X$ emissions will result in increased ozone formation. Further, increased VOC emissions generally will not result in additional ozone formation unless accompanied by additional $NO_X$ emissions.

A report contained in the docket analyzed the worst case potential impact of VOC emissions on ozone formation in the area, based on an evaluation of urban airshed modeling developed for State Implementation Planning purposes in two urban areas. The potential for ozone formation was evaluated under the following worst case conditions: (1) If Merck were located in a VOC-limited area; (2) if the reactivity of Merck's VOC emissions were significantly higher than typical VOCs currently emitted at the facility (i.e., if the reactivity of Merck's VOC emissions were that of typical urban air or auto exhaust); and (3) if Merck's VOC emissions consumed the entire site-wide cap (i.e., a VOC emissions increase of approximately 600 TPY). Under this worst case scenario, which is highly improbable, the expected ozone increase from Merck's VOC emissions would be less than 1 $\mu g/m^3$ (.5 ppb), which is less than 0.5% of the ozone NAAQS. EPA believes that this is a highly conservative worst case analysis and that the potential ozone formation would be negligible under actual conditions. The worst case scenario is highly conservative because in actuality: (1) Merck is located in a $NO_X$-limited area; (2) the reactivity of the typical VOC emissions currently emitted by Merck is much lower than that of typical urban air or auto exhaust; and (3) it is unlikely that VOC emissions could consume Merck's entire site-wide cap, since a portion of the cap necessarily will be consumed by $SO_2$, $NO_X$, $PM_{10}$ and CO from combustion sources (e.g., the natural gas-fired boilers) and other sources at the facility. Moreover, the $NO_X$ emission reductions achieved as a result of Merck's powerhouse conversion and the establishment of permanent $NO_X$ subcaps should help to reduce local ozone formation. Therefore, EPA believes that the maximum potential VOC emission increases allowed under Merck's site-wide cap will continue to provide protection of the ozone NAAQS.

One of the five-year periodic review criteria in the draft permit provides that any project stakeholder may present technical papers or studies that change the recognized determination that the area is $NO_X$-limited for ozone formation. Based on the stakeholders'' evaluation of this information, changes to the project may be considered if necessary.

Section 165(a)(4) of the Act requires the proposed facility to be subject to the best available control technology for each pollutant subject to regulation

[10] The VADEQ currently implements the PSD program at 40 CFR 52.21 under a delegation of authority from EPA. See 40 CFR 52.2451.

[11] Although VOC and CO emissions may increase, there are no PSD increments for VOC and CO.

under the Act emitted from such facility. Section 169(3) of the Act defines ''best available control technology'' (BACT) as an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under the Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant.

Under the existing PSD rules at 40 CFR 52.21(j), the Merck permit would be required to apply BACT only for pollutants which would be allowed to increase above the significance levels in 40 CFR 52.21(b)(23). Under the site-wide emissions caps, VOC and CO are the only pollutants that can be increased above the existing PSD significance levels (i.e., 40 TPY for VOC and 100 TPY for CO). EPA proposes that this site-specific rule also require BACT (according to the interpretation proposed below) only for pollutants which will be allowed to increase significantly under the permit (i.e., VOC and CO). For purposes of this site-specific rule only, EPA proposes to interpret section 165(a)(4) to allow the BACT determination for the Merck Stonewall Plant to take into account the environmental impacts and benefits of foregoing traditional BACT for VOC and CO emission increases, and associated compliance costs, in favor of an innovative BACT determination for VOC and CO emission increases which relies on otherwise voluntary $SO_2$ and $NO_X$ reductions from the powerhouse conversion and the site-wide emissions caps. Merck will implement the powerhouse conversion solely as a means of achieving superior environmental benefit under Project XL. There are no current or reasonably anticipated regulatory requirements that would require Merck to replace the coal boilers with natural gas boilers, and the boilers do not need to be replaced for other reasons (e.g., age, capacity, performance). The existing coal-fired boilers that will be replaced were installed in 1982 and have a useful life of about 40 years. Merck estimates that the powerhouse conversion will cost approximately $10 million in capital cost, and an additional $1 million per year in increased operational costs due to the currently higher price of natural gas.

The environmental benefits from the powerhouse conversion include over 900 TPY (60% of baseline) of up-front criteria pollutant emission reductions ($SO_2$ and $NO_X$) and about 47 TPY (65% of baseline) of HAP emissions reductions (hydrogen chloride and hydrogen fluoride). The 20 percent reduction of the total emissions cap after the powerhouse conversion will ''lock-in'' at least 300 TPY of these $SO_2$ and $NO_X$ reductions. Further, Merck will have permanent site-wide emissions caps for $SO_2$ and $NO_X$, established at levels 25% and 10%, respectively, below recent actual emissions. These caps will permanently lock in a significant portion of the environmental benefit from the powerhouse conversion, and provide incentives for Merck to minimize actual emissions in order to preserve an operating margin for future growth. The environmental benefits from the powerhouse conversion and emissions caps include the following: (1) Visibility in nearby Shenandoah National Park should be improved from the $SO_2$ reductions; (2) acid deposition should be reduced from the substantial $SO_2$ and $NO_X$ reductions, as well as the hydrogen chloride and hydrogen fluoride reductions; and (3) local ozone formation should be reduced from the $NO_X$ reductions.

EPA proposes that the significant environmental benefits from the powerhouse conversion and site-wide emissions caps should be considered when determining appropriate BACT for future VOC and CO emission increases under the total emissions cap. EPA believes this is an approach that, while not the one historically adopted by the Agency under section 165(a)(4), merits consideration on a pilot project basis. If the project demonstrates that such an approach leads to superior environmental and economic results and if EPA determines that such an approach is transferrable to other situations, it could be considered for broader application. EPA emphasizes that this innovative approach to BACT determinations is not being adapted at this time for any source other than the Merck Stonewall Plant, and that the decision to make it available at this facility takes into account the totality of the obligations undertaken by Merck in this project. Thus, EPA believes that the BACT determination may consider the innovative nature of the site-wide emissions caps, and the tiered monitoring approach, in providing incentives for Merck to minimize actual emissions. In addition, the proposed rule would require Merck to install ''good environmental engineering practice'' technology on significant new installations or significant modifications for pollutants covered by the site-wide emissions cap. The draft PSD permit includes examples of emission controls that qualify as good environmental engineering practice technology in the pharmaceutical or batch processing industry. For example, for VOC control, the draft permit lists carbon adsorption, condensation, or thermal oxidation as example control technologies that could be used depending on the concentration and flow rate of the VOC streams. The EPA believes that the combination of substantial $SO_2$ and $NO_X$ reductions, site-wide emissions caps, and the good environmental engineering practice requirement satisfy the statutory BACT requirement for possible VOC and CO emission increases as authorized in this site-specific rule.

There are several other aspects of the Merck XL project that will serve to keep VOC emissions well-controlled as Merck operates under the site-wide cap. First, Merck will comply with all requirements for the control of HAPs under section 112 of the Act, including the forthcoming MACT standard for the pharmaceutical industry. EPA expects that the pharmaceutical MACT standard will require control of emissions from process vents, wastewater, equipment leaks, and storage tanks. Merck's compliance with the pharmaceutical MACT will also provide co-control of some VOC emissions. For example, if a process vent stream contains HAPs as well as VOCs (or HAPs that are also VOC), the VOCs emissions would likely be controlled in accordance with the MACT standard. Second, Merck will conduct property line modeling of non-HAP VOCs to determine whether the emission levels are protective of public health. This modeling will be conducted when VOC emissions reach 125% of the VOC baseline (i.e., 510 TPY) and whenever VOC emissions increase by additional 100 TPY increments (i.e., 610 TPY, 710 TPY, and 810 TPY). This draft PSD permit provision (Condition 6.2.2) was developed to address the community stakeholders' concerns about the potential public health effects of Merck's VOC emissions. Third, the tiered monitoring provisions were designed to create an added incentive for Merck to minimize actual emissions. The monitoring, recordkeeping and reporting requirements increase in stringency as Merck's actual emissions approach the cap. This approach creates an incentive for Merck to minimize VOC emission increases, through the use of

good emissions control technology, pollution prevention, or other techniques, so that site-wide emissions remain in the lowest tier of monitoring.

The EPA acknowledges that the BACT provisions, as well as other provisions, of this proposed rule and the draft permit are in some ways in conflict with existing Agency guidance and interpretations of the Act. The Agency believes that it nonetheless has authority to apply today's proposed rule and the draft permit to Merck under Project XL as a unique, site-specific pilot project to explore and evaluate this innovative approach to environmental regulation consistent with the Act.

Section 165(a)(5) of the Act requires that major emitting facilities comply with the provisions of section 165(d) with respect to Federal Class I areas. Section 165(d)(2) provides that the FLM and the Federal official charged with direct responsibility for management of any Federal lands within a Class I area have an affirmative responsibility to protect the AQRVs (including visibility) of such lands. The FLM has a responsibility to consider, in consultation with the EPA Administrator, whether a proposed major emitting facility will have an adverse impact on any AQRV.

The U.S. Department of the Interior (DOI) is the FLM for the Shenandoah National Park, a Federal Class I area within 2 kilometers of the Merck Stonewall Plant. The DOI, specifically the National Park Service (NPS), is a key stakeholder in developing the Merck XL project. Issues involving the potential impacts of the project on AQRVs in the Park were discussed at length among the project stakeholders. Because Merck will convert its powerhouse from burning coal to natural gas, the proposed XL project will achieve significant up-front reductions of $SO_2$ and $NO_X$, two pollutants associated with existing adverse impacts on the Park.[12] Another pollutant of concern is ozone, because of its potential effects on park resources, such as vegetation. However, ozone levels are not expected to increase as a result of this project. As explained above, the area generally is considered to be $NO_X$-limited for purposes of ozone formation and, therefore, increases in VOC emissions are not expected to cause increased ozone levels without additional increases of $NO_X$. Thus, the allowable increase of VOC emissions under Merck's total emissions cap is not likely to contribute significantly to ozone formation, as described above. Moreover, the Merck XL project should help reduce the formation of local ozone due to decreases in $NO_X$ emissions.

Aside from the impact of VOC emissions as a precursor to ozone formation, the FLM also expressed concern during the Merck XL stakeholder discussions regarding the potential impacts of future VOC emissions increases directly on AQRVs in the Park. Therefore, the draft PSD permit for the Merck XL project requires Merck to evaluate the effects of VOC on AQRVs in the Park upon certain ''trigger levels'' of VOC emission increases. Merck will perform an AQRV assessment upon either of the following events: (1) After the first time the site-wide VOC emissions reach a level that is double the baseline VOC emissions (i.e., if site-wide VOC emissions reach 816 TPY); or (2) after installation of any individual new process or process modification that results in a net emissions increase of the site's actual VOC emissions of 100 TPY or more. Under condition 6.2.1 of the draft permit, if the project signatories agree that Merck's VOC emissions are the cause of adverse impact on any AQRVs at the Federal Class I area, Merck shall implement mitigation measures that are agreed to by the project signatories. However, Merck does not have the obligation under the permit to mitigate if there are other contributing sources to the AQRV adverse impact.

EPA believes that it has the authority under the Clean Air Act to address adverse impacts on AQRVs in Federal Class I areas from both new and existing sources. EPA intends to undertake a future rulemaking to require State Implementation Plans to prevent significant deterioration of air quality by adopting mitigation measures to address such adverse impacts. Merck agrees that EPA should undertake the rulemaking approach, described above, to address environmental problems indicated by adverse impacts on AQRV's in Federal Class I areas.

DOI also expressed an interest in further understanding the impacts of VOC emissions generally on resources in Shenandoah National Park. EPA and DOI have agreed to work cooperatively to better understand background VOC levels in the Park, through monitoring, sampling or other appropriate analyses, and their potential impacts on park resources.[13]

Section 165(a)(6) of the Act requires an analysis of any air quality impacts projected for the area as a result of growth associated with the proposed permit. The Merck Stonewall Plant is an existing source, in operation since 1941. There is not expected to be any significant growth associated with the Merck Stonewall Plant in the area that would affect air emissions.

Section 165(a)(7) of the Act requires the owner or operator to conduct monitoring as may be necessary to determine the effect which emissions increases may have, or are having, on air quality. Under the Merck XL project, Merck will not have a significant increase of $SO_2$, $NO_X$ or $PM_{10}$ above baseline levels. Moreover, allowable $SO_2$ and $NO_X$ emissions (i.e., subcaps) will be reduced from the actual emissions baseline levels by 25% and 10%, respectively, after the powerhouse conversion. As described above, Merck has conducted modeling to demonstrate that its maximum possible CO emissions under the cap would consume less than 1% of the NAAQS. Because the area is $NO_X$ limited for ozone formation and the Agency believes that the maximum potential VOC emission increases allowed under Merck's total emissions cap will not increase ozone levels (see previous discussion in this section of the preamble), EPA does not believe that Merck's allowable VOC emission increases warrant a requirement to conduct ambient ozone monitoring. Therefore, EPA believes that there are no ambient monitoring requirements necessary to satisfy this provision of the Act for the Merck project.

2. Permit Modifications

As described in Section II.B.4 of the preamble, the stakeholders will periodically review the PSD permit and consider whether any changes are required. Changes to the permit may be made either after full consent of the project signatories and subject to the permit modification procedures promulgated in this site-specific rule, or pursuant to PSD permit modification procedures generally applicable to other PSD permits.[14]

As part of the site-specific PSD rule, EPA is proposing procedures to be followed by the permitting authority for

[12] See 55 FR 38403–38408 (September 18, 1990).

[13] See October 16, 1996 letter from Richard D. Wilson, Deputy Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency, to George Frampton, Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior; and October 17, 1996 letter from George T. Frampton to Richard D. Wilson (contained in docket file).

[14] EPA has not promulgated general procedures to modify PSD permits. See 40 CFR 124.5(g)(1). The language in the draft PSD permit is intended to provide that if the Agency were to promulgate generally applicable regulations, not solely applicable to the Merck PSD permit, establishing the procedures for sources and permitting authorities to modify PSD permits, then the Merck PSD permit also would be subject to such procedures.

processing modifications to the Merck PSD permit. See proposed § 52.2454(n). These provisions also define criteria for the types of changes that may be processed as PSD administrative permit modifications. See proposed § 52.2454(n)(2). These procedures apply only to the permit issued pursuant to the site-specific PSD rule for the Merck Stonewall Plant.

*C. State Implementation Plan Requirements*

The Merck XL project would involve alternative compliance provisions for several Virginia SIP requirements. In the next few months, prior to issuance of the Merck PSD permit, VADEQ plans to propose that the Virginia State Air Pollution Control Board approve a variance for the Merck Stonewall Plant, pursuant to section 10.1–1307 of the Virginia Air Pollution Control Law. This variance provision previously has been approved into the Virginia SIP at 40 CFR 52.2420(c) (15) and (89). The variance would allow Merck to operate under the PSD permit, which represents compliance for the Virginia regulations cited in Section 3 of the draft permit. The permit support document contained in the docket file for this rulemaking describes the basis for determining that the XL project should serve as alternative compliance to these regulations. VADEQ also plans in the future to promulgate a source-specific regulation for the Merck XL project that would serve as an alternate to the regulations cited in the draft permit. VADEQ plans to submit this regulation to the EPA for approval as a source-specific SIP revision. EPA would then take action on the expected source-specific SIP revision in a future rulemaking action.

One of the key SIP requirements that the Merck XL project will replace is minor NSR permitting. The new PSD permit would replace the previously-issued minor NSR permits for the Stonewall Plant. Merck currently has 14 minor NSR permits for the Stonewall Plant. Pursuant to the variance and SIP revision procedure described above, this proposed rule and the draft permit would be substituted for the existing Virginia minor NSR SIP program for the Merck Stonewall Plant. The draft PSD permit requires Merck to continue to operate and maintain the emission control equipment that is currently permitted. By operating under the permit, including the site-wide emissions caps, modifications at the facility would not be required to undergo traditional minor NSR permit reviews.

If the area in which the Merck Stonewall Plant is located becomes a nonattainment area for any of the criteria air pollutants included in the total emissions cap, the facility will be grandfathered from any new nonattainment NSR requirements, as long as the PSD permit issued pursuant to this proposed site-specific rulemaking is in effect. This is because the PSD permit authorizes construction and operation of any new or modified sources of emissions of the pollutants included in the total emissions cap. All changes at the facility covered by the PSD permit would not be subject to any additional major NSR permitting requirements, whether PSD or nonattainment NSR. This grandfathered status does not apply to any other Title I nonattainment requirements (see the following discussion pertaining to newly applicable criteria pollutant regulations).

The draft permit also contains provisions for Merck to comply in an alternative means with applicable future criteria pollutant regulations [15] including regulations promulgated pursuant to the AQRV SIP rulemaking described above. Under this approach, Merck would have the option of either complying with a new criteria pollutant regulation as written, or by reducing its total emissions cap or subcaps (depending on the pollutant). If Merck chooses the option of reducing its total emissions cap or subcaps, Merck would determine the reduction in total actual emissions that would result from complying with the regulation, and reduce its total emissions cap or subcaps by that amount. If the criteria pollutant regulation would result in the control of $SO_2$, $NO_X$, or $PM_{10}$, Merck would reduce its subcaps for $SO_2$, $NO_X$, or $PM_{10}$, respectively (or comply directly with the applicable regulation). If the criteria pollutant regulation would result in the control of VOC or CO, Merck would reduce its total emissions cap (or comply directly with the applicable regulation). The draft permit sets forth the process by which the administering agency (EPA or VADEQ) will approve Merck's emission reduction determination. For certain types of criteria pollutant regulations, namely, Federal Implementation Plans (FIP) and most NSPS, EPA will determine whether such alternative compliance provisions are appropriate, as discussed below. For SIP requirements, this approach is contingent on authorizing language in the Virginia SIP, which will be accomplished initially through Virginia's approval of a variance. (See previous discussion in this section). The permit support document contained in the docket describes this approach in more detail.

This alternative compliance option is a significant element of the overall Merck XL project. Merck has expressed that this option could be useful when, for example, a rule requires controls on an emission unit(s) that Merck may be planning to shut down or replace soon after the rule's compliance date (e.g., phase-out of certain pharmaceutical products) and it would not be cost-effective to comply with the rule directly. As another example, Merck may decide that it should achieve actual emission reductions to keep site-wide actual emissions well below the cap (e.g., within Tier I monitoring), but the new rule will not result in cost-effective reductions. In this case, Merck could choose to reduce the cap in lieu of complying directly with the regulation, but may voluntarily install more effective emission controls on other emission units to minimize site-wide actual emissions and preserve its operating margin under the caps.

The Commonwealth of Virginia plans to include this compliance option for the Merck Stonewall Plant for SIP rules in a future source-specific SIP revision. EPA believes that it is acceptable to allow such a source-specific compliance option for SIP purposes as part of the Merck XL project, because it is the Commonwealth's responsibility to design SIP control strategies that ensure that the area attains and maintains the NAAQS, and the Commonwealth generally determines which sources must achieve emissions reductions. Virginia is making an up front decision that, for future SIP regulations, the Commonwealth may not achieve planned levels of actual emission reductions from the Merck Stonewall Plant as a result of such regulations (i.e., if Merck chooses to reduce its total emissions cap or subcaps instead). EPA has informed Virginia that the Commonwealth could not receive emission reduction credit in an attainment plan if Merck chooses the option of reducing its site-wide cap or subcaps. If the criteria pollutant regulation is promulgated by EPA in a FIP, it would be EPA's responsibility to ensure adequate emission reductions to attain and maintain the NAAQS. Therefore, if Merck is subject to a future FIP requirement for criteria pollutants covered by the total emissions cap the

[15] These provisions apply only to regulations that would apply to the criteria pollutants included within the site-wide emissions cap and listed in Section 1.1 of the draft permit, namely $SO_2$, $NO_X$, $PM_{10}$, CO, and ozone (using VOC as surrogate).

draft permit provides that EPA will determine whether it is appropriate for Merck to have the option of reducing the total emissions cap or subcaps in lieu of complying with the FIP regulation.

*D. New Source Performance Standards*

EPA is proposing a site-specific rule that would establish an alternate means of compliance for the Merck Stonewall Plant for two existing New Source Performance Standards (NSPS)—Subpart Db (Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units) and Subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels)—as well as for future applicable NSPS. These alternate compliance provisions are necessary to implement a simpler compliance approach for the facility that is more consistent with the principles of the site-wide emissions cap.

A key innovation in this XL project is to demonstrate that incentives to minimize emissions can be achieved through compliance with a site-wide total emissions cap, established at a level 20 percent below recent actual emissions (i.e., an ''actuals-based'' cap), as well as subcaps for $SO_2$, $NO_X$, and $PM_{10}$. Thus, under this project, total criteria pollutant emissions must decrease substantially from recent actual emissions. Under this proposed rule and the draft permit, Merck would achieve significant environmental benefits by converting its coal-burning powerhouse to natural gas and by complying with the actuals-based site-wide emissions caps.

Under the existing regulations, the new natural-gas fired boilers would be subject to NSPS Subpart Db. EPA proposes to promulgate a site-specific NSPS rule establishing an alternate means of compliance for the Merck Stonewall Plant's planned natural gas-fired boilers that would be subject to NSPS Subpart Db. See proposed § 60.49b(u). The key emission limitation requirement of NSPS Subpart Db for natural gas-fired boilers is a $NO_X$ emissions standard of 0.10 lb/mmBTU heat input. The proposed alternate compliance provisions would require Merck to install low-$NO_X$ technology on the new natural gas-fired boilers instead of meeting a specific $NO_X$ emission standard for the boilers. See proposed § 60.49b(u)(1)(i). The requirement to comply with the total emissions cap (established at a level 20 percent below recent actual emissions), as well as the $NO_X$ subcap, establishes an incentive to minimize actual emissions. In selecting low $NO_X$ technology for installation with the new natural gas boilers, Merck plans to install technology that will achieve a $NO_X$ emission rate of 0.035 lb/mmBtu—an emission rate well below the applicable NSPS standard. The docket file contains a letter from Merck stating its commitment to specify low $NO_X$ technology that will achieve a $NO_X$ emission rate of 0.035 lb/mmBtu or less when seeking bids for the new boilers.[16]

Under the alternate compliance provisions, Merck would be required to perform emissions testing and monitoring requirements that are substantively equivalent to the requirements of NSPS Subpart Db, including the emissions monitoring requirements in 40 CFR 60.48b. Merck would be required to perform a stack test within 180 days of completing the powerhouse conversion to quantify the criteria pollutant emissions from the new boilers. Merck also would be required to continuously monitor and record $NO_X$ and opacity using a continuous emissions monitoring system or predictive emissions monitoring system.

EPA also proposes to promulgate a site-specific NSPS rule establishing an alternate means of compliance for volatile organic liquid (VOL) storage vessels (including petroleum liquid storage vessels) that would be subject to NSPS Subpart Kb. See proposed § 60.112b(c). The recordkeeping provisions of 40 CFR 60.116b (b) and (c) require certain records to be kept depending on the size of the vessel and the vapor pressure of the VOL stored. At this time, the Merck Stonewall Plant operates VOL storage vessels that are subject only to these recordkeeping requirements. EPA believes that the monitoring, recordkeeping and reporting requirements of this proposed rule and the draft PSD permit are adequate to ensure compliance with the provisions of the draft PSD permit at the site. Therefore, EPA proposes that, for storage vessels not subject to the control technology requirements of Subpart Kb (see discussion below), the requirements of 40 CFR 60.116b (b) and (c) and the NSPS General Provisions (40 CFR Part 60, Subpart A) not be applicable to the Merck Stonewall Plant. See proposed § 60.112b(c)(2).

For storage vessels with a certain design capacity and storing a VOL with a certain vapor pressure, Subpart Kb (40 CFR 60.112b (a) and (b)) requires that the storage vessels be equipped with control technology. The control technology options of 40 CFR 60.112b(a) include: (1) A fixed roof tank with an internal floating roof; (2) an external floating roof; (3) a closed vent system and control device with 95% control efficiency; and (4) a system of equivalent control to options 1–3. In addition, certain EPA notifications are applicable for such new or modified facilities in accordance with the NSPS General Provisions (Subpart A). Storage vessels storing material with high vapor pressures do not have the option to use floating roof controls, but must be equipped with a closed vent system and control device or meet an equivalent standard (40 CFR 60.112b(b)). Merck currently has no storage vessels that are subject to the Subpart Kb control technology requirements. EPA also proposes to promulgate a site-specific NSPS rule establishing an alternate means of compliance that would apply if in the future Merck installs such storage vessels, or changes the operation of existing storage vessels, such that they would otherwise be subject to the control technology requirements of Subpart Kb (40 CFR 60.112b (a) or (b)). EPA proposes that Merck would have the option of reducing the site-wide emissions cap in lieu of complying directly with the NSPS Subpart Kb requirements. This option would be implemented in the same manner as that described above for alternate compliance for SIP rules (see Section III.C of this preamble). See proposed § 60.112b(c)(1) and condition 1.2.2.c.iii. of the draft PSD permit.

For future applicable NSPS other than Subpart Kb, including future promulgated NSPS, this proposed rule and the draft permit would allow Merck to seek the same alternative compliance option as for Subpart Kb, that is, the option to reduce the site-wide emissions cap(s) in lieu of complying directly with the applicable NSPS rule. See proposed § 60.1(d). However, the proposed rule and draft permit provide EPA an opportunity to require Merck to comply with the NSPS regulation as written, rather than exercise the option to reduce the site-wide emissions cap(s). See proposed § 60.1(d)(3). Condition 1.2.2.c.iii. of the draft PSD permit provides that, for any NSPS other than Subpart Kb, Merck shall implement the regulation as written by the compliance date if: (1) EPA determines that compliance with the regulation instead of a cap adjustment is necessary for achieving the objectives of the regulation, and (2) EPA notifies Merck in writing within 60 days of Merck's notification that it is newly subject to the regulation.

[16] See letter dated December 11, 1996 from Mr. Tedd Jett, Manager of Environmental Engineering, Merck & Co., Inc., Stonewall Plant, included as Appendix 4 of the PSD permit support document (contained in the docket).

EPA emphasizes that the alternative approaches to compliance with Clean Air Act requirements adopted in this rule are being adopted only for this facility, on a pilot project basis. The approach is not available to other facilities, and the decision to make it available at this facility is linked to the full set of the facility's obligations in this project. Based on the experience in this project, EPA could propose to adopt such an approach more widely at some future time, but the rule proposed today is limited to the Merck Stonewall Plant and should not be interpreted as a more general revision of NSPS regulations, or even as initiating a process toward such a general revision.

*E. Title V Operating Permit*

Today's proposed site-specific rulemaking does not amend or add any new Title V requirements for the Merck Stonewall Plant. Merck will be required to obtain a Title V operating permit, pursuant to the applicable Title V program in the Commonwealth of Virginia. The 40 CFR Part 71 Federal Operating Permit Program is currently effective in Virginia.[17] However, EPA plans in the near future to propose approval of Virginia's Title V program pursuant to 40 CFR Part 70 (State Operating Permit Programs), which, when finalized, would replace the Part 71 program in Virginia. EPA expects that Merck's Title V permit would be issued under Virginia's Title V program after it is approved, rather than under the Part 71 program requirements. However, Merck has requested that EPA clarify some interpretations about how the Part 71 program would apply to the facility, particularly, how the provisions of the PSD permit would be treated as an underlying set of applicable requirements within the Title V permit.

As part of Merck's Title V permit, the new PSD permit would become the principal set of applicable requirements for criteria pollutants for the facility. Other applicable requirements would include the future pharmaceutical MACT and any other requirements pertaining to HAP emissions, any SIP or NSPS rules that the facility complies with directly, as well as any other rules promulgated in the future that would apply to the facility.

The draft PSD permit has substantial requirements for monitoring, recordkeeping and reporting in order to ensure compliance with the PSD permit. As described previously in this preamble, the monitoring, recordkeeping and reporting provisions of the PSD permit increase in stringency as Merck's emissions approach the total emissions cap. EPA does not believe that any additional monitoring requirements (e.g., periodic monitoring or ''gap-filling'') would need to be added to Merck's Title V permit in order to demonstrate compliance with the PSD permit. Therefore, EPA interprets that the monitoring, recordkeeping and reporting requirements of the PSD permit constitute compliance with the monitoring requirements of 40 CFR 71.6(a)(3) that would be applicable to the PSD permit (as a set of applicable requirements in the Title V permit). Similarly, EPA interprets that the recordkeeping and reporting requirements of the draft PSD permit satisfy compliance with the recordkeeping and reporting requirements of 40 CFR 71.6(a)(3)(ii) and 71.6(a)(3)(iii)(A) that would be applicable to provisions of the PSD permit (as a set of applicable requirements in the Title V permit). See condition 3.4.2 of the draft PSD permit. Further, EPA intends that the forthcoming Compliance Assurance Monitoring (CAM) rule would not impose additional monitoring requirements through Merck's Title V permit for applicable requirements in the PSD permit.

Merck also wants to ensure that the Title V permit modification provisions would not undermine the flexibility gained through the XL project. Because the draft PSD permit would not require modifications at the site to undergo case-by-case permitting approval, so long as Merck is in compliance with the site-wide emission caps, EPA expects that there would be relatively few changes at the site that would necessitate a Title V permit revision. Merck specifically asked EPA to clarify what type of Title V permit revision process would apply to an operational change that would add, delete or otherwise change Title V permit terms related to MACT standards promulgated under 112(d) of the Act (e.g., adding a process unit that would be subject to MACT permit terms already listed in the permit for other emission units). Under the existing 40 CFR 70 and 71, EPA interprets that the minor permit modification process generally would apply to a change at the site that would affect permit terms related to MACT standards, so long as the change did not specifically meet the conditions for a significant permit modification (e.g., relaxation of applicable monitoring, recordkeeping or reporting requirements). The minor permit modification would apply in a situation where a physical change or a change in method of operation of a source changed the applicability of a 112(d) standard by deleting an existing 112(d) requirement that no longer applied to the source. For example, if use of a storage tank is changed from storage of a high vapor pressure solvent to a low vapor pressure solvent, that change in method of operation may eliminate a 112(d) requirement to control emissions from the tank and perhaps add a new recordkeeping requirement. Such a change in the applicability of the 112(d) standard to the source would not be considered a ''relaxation of monitoring, recordkeeping and reporting requirements,'' and therefore, would qualify for the minor permit modification procedure. The minor permit modification process allows the source to operate the change immediately after the source files the Title V permit application for the modification. EPA plans to promulgate final revisions to the Part 70 regulations in the near future. EPA expects that the final Part 70 rules may provide options for an even more streamlined permit revisions process for certain types of changes to MACT permit terms.

## IV. Resource Conservation and Recovery Act Requirements

The RCRA subpart AA, BB, and CC air emission standards under 40 CFR parts 264 and 265 are applicable to certain existing hazardous waste units at the Merck Stonewall Plant. These standards also may be applicable to equipment brought into hazardous waste service in the future. The RCRA air standards contain both substantive emission control requirements and administrative requirements (e.g., reporting and recordkeeping) applicable to certain hazardous waste management units. Under this XL project, the Merck Stonewall Plant will be subject to a site-specific exemption from the RCRA air emission standards under 40 CFR parts 264 and 265. Additionally, the Merck Stonewall Plant will be subject to an enforceable PSD permit, as described in Section II.B.2 of this preamble, and will continue to conduct a preventive maintenance program. Although the PSD permit and the preventive maintenance program address both inorganic and organic air emissions from many types of units located at the plant, the RCRA air emission standards only address organic air emissions from RCRA hazardous waste management units.

The following hazardous waste management equipment is currently in operation at the Merck Stonewall Plant: A RCRA-permitted container storage area; three accumulation tanks; less than

[17] See 61 FR 34202–34249 (July 1, 1996).

90-day accumulation containers; three pumps; approximately 50 valves; and associated fittings (e.g., flanges and sampling connections). In absence of this XL project, this hazardous waste management equipment would be subject to both the substantive and administrative requirements contained in the RCRA air standards. Any new hazardous waste management units, or existing units newly placed in hazardous waste service, would also be subject to those substantive and administrative requirements.

For hazardous waste tanks and containers located at the Merck Stonewall Plant, the PSD permit includes air emission control requirements that are identical to the substantive requirements under the RCRA air standards. For process vents that would otherwise be subject to the subpart AA process vent regulations, and for equipment that would otherwise be subject to the subpart BB equipment leak regulations, the Merck Stonewall Plant will implement air emission control requirements that are similar, though not identical, to those that are included in the nationwide standards.

For all affected hazardous waste equipment, this site-specific regulation will exempt the Merck Stonewall Plant from the administrative requirements of the RCRA air standards; the PSD permit and, when issued, the Clean Air Act (CAA) Title V permit, will subject the plant to alternative administrative requirements. The nationwide RCRA air standards contain an allowance that a unit operated with air emission controls, in compliance with a CAA standard in 40 CFR parts 60, 61, or 63, is exempt from the RCRA standards. Among other requirements, this nationwide allowance exempts a unit from the administrative requirements of the RCRA air standards, provided that the air emission controls on that unit are operated in compliance with the requirements of the CAA part 60, 61, or 63 standard, including administrative requirements. In such cases, the administrative requirements would ultimately be enforceable through a CAA permit. Under this XL project, the Agency is allowing the Merck Stonewall Plant to comply with the administrative requirements that will be contained in the plant's CAA PSD and Title V permits, which is analogous to the existing nationwide RCRA air standards provision that allows facilities the alternative to operate air emission controls in compliance with standards under 40 CFR parts 60, 61 or 63. Thus, the Agency considers the administrative requirements under this XL project for affected hazardous waste management units at the Merck Stonewall Plant to be equivalent to the administrative requirements of the nationwide RCRA air standards.

The Merck Stonewall Plant does not currently have any units or emission points that would be subject to the subpart AA process vent standards. Over the life of the PSD permit, it is conceivable that the Merck Stonewall Plant may make facility or process alterations resulting in emission points that become newly subject to subpart AA. To address this possibility, the terms of the PSD permit require the Merck Stonewall Plant to route any hazardous waste process vent emissions to a secondary brine condenser or thermal oxidizer, and monitor the performance of these organic control devices. The subpart AA nationwide standards would require that these process vent emissions be routed to a 95% organic emission control device and monitor control device performance, only if the total facility-wide hazardous waste process vent emissions exceed 3.1 tons per year or 3 pounds per hour. However, under the PSD permit, all hazardous waste process vents which would otherwise be subject to subpart AA will be controlled for organic emissions, regardless of the facility-wide emission rates. Because the PSD permit will require organic air emission controls on each hazardous waste process vent operated at the Merck Stonewall Plant, the Agency considers that compliance with the PSD permit will achieve greater emission reductions from these hazardous waste process vents than would be achieved by compliance with the nationwide subpart AA standards.

For subpart BB leak detection and repair requirements, the Merck Stonewall Plant does have hazardous waste management units that are subject to the RCRA air standards. Under this XL project, the Merck Stonewall Plant will be addressing the organic emissions which would otherwise be addressed through compliance with the subpart BB nationwide standards, through the continued performance of a preventive maintenance program that is in place at its facility. This maintenance program is applicable to all existing and future equipment that would otherwise be subject to the nationwide subpart BB standards. The program includes semi-annual, quarterly, and monthly visual inspections, depending on the equipment type, and routine maintenance and repair procedures. The Merck Stonewall Plant has submitted site-specific leak rate data for subpart BB equipment which has been subject to this program; that data indicates low leak rates and low incidence of leaking equipment for all the hazardous waste components at the plant. For this XL project, the Agency is assuming that the continued performance of this program will result in similar leak rates over the life of the PSD permit.

The sampling connection systems and open-ended valves or lines that would otherwise be subject to subpart BB standards are designed and operated in a manner consistent with the requirements of the subpart BB standards. The preventive maintenance program includes periodic visual inspections and subsequent repair of detected leaks for flanges and other connectors, which is consistent with the subpart BB requirements under 40 CFR part 264.1058(a) for that equipment. Because the Merck Stonewall Plant preventive maintenance program includes these requirements, the Agency is assuming that this program will effectively accomplish the same organic emission controls as the substantive subpart BB nationwide standards for flanges and other connectors, sampling connection systems, and open-ended valves or lines at that Plant.

The EPA has reviewed facility-specific component leak rate data provided by the Merck Stonewall Plant and found that less than 2% of the affected valves leak, and none of the three hazardous waste pumps leak or have detectable emissions. Under the provisions of subpart BB in 40 CFR part 264.1061, a facility at which less than 2% of affected valves leak can choose to comply with subpart BB through a performance standard that includes an annual performance test using EPA Method 21 instrument monitoring. Under subpart BB in 40 CFR part 264.1052, these hazardous waste pumps, which are in light liquid service, would be subject to monthly leak detection and repair monitoring using EPA Method 21. Under this XL project, this hazardous waste equipment will be exempt from the subpart BB standards. Instead, the Merck Stonewall Plant will include this hazardous waste equipment in their preventive maintenance program; this program includes visual inspection of all valves and pumps and repair of any detected leaks. In allowing this alternative for the Merck Stonewall Plant, the Agency is assuming that the preventive maintenance program for valves and pumps will maintain the low leak rates that have been previously demonstrated for these existing hazardous waste valves and pumps, and will achieve similarly low leak rates for any valves and pumps placed in hazardous waste service in the future. The component-

specific leak rates demonstrated for this equipment are within the range that the Agency would expect to be achieved by compliance with the subpart BB nationwide standards for hazardous waste valves and pumps. The preventive maintenance program has been in place at the Merck Stonewall Plant for several years, and the EPA is assuming that the very low leak rates for the affected equipment have resulted from a combination of: the effectiveness of the Merck Stonewall Plant preventive maintenance program; the quality of the valves, pumps and associated equipment that are used at the plant; the properties of the hazardous waste which this equipment contacts; and the specific parameters for the hazardous waste processes. The Agency is also assuming that requiring the Merck Stonewall Plant to continue this preventive maintenance program under this XL project will preserve the low component leak rates for hazardous waste management units at the plant.

For subpart CC standards applicable to tanks and containers, the Merck Stonewall Plant is currently in compliance with the substantive organic air emission control requirements of those nationwide standards. For the hazardous waste containers at the Merck Stonewall Plant, the nationwide subpart CC standards would require that the containers be operated with covers that have no visible openings; the PSD permit includes this same requirement for all hazardous waste containers currently operated, or operated in the future, at the plant. For the hazardous waste accumulation and/or storage tanks at the Merck Stonewall Plant, the nationwide subpart CC standards would require that the tanks be operated with a cover that has no visible openings or gaps; the PSD permit contains this same requirement for all hazardous waste accumulation and/or storage tanks currently operated, or operated in the future, at the plant. The Merck Stonewall Plant does not operate any hazardous waste tanks that would be classified as Level 2 tanks under the RCRA subpart CC standards. However, it is conceivable that during the life of the PSD permit, the plant may operate this type of tank. To address this possibility, the PSD permit contains a requirement that any hazardous waste treatment tank operated at the plant must be equipped with a fixed cover and either a floating roof or a vent system that routes the tank emissions to a secondary brine condenser or a thermal oxidizer. These requirements are among the compliance options allowed under the nationwide subpart CC standards, and would constitute compliance with the substantive requirements of those nationwide standards. Therefore, the Agency considers the requirements of the PSD permit for the hazardous waste containers and tanks at the Merck Stonewall Plant to be the same as the substantive requirements of the nationwide RCRA air rules for those units.

The Merck Stonewall Plant does not currently operate any hazardous waste surface impoundments, nor do they expect to operate any in the future. For this reason, the Plant is not seeking relief from the surface impoundment RCRA air emission standards. The Merck Stonewall Plant has agreed that any hazardous waste surface impoundment that may be operated at the facility in the future will be installed and operated to comply with the applicable requirements of the nationwide subpart CC air emission standards. Therefore, the site-specific regulation exempts the Merck Stonewall Plant from all the subpart CC requirements except for the requirements that are applicable to surface impoundments.

Overall, the Agency considers this to be a viable approach to addressing organic air emission from hazardous waste units, which is worthy of further evaluation through the Project XL program.

## V. Additional Information

### *A. Public Hearing*

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding the proposed regulation in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the proposed rule to implement Merck's XL project should contact the EPA at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing and written statements will be available for inspection and copying during normal business hours at the EPA addresses given in the **ADDRESSES** section of this document.

### *B. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency 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, of 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 entitlement, grants, user fees, or loan programs of 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.

Because the annualized cost of this final rule would be significantly less than $100 million and would meet none of the other criteria specified in the Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

### *C. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because it only affects one source, the Merck Stonewall Plant, which is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

### *D. Paperwork Reduction Act*

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*E. 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 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 rule is limited to Merck's facility in Elkton, Virginia. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental Relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 60*

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental Relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 264*

Environmental protection, Air pollution control, Container, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Tank, Treatment storage and disposal facility, Waste determination.

*40 CFR Part 265*

Environmental protection, Air pollution control, Container, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Tank, Treatment storage and disposal facility, Waste determination.

Dated: March 21, 1997.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, parts 52, 60, 264 and 265 of chapter I of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart VV—[Amended]

2. Subpart VV is amended by adding a new § 52.2454 to read as follows:

### § 52.2454 Prevention of significant deterioration of air quality for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia

(a) *Applicability.*

(1) This section applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia (''site').

(2) This section sets forth the prevention of significant deterioration of air quality preconstruction review requirements for the following pollutants only: carbon monoxide, nitrogen oxides, ozone (using volatile organic compounds as surrogate), particulate matter with an aerodynamic diameter less than 10 microns (PM–10), and sulfur dioxide. This section applies in lieu of § 52.21 for the pollutants identified in this paragraph as well as particulate matter; however, the preconstruction review requirements of § 52.21, or other preconstruction review requirements that the Administrator approves as part of the plan, shall remain in effect for any pollutant which is not specifically identified in this paragraph and is subject to regulation under the Act.

(b) *Definitions.* For the purposes of this section:

*12-month rolling total* for an individual pollutant or the total criteria pollutants, as specified in paragraph (d) of this section, is calculated on a monthly basis as the sum of all actual emissions of the respective pollutant(s) from the previous 12 months.

*Act* means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

*Completion of the powerhouse conversion* means the date upon which the new boilers, installed pursuant to paragraph (g) of this section, are operational. This determination shall be made by the site based on the boiler manufacturer's installation, startup and shakedown specifications.

*Permitting authority* means either of the following:

(1) The Administrator, in the case of an EPA-implemented program; or

(2) The State air pollution control agency, or other agency delegated by the Administrator, pursuant to paragraph (o) of this section, to carry out this permit program.

*Process unit* means:

(1) Manufacturing equipment assembled to produce a single intermediate or final product, and

(2) Any combustion device.

*Responsible official* means:

(1) The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the business entity; or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The authority to sign documents has been assigned or delegated to such

representative in accordance with procedures of the business entity.

*Site* means the contiguous property at Route 340 South, Elkton, Virginia, under common control by Merck & Co., Inc., and its successors in ownership, known as the Stonewall site.

(c) *Authority to issue permit.* The permitting authority may issue to the site a permit which complies with the requirements of paragraphs (d) through (n) of this section. The Administrator may delegate, in whole or in part, pursuant to paragraph (o) of this section, the authority to administer the requirements of this section to a State air pollution control agency, or other agency authorized by the Administrator.

(d) *Site-wide emissions caps.* The permit shall establish site-wide emissions caps as provided in this paragraph.

(1) *Initial site-wide emissions caps.* The initial site-wide emissions caps shall be based on the site's actual emissions during a time period, within five years of the date of permit issuance, which represents normal site operation. The permitting authority may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual site-wide emissions shall be calculated using the actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(i) *Total criteria pollutant emissions cap.* The permit shall establish a total criteria pollutant emissions cap (total emissions cap). The criteria pollutants included in the total emissions cap are the following: carbon monoxide, nitrogen oxides, ozone (using volatile organic compounds as surrogate), particulate matter with an aerodynamic diameter less than 10 microns, and sulfur dioxide.

(ii) *Individual pollutant caps.* The permit shall establish individual pollutant caps for sulfur dioxide, nitrogen oxides and PM–10.

(2) *Adjustments to the site-wide emissions caps.*

(i) The permit shall require that upon completion of the powerhouse conversion, the site shall reduce the site-wide emissions caps as follows:

(A) The total emissions cap shall be reduced by 20 percent from the initial site-wide emissions cap established pursuant to paragraph (d)(1)(i) of this section.

(B) The sulfur dioxide cap shall be reduced by 25 percent from the initial site-wide emissions cap established pursuant to paragraph (d)(1)(ii) of this section.

(C) The nitrogen oxide cap shall be reduced by 10 percent from the initial site-wide emissions cap established pursuant to paragraph (d)(1)(ii) of this section.

(ii) The permit may specify other reasons for adjustment of the site-wide emissions caps.

(e) *Operating under the site-wide emissions caps.*

(1) The permit shall require that the site's actual emissions of criteria pollutants shall not exceed the total emissions cap established pursuant to paragraph (d) of this section.

(2) The permit shall require that the site's actual emissions of sulfur dioxide, nitrogen oxides and PM–10 shall not exceed the respective individual pollutant cap established pursuant to paragraph (d) of this section.

(3) Compliance with the total emissions cap and individual pollutant caps shall be determined by comparing the respective cap to the 12-month rolling total for that cap. Compliance with the total emissions cap and individual pollutant caps shall be determined within one month of the end of each month based on the prior 12 months. The permit shall set forth the emission calculation techniques which the site shall use to calculate site-wide actual criteria pollutant emissions.

(4) *Installation of controls for significant modifications and significant new installations.*

(i) This paragraph applies to significant modifications and significant new installations. Significant modifications for the purposes of this section are defined as changes to an existing process unit that result in an increase of the potential emissions of the process unit, after consideration of existing controls, of more than the significance levels listed in paragraph (e)(4)(ii) of this section. Significant new installations for the purposes of this section are defined as new process units with potential emissions before controls that exceed the significance levels listed in paragraph (e)(4)(ii) of this section. For purposes of this section, potential emissions means process unit point source emissions that would be generated by the process unit operating at its maximum capacity.

(ii) The significance levels for determining significant modifications and significant new installations are: 100 tons per year of carbon monoxide; 40 tons per year of nitrogen oxides; 40 tons per year of sulfur dioxide; 40 tons per year of volatile organic compounds; and 15 tons per year of PM–10.

(iii) For any significant modification or significant new installation, the permit shall require that the site install, at the process unit, emission controls, pollution prevention or other technology that represents good environmental engineering practice in the pharmaceutical or batch processing industry, based on the emission characteristics (such as flow, variability, pollutant properties) of the process unit.

(f) *Operation of control equipment.* The permit shall require that the site shall continue to operate the emissions control equipment that was previously subject to permit requirements at the time of issuance of a permit pursuant to this section. This equipment shall be operated in a manner which minimizes emissions, considering the technical and physical operational aspects of the equipment and associated processes. This operation shall include an operation and maintenance program based on manufacturers' specifications and good engineering practice.

(g) *Powerhouse conversion.* The permit shall require that the site convert the steam-generating powerhouse from burning coal as the primary fuel to burning natural gas as the primary fuel and either No. 2 fuel oil or propane as backup fuel.

(1) The new boilers shall be equipped with low nitrogen oxides technology.

(2) The site shall complete the powerhouse conversion (completion of the powerhouse conversion) no later than 30 months after the effective date of the permit.

(h) *Monitoring, recordkeeping and reporting.*

(1) The permit shall set forth monitoring, recordkeeping, and reporting requirements sufficient to demonstrate compliance with the site-wide emissions caps. The monitoring, recordkeeping and reporting requirements shall be structured in a tiered system, such that the requirements become more stringent as the site's emissions approach the total emissions cap.

(2) At a minimum, the permit shall require that the site submit to the permitting authority semi-annual reports of the site-wide criteria pollutant emissions (expressed as a 12-month rolling total) for each month covered by the report. These reports shall include a calculation of the total emissions cap, as well as, the emissions of sulfur dioxide, nitrogen oxides, carbon monoxide, volatile organic compounds and PM–10.

(3) Any reports required by the permit to be submitted on an annual or semi-annual basis shall contain a certification by the site's responsible official that to his belief, based on reasonable inquiry, the information submitted in the report is true, accurate, and complete.

(4) Any records required by the permit shall be retained on site for at least five years.

(i) *Air quality analysis.* The permittee shall demonstrate, prior to permit issuance and on a periodic basis which shall be specified in the permit, that emissions from construction or operation of the site will not cause or contribute to air pollution in excess of any:

(1) maximum allowable increase or maximum allowable concentration for any pollutant, pursuant to § 165 of the Act;

(2) national ambient air quality standard or;

(3) other applicable emission standard or standard of performance under the Act.

(j) *Termination.*

(1) The permit may be terminated as provided in this paragraph for reasons which shall include the following, as well as any other termination provisions specified in the permit:

(i) If the Administrator or the permitting authority determines that continuation of the permit is an imminent and substantial endangerment to public health or welfare, or the environment;

(ii) If the permittee knowingly falsifies emissions data;

(iii) If the permittee fails to implement the powerhouse conversion pursuant to paragraph (g);

(iv) If the permittee receives four consent orders or two judgments adverse to the site arising from non-compliance with this permit in a five year period that are deemed material by the Administrator or the permitting authority; or

(v) If the total emissions cap is exceeded.

(2) In the event of termination, the Administrator or the permitting authority shall provide the permittee with written notice of its intent to terminate the permit. Within 30 calendar days of the site's receipt of this notice, the site may take corrective action to remedy the cause of the termination. If this remedy, which may include a corrective action plan and schedule, is deemed acceptable by the Administrator or the permitting authority (whichever agency provided written notice of its intent to terminate the permit), the action to terminate the permit shall be withdrawn. Otherwise, the permit shall be terminated in accordance with procedures specified in the permit.

(3) Termination of the permit does not waive the site's obligation to complete any corrective actions relating to non-compliance under the permit.

(k) *Inspection and entry.*

(1) Upon presentation of credentials and other documents as may be required by law, the site shall allow authorized representatives of the Administrator and the permitting authority to perform the following:

(i) Enter upon the site;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Have access at reasonable times to batch and other plant records needed to verify emissions.

(iv) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations required under the permit;

(v) Sample or monitor any substances or parameters at any location, during operating hours, for the purpose of assuring permit compliance or as otherwise authorized by the Act.

(2) No person shall obstruct, hamper, or interfere with any such authorized representative while in the process of carrying out his official duties. Refusal of entry or access may constitute grounds for permit violation and assessment of civil penalties.

(3) Such site, facility and equipment access, and sampling and monitoring shall be subject to the site's safety and industrial hygiene procedures, and Food and Drug Administration Good Manufacturing Practice requirements (21 CFR 210 and 211) in force at the site.

(l) *Transfer of ownership.* The terms of the permit are transferable to a new owner upon sale of the site, in accordance with provisions specified by the permit.

(m) *Permit issuance.* The permitting authority shall provide for public participation prior to issuing a permit pursuant to this section. At a minimum, the permitting authority shall:

(1) Make available for public inspection, in at least one location in the area of the site, the information submitted by the permittee, the permitting authority's analysis of the effect on air quality including the preliminary determination, and a copy or summary of any other materials considered in making the preliminary determination;

(2) Notify the public, by advertisement in a newspaper of general circulation in the area of the site, of the application, the preliminary determination, and of the opportunity for comment at a public hearing as well as written public comment;

(3) Provide a 30-day period for submittal of public comment;

(4) Send a copy of the notice of public comment to the following: theTAdministrator, through the appropriate Regional Office; any other State or local air pollution control agencies, the chief executives of the city and county where the site is located; any State, Federal Land Manager, or other governing body whose lands may be affected by emissions from the site.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the site, the control technology required, and other appropriate considerations.

(n) *Permit modifications.* The permit shall specify the conditions under which the permit may be modified by the permitting authority. The permitting authority shall modify the permit in accordance with the procedures set forth in this paragraph.

(1) *Permit modifications that require public participation.* For any change that does not meet the criteria for an administrative permit modification established in paragraph (n)(2)(i) of this section, the permitting authority shall provide an opportunity for public participation, consistent with the provisions of paragraph (m) of this section, prior to processing the permit modification.

(2) *Administrative permit modification.*

(i) An administrative permit modification is a permit revision that:

(A) Corrects typographical errors;

(B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the site;

(C) Requires more frequent monitoring, recordkeeping, or reporting by the permittee;

(D) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority.

(E) Updates the emission calculation methods specified in the permit, provided that the change does not also involve a change to any site-wide emissions cap.

(F) Changes the monitoring, recordkeeping or reporting requirements for equipment that has been shutdown or is no longer in service.

(G) Any other change that is stipulated in the permit as qualifying as an administrative permit modification,

provided that the permit condition which includes such stipulation has already undergone public participation in accordance with paragraph (m) of this section.

(ii) An administrative permit modification may be made by the permitting authority consistent with the following procedures:

(A) The permitting authority shall take final action on any request for an administrative permit modification within 60 days from receipt of the request, and may incorporate such changes without providing notice to the public, provided that the permitting authority designates any such permit revisions as having been made pursuant to this paragraph.

(B) The permitting authority shall submit a copy of the revised permit to the Administrator.

(C) The site may implement the changes addressed in the request for an administrative permit modification immediately upon submittal of the request to the permitting authority.

(o) *Delegation of authority.*

(1) The Administrator shall have the authority to delegate the responsibility to implement this section in accordance with the provisions of this paragraph.

(2) Where the Administrator delegates the responsibility for implementing this section to any agency other than a Regional Office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the delegate agency is not an air pollution control agency, it shall consult with the appropriate State and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate State and local agency primarily responsible for managing land use prior to making any determination under this section.

(ii) The delegate agency shall send a copy of any public comment notice required under paragraph (n) of this section to the Administrator through the appropriate Regional Office.

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 60.1 is amended by adding paragraph (d) to read as follows:

### § 60.1 Applicability.

* * * * *

(d) *Site-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia.* (1) This paragraph applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia (''site'').

(2) Except for compliance with 40 CFR 60.49b(u), the site shall have the option of either complying directly with the requirements of this part, or reducing the site-wide emissions caps in accordance with the procedures set forth in a permit issued pursuant to 40 CFR 52.2454. If the site chooses the option of reducing the site-wide emissions caps in accordance with the procedures set forth in such permit, the requirements of such permit shall apply in lieu of the otherwise applicable requirements of this part.

(3) Notwithstanding the provisions of paragraph (d)(2) of this section, for any provisions of this part except for Subpart Kb, the owner/operator of the site shall comply with the applicable provisions of this part if the Administrator determines that compliance with the provisions of this part is necessary for achieving the objectives of the regulation and the Administrator notifies the site in accordance with the provisions of the permit issued pursuant to 40 CFR 52.2454.

3. Section 60.49b is amended by adding paragraph (u) to read as follows:

### § 60.49b Reporting and recordkeeping requirements.

* * * * *

(u) *Site-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia.*

(1) This paragraph applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia (''site'') and only to the natural gas-fired boilers installed as part of the powerhouse conversion required pursuant to 40 CFR 52.2454(g). The requirements of this paragraph shall apply, and the requirements of 40 CFR 60.40b through 60.49b shall not apply, to the natural gas-fired boilers installed pursuant to 40 CFR 52.2454(g).

(i) The site shall equip the natural gas-fired boilers with low nitrogen oxide ($NO_X$) technology.

(ii) The site shall install, calibrate, maintain, and operate a continuous monitoring and recording system for measuring $NO_X$ emissions discharged to the atmosphere and opacity using a continuous emissions monitoring system or a predictive emissions monitoring system.

(iii) Within 180 days of the completion of the powerhouse conversion, as required by 40 CFR 52.2454, the site shall perform a stack test to quantify criteria pollutant emissions.

(2) [Reserved]

4. Section 60.112b is amended by adding paragraph (c), to read as follows:

### § 60.112b Standard for volatile organic compounds (VOC).

* * * * *

(c) *Site-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia.* This paragraph applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia (''site'').

(1) For any storage vessel that otherwise would be subject to the control technology requirements of paragraph (a) or (b) of this section, the site shall have the option of either complying directly with the requirements of this subpart, or reducing the site-wide total criteria pollutant emissions cap (total emissions cap) in accordance with the procedures set forth in a permit issued pursuant to 40 CFR 52.2454. If the site chooses the option of reducing the total emissions cap in accordance with the procedures set forth in such permit, the requirements of such permit shall apply in lieu of the otherwise applicable requirements of this subpart for such storage vessel.

(2) For any storage vessel at the site not subject to the requirements of 40 CFR 60.112b (a) or (b), the requirements of 40 CFR 60.116b (b) and (c) and the General Provisions (Subpart A of this part) shall not apply.

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

## Subpart AA—[Amended]

2. Section 264.1030 is amended by adding paragraph (d) to § 264.1030 to read as follows:

### § 264.1030 Applicability.

* * * * *

(d) The requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton,

Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

3. Subpart BB is amended by adding paragraph (g) to § 264.1050 to read as follows:

**§ 264.1050 Applicability.**

* * * * *

(g) The requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

4. Subpart CC is amended by adding paragraph (e) to § 264.1080 to read as follows:

**§ 264.1080 Applicability.**

* * * * *

(e)(1) Except as provided in paragraph (e)(2) of this section, the requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

(2) Notwithstanding paragraph (e)(1) of this section, any hazardous waste surface impoundment operated at the Stonewall Plant is subject to:

(i) the standards in § 264.1085 and all requirements related to hazardous waste surface impoundments that are referenced in or by § 264.1085, including the closed-vent system and control device requirements of § 264.1087 and the recordkeeping requirements of § 264.1089(c); and

(ii) the reporting requirements of § 264.1090 that are applicable to surface impoundments and/or to closed-vent systems and control devices associated with a surface impoundment.

## PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

2. Subpart AA is amended by adding paragraph (c) to § 265.1030 to read as follows:

**§ 265.1030 Applicability.**

* * * * *

(c) The requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

3. Subpart BB is amended by adding paragraph (f) to § 265.1050 to read as follows:

**§ 265.1050 Applicability.**

* * * * *

(f) The requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

4. Subpart CC is amended by adding paragraph (e) to § 265.1080 to read as follows:

**§ 265.1080 Applicability.**

* * * * *

(e)(1) Except as provided in paragraph (e)(2) of this section, the requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

(2) Notwithstanding paragraph (e)(1) of this section, any hazardous waste surface impoundment operated at the Stonewall Plant is subject to the standards in § 265.1086 and all requirements related to hazardous waste surface impoundments that are referenced in or by § 265.1086, including the closed-vent system and control device requirements of § 265.1088 and the recordkeeping requirements of § 265.1090(c).

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# Part V

# Department of Labor

## Occupational Safety and Health Administration

## 29 CFR Part 1903

## Abatement Verifcation; Final Rule

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1903**

**[Docket No. C–03]**

**RIN 1218–AB40**

## Abatement Verification

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** OSHA is issuing a final regulation requiring those employers who have received a citation(s) for violation(s) of the Occupational Safety and Health Act (OSH Act or Act) to certify that they have abated the hazardous condition for which they were cited and to inform affected employees of their abatement actions. The abatement procedures a specific employer must follow depend on the nature of the violation(s) identified and the employer's abatement actions. If abatement occurs during or immediately after the inspection that identified the violation(s), the employer is not required to submit an abatement certification letter to OSHA. If the violation(s) is an other-than-serious violation, or a serious violation that does not require additional documentation, the employer is required to certify abatement using a simple one-page form or equivalent. In cases involving the most serious violations, additional documentation is required. The final regulation being published today codifies, simplifies, and streamlines the abatement certification procedures that OSHA has previously enforced administratively. OSHA has determined that this abatement verification regulation will reduce employers' paperwork, enhance employee participation in the abatement process, increase the number of cited hazards that are quickly abated, and streamline and standardize OSHA's abatement procedures.

**DATES:** This final rule is effective on May 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Friedman, Office of Information and Consumer Affairs, OSHA, Room N–3647, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210; telephone: (202) 219–8148.

**SUPPLEMENTARY INFORMATION:** A Table of Contents identifying the various portions of this regulatory package follows.

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## I. Background

Under the OSH Act, 29 U.S.C. 651 *et seq.*, OSHA inspects workplaces to determine whether employers are complying with OSHA standards and other statutory and regulatory requirements. The purpose of OSHA inspections is to identify violative conditions that pose safety and health hazards to employees and to ensure that these conditions are abated. If OSHA determines that a given employer has committed a violation, a citation is issued. The citation references the alleged violation, notes the proposed penalties, and indicates the date by which the violation is to be corrected, i.e., the abatement date (see Section 9(a) of the OSH Act and 29 U.S.C. 658(a)). For each inspection, OSHA opens an employer-specific case file; this case file remains open throughout the inspection process and is not closed until the Agency is satisfied that abatement has occurred.

OSHA has followed a variety of administrative procedures in the past to ensure that employers abate cited hazards, and has modified these procedures a number of times in the years since the Agency was established. Currently, the cover letter to the employer that accompanies all OSHA citations states that the cited employer must notify the Area Director promptly by letter of completed abatements, as well as provide documentation, such as a photograph or description of the method of abatement, that abatement has occurred. OSHA also frequently conducts follow-up-inspections to verify that abatement has in fact occurred.

In May 1991, the General Accounting Office (GAO) issued a report (GAO/HRD–91–35) to Congress in which the GAO assessed the adequacy of OSHA's policies and procedures for ensuring the abatement of cited hazards. This report found that OSHA's abatement policies and procedures had limitations that interfered with the Agency's ability to identify those employers who have failed to abate the safety and health hazards for which they had been cited. The GAO also was concerned about hazard abatement problems in the construction industry (e.g., that some construction employers, to avoid abatement, moved cited hazardous equipment to another location, where the uncorrected hazard could continue to pose a risk to unsuspecting employees). The GAO report concluded that OSHA should correct these deficiencies by issuing a regulation that requires employers to provide specific documentation that they have abated cited hazards, including detailed evidence of the corrective actions they have taken to abate such hazards, and prevents employers from circumventing abatement by removing cited movable equipment from the worksite and using it at another worksite.

Prior to the GAO report, the Agency had made several efforts to strengthen OSHA's abatement verification policies by revising the OSHA *Field Operations Manual* (FOM) (superseded by the Agency's *Field Inspection Reference Manual);* the most recent of these revisions was made in 1989. These revisions strengthened OSHA's abatement verification procedures but did little to ensure that these procedures were being applied uniformly across the regulated community.

The regulation being issued today will address the GAO's concerns while at the same time streamlining and codifying OSHA's procedures for abatement verification. Once this regulation is effective, these procedures will be enforced in a consistent way by all OSHA Area Offices, eliminating inconsistencies and reducing the amount of paperwork employers who receive citations must complete to notify OSHA of their abatement actions. In cases where abatement action can be taken immediately or be completed within 24 hours of the time the Compliance Officer has identified the violation, employers will not be required to certify abatement. In other cases, i.e., those involving other-than-serious and some serious violations, employers are required only to provide OSHA with the information shown in Appendix A or its equivalent. Additional documentation is required only for the most serious violations (e.g., serious violations that the Agency has specifically identified in the citation as requiring documentation and repeat or willful violations.

Many employers have not been aware that the abatement verification procedures employed by OSHA in the past have been administrative, rather than regulatory, in nature. For example, several commenters in this rulemaking (Exs. 4–22, 4–23, 4–28, and 4–61) were of the opinion that no abatement verification regulation was required because OSHA already has the legal means to verify abatement. These commenters were apparently unaware that, because the Agency's procedures had not been codified, they did not have the force of law.

OSHA finds that establishing effective abatement verification procedures by regulation will have a number of benefits for employers, employees, and OSHA. This abatement verification regulation will strengthen employee protection by increasing the number of cited hazards abated by employers, reduce employers' paperwork and associated costs, increase employee involvement in the abatement process, streamline the process, and increase the consistency of OSHA's abatement procedures in all areas of the country.

## II. Summary and Explanation of the Regulation

This section of the preamble discusses the requirements of the final regulation, describes changes made to the regulation in response to comments received on the proposal, and summarizes the comments received.

*Purpose*

A paragraph clearly stating the purpose of this regulation has been added to the final rule. This new paragraph describes the intent of OSHA's inspection process and stresses that abatement of violative conditions identified during an OSHA inspection is the overriding goal of that process. The abatement verification regulation establishes the procedures OSHA will follow to ensure that individual employers who have been cited for workplace-specific hazards have abated those hazards. The actions cited employers are required to take to verify abatement, which are set forth in this regulation, are tailored specifically to the nature of the hazard cited and to the employer's abatement actions. That is, the extent of the abatement verification required by OSHA is commensurate with the seriousness of the violation and the actions the employer takes to abate the cited hazard.

*Paragraph (a). Scope and Application*

The scope of the final regulation has been revised since the proposal to make clear that this section applies only to those individual employers who have received an OSHA citation for a workplace-specific violation of the Occupational Safety and Health Act. Employers who have not been cited are not subject to this regulation. Thus, only those employers for whom OSHA has opened a specific case file are covered by this regulation.

*Paragraph (b). Definitions*

Paragraph (b) includes definitions for terms used in the final rule. Two proposed definitions have been modified minimally in the final rule to enhance clarity and are not further discussed here. These terms are ''Abatement date'' and ''Final order date.'' In addition, several terms that were defined in the proposal have been deleted from the Definitions paragraph of the final rule because OSHA believes they are self-explanatory. These terms include ''Area Director,'' ''Assistant Secretary,'' and ''Citation item.'' Further, OSHA believes that the meaning of several terms that were defined in the proposal is now clear from the context in which they are used in the regulatory text. These terms include ''Abatement plan,'' ''Commission,'' ''Petition for modification of abatement date (PMA),'' ''PMA final order,'' and ''Progress report.'' However, in response to comments, OSHA has altered some definitions from those proposed and has added others. These changes are discussed further in the following paragraphs.

Abatement

OSHA has added ''Abatement'' to the list of definitions included in the final regulation. Abatement is defined as ''action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.'' This definition makes clear that OSHA issues citations both for violations of particular standards and for violations of the General Duty Clause (Sec. 5(a)(1) of the Act, 29 USC 654(a)(1)), which requires employers to provide their employees with ''employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm,'' and that the abatement procedures prescribed by this regulation apply to both types of violations. This definition of abatement is consistent with that used in Chapter IV of OSHA's compliance instruction, CPL 2.103, the *Field Inspection Reference Manual* (*FIRM*). Examples of methods commonly used to abate cited hazards include the use of engineering controls (such as local exhaust ventilation) to reduce the exposure of employees to a toxic substance to the levels prescribed by an OSHA standard; correction of a deficiency in a program, such as the respiratory protection program required by 29 CFR 1910.134; or the use of permissible electrical equipment to eliminate a fire hazard.

Abatement Date

The final rule defines the abatement date for an uncontested citation as the later of the following dates: the abatement date identified in the citation; the date approved by OSHA or established in litigation as a result of a PMA; or the date established in a citation by an informal settlement agreement. For contested citation items for which the Occupational Safety and Health Review Commission has issued a final order, the abatement date is the later of the following dates: the date identified in the final order for abatement; the date computed by adding the period allowed in the citation for abatement to the final order date; or the date established by a formal settlement agreement. OSHA has added this definition to the final rule to provide cited employers with specific information on the meaning of this term as it is used in the final regulation.

Affected Employees

''Affected employees'' is defined to mean ''those employees who are exposed to the hazard(s) identified as violation(s) in a citation.'' This definition has been added to clarify that the term, as used in this regulation, applies specifically to those employees who are put at risk by the safety or health hazard cited by the OSHA Compliance Officer.

OSHA received one comment (Ex. 4–31) asking that the word ''worksite'' be defined because, according to this commenter, it was used ambiguously in the proposal. Instead of defining this term, however, OSHA has responded to this comment by ensuring that the word ''worksite'' is used unambiguously in the final rule.

Final Order Date

The final regulation defines the final order date for uncontested citation items as the 15th working day after the employer receives an OSHA citation. For a contested citation item, the final order date is (A) the 30th day after the date on which a decision or order of a Commission (OSHRC) administrative law judge has been docketed with the Commission unless a member has directed review; or (B) if review has been directed, the 30th day after the

date on which the Commission decided or issued an order on all or the pertinent part(s) of the case; or (C) the date on which a Federal appeals court issues a decision in a case in which a final order of OSHRC has been stayed. OSHA has added a definition of this term to the final regulation to provide employers with specific information on the meaning of this term in the context of the final rule.

Movable Equipment

The final rule defines movable equipment as any hand-held or non-hand-held machine or device, whether powered or unpowered, that is used to do work and is moved within or between worksites. This definition has been added to the final rule to clarify the types of equipment to which the requirements of paragraph (i) of the final rule apply.

*Paragraph (c). Abatement Certification*

Paragraph (c) of the final rule sets forth the requirements employers must follow to certify that they have abated a workplace-specific safety or health hazard cited by OSHA. The title of paragraph (c) has been revised from that used in the proposed rule, ''abatement certificate,'' to ''abatement certification'' to emphasize that the requirements of this paragraph relate to the process of abatement certification, rather than to a particular document.

Many commenters favored changing the Agency's current administratively imposed abatement verification procedures or suggested modifications to the abatement certification paragraph of the proposed rule (Exs. 4–18, 4–32, 4–53, 4–55, and 4–57). These participants recommended that OSHA adopt a ''tiered'' approach to abatement, i.e., one that tailors the extent of the abatement verification required to the seriousness of the hazardous condition cited and the employer's abatement response. The final regulation reflects this approach, and the following paragraphs describe the comments received on the various provisions of paragraph (c) and OSHA's reasoning for including the requirements that appear in the final regulation.

Paragraph (c)(1) of the final regulation states the obligation of employers who have received a citation to certify to OSHA that they have abated the cited hazardous condition. Certification of abatement must occur within 10 calendar days of the completion of the abatement action, except in those situations addressed by paragraph (c)(2) of the final regulation. The proposed regulation would have allowed employers 30 calendar days between the time they abated a cited violation and the time they submitted an abatement certificate to this effect to OSHA. Several commenters (Exs. 4–26, 4–30, 4–50, and 4–72) stated that 30 days was too long an interval between completion of abatement and certification of abatement to OSHA. Some of these commenters argued that this interval would delay the OSHA abatement certification review process, while others stated that allowing such a lengthy period of time would mean that exposed employees would not receive timely notification that the hazardous condition to which they had been exposed had been abated. One commenter (Ex. 4–50) stated:

> The employer should be required to submit the abatement certificate on, or within a few days after, the abatement date. In this way, employees, who by virtue of the nature of the hazard may not otherwise be privy to knowledge regarding the employer's abatement action, will not be forced to wait thirty days beyond the abatement date to know whether the hazard has been removed and their workplace is safe.

Other commenters (Exs. 4–28 and 4–42), however, argued that 30 days was insufficient time for employers to process certification documents through multiple levels of legal and administrative review.

In the final regulation, the period between the abatement date and submission of the required abatement information is 10 calendar days, which will ensure that abatement verification is completed in an expeditious manner. OSHA believes that a 10 calendar day period is adequate because the Agency has simplified the abatement process by providing an example of a non-mandatory abatement certification letter in Appendix A. Use of this simplified form, or an equivalent form chosen by the employer that contains the same information, will also facilitate corporate review of the required abatement information.

Paragraph (c)(2) specifies that employers who abate a hazard identified by an OSHA Compliance Officer immediately, i.e., either during the inspection or within 24 hours of the time the hazard was identified, are not required to certify abatement to OSHA in a separate certification letter. In such cases, however, the Compliance Officer must note in the citation that such immediate abatement has occurred. Paragraph (c)(2) has been added to the final rule in response to comments from rulemaking participants who urged the Agency to eliminate unnecessary paperwork and streamline the process for those employers who choose to abate a cited hazard immediately (defined as during the on-site portion of the inspection, within 24 hours after the violation was identified).

In the preamble to the proposal, OSHA raised a number of questions, including one (Question 8) that asked for comment on the need for written abatement certification procedures in cases where employers abate hazards immediately. This question elicited more comments than any other. Commenters (Exs. 4–7, 4–9 to 4–23, 4–28, 4–31 to 4–35, 4–39, 4–42, 4–47, 4–48, 4–54 to 4–57, 4–59, 4–61, 4–62, 4–64, 4–65, 4–67, 4–69, 4–75, 4–77, 4–79, 4–83, 4–84, and 4–85) were unanimous in the opinion that abatement certification and documentation should not be required if immediate abatement of the violation is observed by the OSHA Compliance Officer or occurs shortly thereafter. These participants also stated that the proposed certification requirements, which contained no such exception for immediate abatement, would impose a substantial and unnecessary regulatory burden on employers choosing the immediate abatement approach.

At the time of the proposal, it was OSHA's practice to require and maintain an extensive abatement ''paper trail'' to ensure that cited violations had been abated. In the meantime, however, in keeping with OSHA's efforts to reduce paperwork, encourage compliance, enhance employee protections, and streamline the process both for OSHA and employers, the Agency has developed a software program to print citations that allows Compliance Officers to record their observation of immediate abatement directly on the citation form. This means that citations now provide a means for OSHA to audit immediate abatements, which makes employer certification of such abatement unnecessary. To ensure that immediate abatements are properly documented, which will also avoid unnecessary follow-up inspections, the Compliance Officer will simply record the immediate abatement on Form OSHA–1B (i.e., will enter the specific citation item and the phrase ''corrected during inspection'' on this form) or its equivalent.

Paragraph (c)(3) identifies the minimum abatement-related information that employers must include in the abatement certification they submit to the OSHA Area Director. (Additional information, such as the employer's name and address, that must be included is specified in paragraph (h) of this section, along with other details pertaining to the transmittal of abatement information.) The

information required by paragraph (c)(3) includes, for each cited violation, the date and method of abatement used, and a statement that affected employees and their representatives have been informed of the abatement.

The abatement certification information required by OSHA is similar to that contained in the corresponding paragraph of the proposal, although the language has been simplified in the final rule. OSHA believes that, in most cases, a brief one-sentence statement describing the action taken to abate a violation (e.g., ''replaced guard on saw'') will be all that is needed in the certification letter.

The proposal would have required the employer to specify in the abatement certification letter those instances where an abatement had not been completed as planned. The proposal would also have required the employer to submit a subsequent abatement certification letter to OSHA when such a delayed abatement had actually been completed. These requirements do not appear in the final regulation, however, because existing OSHA regulations provide for the employer to file a petition for modification of abatement (PMA) date in cases of delayed abatement. In other words, for cases in which an employer has not abated a violation as planned, the employer's filing of a PMA under 29 CFR 1903.14(a) reinitiates the abatement certification process.

The proposed requirement to include the date on which the employer signed the abatement certification letter is also not included in the final regulation, in response to a recommendation made by a commenter (Ex. 4–61). OSHA determined that this requirement served no useful purpose because the abatement date is already provided in the abatement certification letter, which is signed by the employer.

One of the questions raised in the preamble to the proposed rule (Question 9) asked whether an Agency-developed sample abatement certification form for employers to use would be useful and specifically asked about the information such a form should contain. Several commenters (Exs. 4–28, 4–39, 4–42, and 4–67) stated that such a form would reduce the compliance burden on employers. The sample abatement certification letter, which is included as non-mandatory Appendix A to the final regulation, was developed in response to these comments. Appendix A is a sample abatement certification letter that is appropriate for certifying both individual or multiple citation items (in the latter case, employers can simply add lines as required). OSHA has developed this abatement certification form, which is non-mandatory, specifically to reduce the time and resource burdens for cited employers, which were of concern to several commenters (Exs. 4–9, 4–18, 4–19, and 4–48).

*Paragraph (d), Abatement Documentation*

Paragraph (d), Abatement documentation, specifies the requirements employers must follow to document the completion of abatement for willful or repeat violations and for any serious violation for which the citation indicates that such documentation is required.

Requiring additional abatement documentation for these more serious violations reflects the tailored approach that many commenters (Exs. 4–18, 4–20, 4–24, 4–32, 4–40, 4–43, 4–44, 4–53, 4–55, and 4–57) urged the Agency to take. Such a tiered approach would require only a simple letter certifying abatement for other-than-serious violations and for many serious violations but would require both a certification letter and more extensive documentation for the most serious violations, i.e., willful or repeat violations and those serious violations determined by OSHA on the citation to warrant such documentation.

Some commenters (Exs. 4–49 and 4–50) recommended that certification and documentation be required for *all* violations, including other-than-serious violations, as has been OSHA's practice in the past. These commenters argued that full certification and documentation were needed in every case to ensure protection to employees exposed to the cited hazards. In contrast, one commenter (Ex. 4–61) stated that abatement documentation should not be required for *any* violation because requiring employers merely to certify abatement was sufficient.

In the final regulation, OSHA has adopted a tiered abatement certification approach that is based on the type of violation for which the citation was issued and the employer's abatement actions in response to the citation. The abatement certification process for other-than-serious violations has been streamlined in the final rule as much as possible, while the process for ensuring the abatement of more serious violations is more extensive, as befits the greater complexity and degree of hazard posed to workers by such violations. OSHA's reasoning is discussed below.

Other-than-serious violations do not expose employees to life threatening or permanently injurious conditions, because they are defined by OSHA as violations that ''cannot reasonably be predicted to cause death or serious physical harm to exposed employees, but [that do] have a direct and immediate relationship to their health and safety.'' (See OSHA Instruction CPL 2.103, Chapter III, p. III–6, September 26, 1994.)

Although other-than-serious violations are of concern to OSHA, abatement of these violations warrants a lesser commitment of Agency resources than does the abatement of more serious violations. This is particularly the case since other provisions of the final regulation will act to provide additional protections for employees throughout the abatement process. For example, paragraph (g) requires that employers inform affected employees (i.e., those directly affected by the cited hazard) and their representatives of the employer's abatement activities; employees and their representatives must also be given the opportunity to examine and copy all abatement materials prepared by the employer in response to this regulation. These notification requirements will ensure that affected employees are aware of the employer's abatement activities and will also increase the incentives for employers to provide accurate and timely information about their abatement activities. Thus, in adopting a tiered approach to abatement verification, OSHA is making effective use of both Agency and employer resources by placing an appropriate emphasis on the more serious violations. This approach also is consistent with the GAO's recommendations regarding abatement verification for such violations.

As required by paragraphs (c) and (d), those employers who have received citations for willful or repeat violations, or for specifically identified serious violations, must certify and provide documentary evidence of their abatement actions. Although OSHA retains the discretion to identify any serious cited hazard as one requiring abatement documentation as well as certification, OSHA will generally require such documentation only for ''high-gravity'' serious violations. High-gravity serious violations are those violations that relate to hazards that have a higher level of severity and a higher probability of resulting in employee injury, illness, or death than other serious violations. Examples of high-gravity serious violations are: (1) A storage loft located 10 feet above the work floor is accessed and worked in by employees daily, and the open side of the loft does not have a guard rail. A fall would result in a severe employee injury, and the probability of a fall occurring is great because of the

frequency of exposure. (2) An electrically powered miter saw is being used daily with the lower blade guard secured in the retracted position. The probability of injury is great due to the frequency of use and the proximity of the employee's hand to the rotating blade. The severity of the resulting injury would undoubtedly be high.

After a careful review both of the comments received and OSHA's own enforcement experience, OSHA has determined that it is appropriate to require abatement certification for all cited hazardous conditions but to reserve submission of full documentary evidence of abatement for the most serious violations only. Comments (Exs. 4–12 through 4–16, 4–23, 4–55) submitted to the record also suggest that a number of other Federal agencies have adopted abatement documentation procedures similar to those being promulgated by OSHA, which increases the Agency's confidence in adopting this approach.

OSHA retains the discretion, under paragraph (d)(1), to require documentation of abatement for any serious violation that warrants this extra measure of assurance. OSHA must specifically identify in the citation those citation items for which such documentation is required. However, OSHA generally intends to require abatement documentation in low-or medium-gravity serious violation situations only where, in the past 10 years, an employer has received a citation either for a willful or failure-to-abate violation or has a history of compliance violations that resulted in a fatality or in serious physical harm to an employee. OSHA believes that the abatement activities of these employers deserve closer scrutiny and more careful documentation, to ensure that cited hazardous conditions are appropriately abated and to prevent similar occurrences in the future. Before the effective date of this regulation, OSHA will issue a directive to the field specifying the conditions under which the Agency will exercise its discretionary authority to require abatement documentation for serious violations that are not classified as high-gravity.

Paragraph (d)(2) of the final regulation specifies the types of documentary evidence needed to fulfill the abatement documentation requirements set forth in paragraph (d)(1). Examples of acceptable documentation may include invoices for the purchase of control equipment, bills from repair services, photographs or video evidence of the abated hazard, or other written records. Additional examples of documentary evidence are discussed below.

In the preamble to the proposal, OSHA asked for comment on the type, sufficiency, and quality of abatement document-ation that should be required. One commenter, the United Steelworkers of America (Ex. 4–72), stated that pre-and post-abatement photographs, in addition to other forms of abatement documentation, should be provided by employers to assist the Agency in evaluating abatement. Other commenters (Exs. 4–26, 4–47, and 4–53) recommended that the text of the final rule include examples of the types of abatement documentation that would be acceptable.

In response to these comments, OSHA has included some examples of appropriate abatement documentation in the final regulatory text and has expanded this section of the preamble to provide additional detail. Examples of acceptable documentation could include: photographs of the abated condition (e.g., a machine's point of operation guard in place); an invoice or sales receipt from a manufacturer or supplier of the equipment used to achieve abatement; reports or evaluations by safety and health professionals describing the actions taken to abate the hazard or a report of results of analytical testing; documentation from the manufacturer that the article repaired is within the manufacturer's specifications; a copy of a signed contract for goods and services (e.g., for needed protective equipment, an evaluation by a safety engineer, etc.); records of training completed by employees (if the citation is related to inadequate employee training); a photograph or videotape of the abated condition that identifies the citation number and item number; or a copy of program documents (if the citation relates to a missing or inadequate program, such as a deficiency in the employer's respirator program or hazard communication program).

As these examples demonstrate, abatement documentation must be objective and describe or portray the abated condition adequately. However, the final regulation does not mandate a particular type of documentary evidence for any specific cited condition; this determination remains the responsibility of the employer, who OSHA believes is in the best position to make this judgment. The acceptability of the abatement documentation will be assessed by OSHA, either during abatement negotiations with the employer or after receipt of the abatement documentation as part of the employer's abatement certification submission. For example, although photographs are listed in the final regulation as an example of abatement documentation, OSHA will not require that photographs, including photographs of pre-and post-abatement conditions, always be used to satisfy this requirement. Whether photographs are appropriate, and the best kinds of photographs, is best determined through discussions between the employer and OSHA, using the information available in the citation and the Agency's knowledge of the employer's workplace and history.

In summary, OSHA finds that the abatement verification procedures being put in place by this final regulation have several components that will interact to ensure employees a high level of protection from exposure to cited hazards while simultaneously minimizing the amount of paperwork and resources employers (and OSHA) will be required to expend. These components include a tiered system of abatement verification that requires increasing levels of documentation as the seriousness of the violation increases; meaningful employee involvement in all aspects of the abatement process, which will increase the reliability of employer reporting and provide employees with the information they need to protect themselves and their co-workers from exposure to cited hazards; and a simplified and standardized reporting process that allows employers to use various means of submitting abatement information to OSHA.

*Paragraph (e). Abatement Plans*

Paragraph (e)(1) of the final regulation specifies that OSHA may require employers to submit abatement plans for abatements having dates of 90 days or greater (except for other-than-serious violations). OSHA may require such plans for each cited violation falling in this category and must indicate in the citation which citation items require such plans. These provisions have been changed somewhat since the proposal. For example, the proposed rule would have permitted OSHA to require in the citation that an employer submit a formal plan for the abatement of *any* safety and health violation for which ''multiple-step'' or ''long-term'' abatement was necessary. In the final regulation, the abatement plan requirement applies only to the more serious violations (serious, willful, or repeat violations), and then only to those abatements that have been assigned dates of 90 days or more.

Paragraph (e)(2) stipulates that employers must submit any abatement

plan required by OSHA within 25 calendar days of the final order date. Abatement plans must identify the violations and the steps the employer is taking to abate the violation, a schedule for achieving abatement, and, where required by OSHA, the interim measures the employer is taking to protect employees from the hazard represented by the violation until abatement is complete. The requirement to provide interim protections if directed by OSHA to do so has been added to the final rule to be consistent with current Agency practice and to provide employees with appropriate protection in those situations warranting it.

Several commenters (Exs. 4–28, 4–53, 4–68, 4–77, and 4–79) acknowledged OSHA's need for information on the employer's abatement program in complex and lengthy abatements but were concerned about the administrative burden and cost of formal plans. For example, the Chemical Manufacturers Association (Ex. 4–28) stated:

> OSHA accomplishes nothing by requiring detailed abatement plans. The only information OSHA needs in this situation is the actions the employer will take and the dates the actions will be completed. This provides OSHA with the ability to measure whether abatement is being achieved and by the date specified.

Another commenter, United Technologies (Ex. 4–53), interpreted the term ''formal,'' as used in the proposed regulation, to mean ''detailed,'' and recommended that this ''formal/detailed'' requirement be deleted and replaced with a ''written plan outlining the schedule for the implementation of measures to achieve abatement.'' Noting that an abbreviated abatement plan would reduce the paperwork burden on employers, United Technologies stated that ''[t]he 2 hour preparation time in the Proposed Rule's economic modeling [to develop an abatement plan] may underestimate the amount of time necessary to prepare a detailed plan. * * *'' The American Society of Safety Engineers (ASSE)(Ex. 4–68) recommended that an abatement plan consist simply of ''a written outline setting forth an implementation schedule for measures to achieve abatement.'' ASSE stated further that ''[t]he plan need not be 'detailed' as long as a schedule exists against which abatement can be measured.''

Several commenters (Exs. 4–8, 4–22, and 4–79) interpreted the proposed requirement for abatement plans as applying to *all* violations and indicated their concern with the scope of this requirement. Two commenters (Exs. 4–42 and 4–43) argued that this proposed requirement allowed OSHA too much discretion and would therefore result in inconsistent application of the abatement plan requirement.

In response to these comments, OSHA has made two important revisions that are reflected in paragraph (e)(1) of the final regulation. First, the requirement now limits the applicability of this provision to abatements of more serious violations that require longer than 90 days to complete. In contrast, the proposed regulation limited abatement plans to multiple-step or long-term abatement situations but did not specify what ''long-term'' meant. In place of the proposed terms ''multi-step'' and ''long-term,'' the final regulation specifies that abatement plans are not required unless the abatement period is longer than 90 calendar days, and then only if required by OSHA.

OSHA chose 90 days as the appropriate trigger for abatement plans because the Agency's analysis of recent inspection data demonstrated that more than 90 percent of abatements were completed within a 90-day period. After that period, the rate at which abatements were completed slowed significantly, indicating that the types of activities necessary for abatements taking longer than 90 calendar days differed substantially from those needed for abatements of shorter duration (i.e., abatements taking more than 90 calendar days appear to be extremely complex, and may require complicated funding arrangements as well as detailed design and fabrication efforts).

Even for abatement periods that exceed 90 calendar days, the final regulation provides OSHA with the discretion to decide whether an abatement plan is or is not needed. The Agency believes that Area Directors are in the best position to determine whether such plans are needed because they are most familiar with the employer and the violations described in a citation. The flexibility granted by this requirement will substantially reduce the regulatory burden that would be imposed both on OSHA and employers by a blanket provision requiring plans for all lengthy abatements. At the same time, allowing OSHA discretion to require an abatement plan will ensure that employees are protected in those complex and lengthy abatements where additional information is necessary to ensure satisfactory abatement progress and, if deemed necessary by OSHA, interim employee protection.

The requirement for abatement plans for complex abatements is consistent with the way OSHA has done business for several years. For example, these plans often are developed jointly by OSHA and the employer, either during an inspection or prior to the time the employer receives a citation; the resulting plans are then incorporated into the citation narrative. Thus, the 90-day requirement will not in any way affect the current negotiation process that occurs between employers and OSHA with regard to abatement plans. This final regulation only specifies the conditions under which abatement plans may be required by OSHA.

The second important revision made to paragraph (e)(1) since the proposal is the elimination of other-than-serious violations from the requirement for abatement plans. OSHA's analysis of recent inspection data showed that only a few other-than-serious violations required more than 90 calendar days to abate. In view of the small number of other-than-serious violations that would be subject to this 90-day requirement and to be consistent with the ''new OSHA'' philosophy of focusing on the more serious hazards, the final regulation applies the abatement plan requirements only to violations classified as serious or above. (See the discussion under ''Abatement certification'' in this preamble.)

Paragraph (e)(1) also explicitly states that OSHA is responsible for identifying and communicating to the employer which citation items need abatement plans. This provision has been revised only minimally from the parallel requirement in the proposal. Appendix B, which is non-mandatory, is a sample abatement plan that employers may use to report their abatement plans to OSHA. This form also allows several citation items to be combined into a single abatement plan. Employers are free to use any other form to report their abatement progress, providing that the form used contains the same information as that shown in Appendix B.

Final rule paragraph (e)(2) retains the proposed requirement that any required abatement plan be submitted to OSHA within 25 calendar days after the date of the final order. Several commenters (Exs. 4–10, 4–42, and 4–67) stated that the 25-day period was too brief for employers to devise, compile, and obtain managerial approval of abatement plans, especially if they have many violations to correct. On the other hand, one commenter (Ex. 4–72) found the 25-day submission period to be excessive and recommended a 10-day submission period instead.

OSHA believes that a 10-day submission period would not allow sufficient time for employers to

investigate abatement methods, develop abatement plan(s), and transmit them (often through corporate channels) to OSHA. However, OSHA believes that the abbreviated format specified for abatement plans in the final regulation makes the 25-day submission period reasonable.

In the proposal, abatement plans were required to be signed and dated by the employer. However, in the final regulation, OSHA has decided to allow abatement plans to be signed by the employer or the employer's representative and not to require that abatement plans be dated. These revisions make the signature and dating requirements for abatement plans consistent with those for all of the abatement documents required by this regulation (see paragraph (h)).

*Paragraph (f). Progress Reports*

Paragraph (f) of the final regulation states that employers are required to submit periodic progress reports, in addition to abatement plans, for those more serious hazards requiring long-term abatement (i.e., greater than 90 days) and that OSHA has identified as requiring such a report in the citation. The corresponding provision of the proposal would have allowed OSHA to require progress reports for *all* ''multi-step'' abatements. This term has been defined in the final regulation to mean abatements requiring 90 calendar days or more to abate. Progress reports are required only for certain abatement plans, and paragraph (f)(1) has been revised to be consistent with paragraph (e)(1), which addresses those plans.

Paragraph (f)(1) of the final regulation indicates that OSHA must specify in the citation each of the citation items for which a progress report is required and the dates for submission of the initial progress report, which may not be sooner than 30 calendar days after the submission of an abatement plan. These requirements are unchanged from the proposal except that the requirement for OSHA to specify which abatement measures are to be reported has been removed from the final regulation as unnecessary.

Final rule paragraph (f)(2) requires employers who submit progress reports to include in such reports a brief description (generally only a single-sentence summary) of the action being taken to abate each cited violation and the date the abatement activity was conducted.

One commenter (Ex. 4–3) stated that OSHA should not require progress reports if an employer abates a cited violation in fewer than 30 calendar days after the date of the final order or the date of the PMA final order. This interpretation reflects confusion over the meaning of the requirement for progress reports, and OSHA has responded by clarifying paragraph (f)(1) of the final regulation. The submission date for the first progress report is clearly specified in paragraph (f)(1) in the final regulation as a minimum of 30 or more calendar days after the date on which an abatement plan was submitted to OSHA. If a violation requiring a progress report (or an abatement plan) is abated prior to the submission date, the employer would be required only to submit the abatement certification and abatement documentation information required by the final regulation.

Citation items may be combined within a single progress report if the citation items being combined have the same abatement actions, proposed completion dates, and actual completion dates, as permitted by the sample progress report form provided in Appendix B to the final regulation. This form, which is non-mandatory, can be used either for individual citation items or for multiple citation items meeting the limitations of the form.

Like all abatement documents (see paragraph (h) of this section), progress reports must be signed by the employer or his/her authorized representative and include the company name and address, the OSHA inspection number, the citation and citation item numbers, and a statement that the information provided is accurate. The citation and item numbers are needed by OSHA to efficiently collate progress reports with other abatement information sent to OSHA by the employer.

*Paragraph (g). Employee Notification*

In the proposal, this paragraph was titled ''Posting requirements.'' In the final regulation, it has been designated paragraph (g), ''Employee notification,'' to clarify its purpose, which is to strengthen the abatement verification process by involving employees in all stages of that process. Paragraph (g)(1) requires employers to provide those employees affected by the cited hazardous condition, and their representatives, with information about abatement activities by posting a copy or summary of each document submitted to OSHA near the place where the violation occurred.

Paragraph (g)(2) specifically recognizes that posting abatement documents or summaries of these documents may not always be an effective way to inform affected employees and their representatives of the employer's abatement activities due to the characteristics of the workplace or the nature of particular jobs. For example, it may be difficult for an employer whose employees work out of their trucks or do not routinely assemble at a central location to communicate the necessary abatement information to these employees by posting. OSHA believes that employers who employ such mobile workers, e.g., arborists, telephone repair personnel, landscape company personnel, salespeople, are in the best position to determine how most effectively to communicate with these employees and their representatives about those abatement activities that affect them. For example, such employers may choose to convey this information in the employee's pay envelope, inside the lid of the work crew's tool box, or in a visible location inside the compartment that contains the cited equipment. Other possible ways of providing employees and their representatives with the required information include discussing the abatement documents with these individuals at a training or tool box session or publishing the information in an employee newsletter or other general communication medium that reaches affected employees and their representatives.

Affected employees and their representatives also may request copies of all abatement documents for examination and copying. Employers are required by paragraph (g)(3) to inform such employees of this right.

Paragraph (g)(3)(i) indicates that employees and employee representatives must submit requests to examine and copy abatement documents to the employer within three working days of the time they are notified by the employer that such documents have been submitted to OSHA. The time period permitted for requesting abatement documents is consistent with the citation posting period required in 29 CFR 1903.16. OSHA believes that, since affected employees and their representatives are aware of the cited condition because it directly affects them, 3 working days will provide sufficient time for such employees to request abatement documents.

Paragraph (g)(3)(ii) requires employers to respond to such requests for abatement materials within 5 working days of the receipt of such requests. One commenter (Ex. 4–39) recommended that the regulation be revised to specify the period during which employers must make abatement documents available for examination and copying by employees and their representatives, and the final rule is responsive to this comment. The posting requirement of

paragraph (g)(1) is also responsive to comments (Exs. 4–19 and 4–21) stating that the proposed requirement, which would have required documents to remain posted until the violation was corrected or for 6 days, whichever was later, was too burdensome. As these commenters noted, during extended abatement periods, the documents are likely to deteriorate or to be removed. This would place employers in violation of this paragraph of the final regulation, which requires them to ensure that posted documents will not be altered, defaced, or obstructed.

Paragraph (g)(4) requires employers to ensure that notice of the availability of abatement documents is provided to employees and their representatives at the same time or before the required abatement information is transmitted to OSHA; that the posted documents are not defaced, covered, or altered so as to be illegible; and that the documents remain posted for three working days after being submitted to OSHA.

This paragraph of the final rule has been revised in response to comments received on the parallel provisions of the proposal. These changes include revising the language of this requirement to conform as closely as possible with OSHA's existing posting requirements, which are codified at 29 CFR 1903.16, to respond to a comment (Ex. 4–33) about the need to ensure consistency between the requirements of paragraph (g) and those of 29 CFR 1903.16.

OSHA received one comment on the mobile work operation issue addressed by paragraph (g)(2) of the final regulation. The National Arborist Association (Ex. 4–8) asked OSHA to include examples of alternative posting locations that would satisfy the posting requirement for employers with highly mobile work operations. As the discussion above indicates, OSHA intends to provide employers with a mobile work force with the flexibility to use a wide range of methods to inform employees about abatement activities. Whatever method is chosen, however, must be effective in communicating the required information to employees and their representatives.

One proposed requirement has not been carried forward in the final regulation. Paragraph (i)(2) of the proposal would have permitted employers to post a notice describing the location at which abatement plans and progress reports could be reviewed if posting these documents was made impractical by their size or magnitude. OSHA believes that this requirement is unnecessary, because the proposed provision would only have referred employees to the location of the required information instead of providing them with the information directly. Additionally, the abatement certification, abatement plan, and progress report provisions of the final regulation have substantially reduced the size and magnitude of these documents, which will make employee notification easier.

OSHA received two comments (Exs. 4–49 and 4–50) urging the Agency to require employers to distribute abatement documents directly to employee representatives as a means of enhancing the completeness and accuracy of these documents. OSHA is concerned that the voluminous nature of some abatement documentation, e.g., documentary proof of abatement, would make such a requirement unnecessarily burdensome for employers. The approach adopted in the final rule affords the same access, examination, and copying rights to employee representatives as to the affected employees themselves. OSHA believes that requiring employers to post copies of all abatement documents in a readily accessible place, coupled with the final rule's requirement that employers provide employees and their representatives with notice of their right to examine and copy all abatement-related documents, will provide both employees and their representatives with the information they need to keep them fully informed of the employer's abatement activities, as requested by these commenters.

The proposal specifically identified the Assistant Secretary as a person authorized to examine and copy abatement documents. However, this provision does not appear in the final regulation because, under Section 8 of the OSH Act, the Assistant Secretary already has the authority to review these materials.

*Paragraph (h). Transmitting Abatement Documents*

Paragraph (g) in the proposal, which specified requirements for transmitting abatement information to OSHA, has been moved to paragraph (h) in the final regulation. This paragraph contains requirements that employers include the following information in all abatement materials submitted to OSHA: The employer's name and address; the inspection number; the citation number and citation item number(s); a statement to the effect that the information provided by the employer is accurate; and the employer's signature or that of his/her authorized representative. These requirements apply to abatement certification letters, abatement documentation, abatement plans, and progress reports, i.e., to all of the abatement verification materials addressed by this regulation. Paragraph (h)(2) specifies that the date of postmark is the date of submission for mailed abatement verification documents. OSHA expects that other means of transmission, such as facsimile transmission, will also be used, if approved by the Area Director in a given case. One commenter (Ex. 4–84) urged OSHA to specifically identify electronic transmission as an approved method in the regulatory text. However, although many methods of transmission are routinely used to provide the Agency with abatement materials, e.g., overnight courier, hand delivery, OSHA does not believe it necessary to specifically list these methods in the regulatory text.

The proposed rule contained a note to the effect that Agency receipt of documents should not be interpreted as compliance with the regulation's transmittal requirements. Two commenters (Exs. 4–10 and 4–69) stated that this note was unnecessary because it merely reminded employers to retain proof that they had submitted abatement certifications and/or documentation, especially in the case of facsimile transmissions. According to these commenters, this is already industry practice. OSHA agrees that the provisions of the final regulation are adequate to notify employers that they are responsible for ensuring that OSHA has received the required abatement information. This note therefore does not appear in the final regulation.

The proposal contained a paragraph entitled Accuracy of documentation. In the final regulation, OSHA has eliminated this paragraph and simply requires that employers attest to the accuracy of any abatement-related information they submit to OSHA at the time of transmittal. Accurate information is essential to the working of the streamlined abatement process OSHA is putting into place with this final regulation. Based on the Agency's past experience, OSHA believes that the overwhelming majority of employers recognize the importance of accurate abatement information, and that the incentives provided under this final regulation (streamlined process, availability of easy-to-use abatement forms, employee involvement) will encourage full compliance with the regulation's provisions.

Paragraph (h)(1) of the final regulation requires employers to provide some information that was not specified in the proposal. This information includes the inspection, citation, and citation item numbers. OSHA currently assigns

each violation a citation and item number that serves as a unique identifier for that inspection. This additional information will benefit both the Agency and employers because it will enable OSHA to distinguish readily between abated and unabated violations, enhance OSHA's ability to retrieve and review abatement materials, and expedite approval of abatement activities. This information will also allow OSHA to determine the appropriateness and completeness of the materials submitted by employers and to identify those needing additional attention.

In the proposal, abatement certificates were required to be signed by the employer or the employer's duly authorized representative. In the preamble to the proposal, OSHA asked for comments on the appropriate level of management needed to serve as an employer's duly authorized representative in abatement matters. Commenters responding to this question had a wide range of opinions on this issue. Some argued that employers should have complete discretion in this matter (e.g., ''OSHA should leave to each employer's discretion the decision regarding what is the appropriate level of personnel authorized to bind the company by signing the abatement certification'' (Ex. 4–83)), while others recommended that specific personnel be designated for this function (e.g., a corporate officer (Ex. 4–28) or the owner or general manager (Ex. 4–48)). Many commenters recommended that signatory authority be limited to managers who have knowledge of the employer's abatement activities and the authority to commit the employer's resources to these activities (Exs. 4–6, 4–7, 4–23, 4–33, 4–34, 4–54, 4–55, 4–56, 4–64, and 4–77). Two commenters supported the language of the proposed requirement, which allowed employers flexibility in designating their representatives (Exs. 4–47 and 4–67).

The Agency has decided that it would be inappropriate to identify particular management positions or job titles in this requirement because positions and titles vary widely among organizations. Accordingly, the final regulation has made only minor revisions to the proposed language. For example, the word ''duly'' has been removed from the phrase ''authorized representative'' to remove any suggestion that a formal process of designating an authorized representative is required. The language of this provision in the final regulation thus allows employers additional discretion and flexibility in assigning signatory authority for the purpose of abatement certification, which will further expedite the process.

*Paragraph (i). Movable Equipment*

Paragraph (i) of the final regulation requires employers to alert employees to the presence of cited movable equipment on the worksite either by tagging the equipment's operating controls or the equipment's hazardous components, or affixing a copy of the citation itself to the controls or hazardous components of the cited equipment. In the proposal, this paragraph was designated as paragraph (f), ''Tagging cited equipment.'' This title has been revised in the final regulation to better indicate that this paragraph applies only to movable equipment, as defined in paragraph (b) of this regulation.

OSHA has included this requirement in the final regulation at least partly in response to the GAO's findings (discussed further in the Background section of this preamble) that, in the past, employers may have been able to circumvent abatement by removing hazardous equipment from the site after it had been cited and then subsequently returning this equipment—without repair—to the site or moving it to another site. Two commenters (Exs. 4–9 and 4–57) stated that the tagging requirements specified in the proposal were unnecessary because these requirements duplicated the provisions of 29 CFR 1910.147 (i.e., OSHA's ''lockout-tagout'' standard). OSHA believes that these commenters have misconstrued the intent of 29 CFR 1910.147's lockout/tagout requirements. The tags of the lockout/tagout standard are intended to alert employees that measures have been taken to control hazardous energy before service or maintenance is performed on the equipment. In contrast, the warning tags required by this regulation are intended to provide warning to employees that a piece of equipment needs to be repaired and poses a serious risk to employees, and to provide such warning even in cases where that equipment is moved to another location, either on or off the worksite where it was first cited.

The preamble of the proposal asked for comment on the proposed tagging provision. These comments, and OSHA's responses to them, are discussed below. The proposal would have required employers to affix a warning tag to cited equipment on receipt of the citation. OSHA received a number of comments regarding this paragraph. One commenter, the American Feed Industry Association (Ex. 4–19), was concerned about the proposed requirement's lack of specificity. This commenter stated:

> The use of warning tags would be inconsistent and confusing. For example, a violation could be cited for not having wheel chocks in place under a parked semi trailer at a loading dock. What should be tagged, the chocks or the trailer? Would the employer keep the chocks tagged until another trailer was parked at the dock? Would an employee not use the chocks on that trailer assuming the chocks themselves may be defective?

Another commenter, the Synthetic Organic Chemical Manufacturers Association, Inc. (Ex. 4–22), argued that the proposed provision was duplicative of OSHA's existing citation posting requirement:

> [T]his requirement is superfluous and a paperwork burden. In most cases posting of the citation would alert affected employees that a hazard exists. An additional punitive piece of paper, such as tagging, would not increase employee safety, it would only add to the requirements for abatement.

Two other commenters (Exs. 4–25 and 4–72) expressed support for the provision. The Food & Allied Service Trades (Ex. 4–25) commented, ''To strengthen the intent of this provision, we believe the cited equipment should be incapacitated until the hazard has been abated.'' The United Steelworkers of America (Ex. 4–72) strongly endorsed the tagging provision, noting that:

> This [requirement] will help to ensure that workers are fully informed as to [the] hazard[s] they may be exposed to. The posting requirements related to posting the *citations* at or near where the violations exist have been diluted over the years. It is the exception rather than the rule when citations are posted at or near the violation. Posting these types [of] tags on cited equipment will finally achieve what the drafters of the OSH Act intended, namely to advise workers of unsafe conditions in their work area. (Emphasis in original.)

One commenter, the National Arborist Association (Ex. 4–8), argued that tagging a single piece of equipment that allegedly violates an OSHA safety standard would send a very negative message to users of similar equipment in a firm even if the similar equipment is not cited and is indeed safe to operate. However, OSHA believes that the information presented on the tag (e.g., hazard cited) is sufficient to identify why a given piece of equipment has been cited and to keep employees from generalizing to other equipment.

In response to these comments, the Agency has made three major revisions to the proposed posting requirements to reduce the regulatory burden associated with compliance, while preserving the protection afforded to employees by these provisions. The first major

revision made to this paragraph in the final regulation is to state more specifically when the tagging actions by the employer are to occur and to limit the requirement for immediate tagging to hand-held equipment only. A tag must be affixed to other (i.e., non-hand-held) cited movable equipment only if the equipment is actually moved within the worksite at which the equipment was cited, or is moved from that worksite to another worksite before the cited hazards are abated.

Employers must ensure, in accordance with paragraph (i)(5), that the tag or copy of the citation is not covered by other material and is not altered or defaced so as to be illegible. Paragraph (i)(6) indicates when the warning tag or copy of the citation may be removed; the conditions under which removal may occur include: when abatement has taken place and any abatement documents required by this regulation have been submitted to OSHA, when the cited equipment has been removed permanently from the worksite or is no longer in the employer's control, or when the Commission has vacated the citation.

The second of these revisions is to except other-than-serious violations from the tagging requirements of the final regulation. As noted above in the discussion of paragraph (c), Abatement certification, violations are characterized as other-than-serious if they do not expose employees to the risk of life-threatening or permanently injurious conditions. Other-than-serious violations also usually require only simple, straightforward corrections that can be accomplished on-site or during short abatement periods. Limiting the applicability of the tagging provision to serious, willful, and repeat violations, and to violative conditions for which the employer has received a failure-to-abate notice, is consistent both with paragraph (c) of the final regulation, which requires abatement documentation only for this group of more serious violations, and with OSHA's emphasis on the most serious hazards.

OSHA believes that hand-held equipment that has been cited must be tagged promptly because this equipment is easily moved within and between worksites and is frequently used by employees who may not have notice of the cited hazard. In addition, the record did not indicate that there was another reliable and practical method that would meet the employee notification requirement of this provision under these workplace conditions.

Other equipment (i.e., equipment that is not hand-held) is less readily moved than hand-held equipment and thus is more likely than hand-held equipment to remain at the location described and/or documented in the citation. OSHA believes that, under these conditions (i.e., as long as the cited equipment remains at the location described and/or documented in the citation), the posting requirements of 29 CFR 1903.16 will provide employees with adequate notification of the cited hazard. If this equipment is moved within or between worksites, however, employees who have not seen the posted citation in the old location could unknowingly be exposed to the cited hazard in the new location. Affixing a warning tag to the operating controls or the hazardous component(s) of this equipment will ensure that such employees in the new location are properly notified of the violation. Paragraph (i)(3)(ii) of the final regulation requires employers to affix a warning tag to this equipment before it is moved.

OSHA will be providing non-mandatory warning tags for employers to use to meet the requirements of this paragraph. The Agency believes that doing so will encourage compliance with the tagging requirement and reduce the regulatory burden of this requirement on employers. A note to paragraph (i)(2) of the final regulation specifies that employers may use tags supplied by OSHA for this purpose (see Appendix C). This provision also permits employers to use their own tags to meet this requirement, provided that these tags conform to the design and information specifications of the sample tag displayed in Appendix C; this provision ensures employees that employer-designed tags will protect them at least as effectively as the warning tags supplied by OSHA.

The last major revision to proposed paragraph (i) permits employers the choice of either posting a copy of the citation or affixing a warning tag directly on the operating controls or the hazardous component of the cited equipment. This change will allow employers additional flexibility and will also satisfy the requirements of 29 CFR 1903.16, OSHA's existing posting requirement. The proposal would have required employers both to affix a warning tag to the operating controls or the hazardous component of the cited equipment and to post a copy of the citation ''at or near each place an alleged violation referred to in the citation occurred,'' as required by 29 CFR 1903.16. There are situations, however, where affixing a copy of the citation to hand-held equipment may be difficult or impractical, and in such cases tagging is the only feasible method of providing employees with notice of the violation.

OSHA received one comment indicating concern about the applicability of the tagging requirements to the construction industry. This commenter (Ex. 4–38) stated that ''[t]he construction industry should not be forced to comply with 29 CFR 1910.145(f)(4) which is not applicable to the construction industry.'' The concerns of this commenter are addressed in paragraph (i)(4) of the final regulation, which states that employers in the construction industry who comply with the design and use requirements for tags specified in paragraphs 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) of the construction industry standards will be deemed to be in compliance with paragraph (i) of this section if the tag used contains the information required by paragraph (i)(2) of the final regulation. OSHA believes that the addition of paragraph (i)(4) to the final regulation will improve compliance with the requirement among employers in the construction industry because they have extensive experience and familiarity with the design and use requirements for tags that were developed for their industry.

Paragraph (i)(2) of the final regulation requires tags that are used to comply with the abatement verification regulation's tagging requirements to warn employees about the nature of the violation and identify where the citation has been posted for affected employees to review.

OSHA received several comments on this provision of the proposal. These commenters (Exs. 4–12, 4–13, 4–14, 4–15, and 4–16) stated that including any information on the warning tag was too burdensome, would endanger employees who read the tag by bringing them within the ambit of the cited hazard, or would discourage employees from operating cited equipment that could be used safely under specific conditions. For example, one commenter (Ex. 4–12) made the following observation:

> If OSHA develops a tag (i.e., a ''red'' danger tag) that complies with 29 CFR § 1910.145, which employees understand to mean that equipment to which it was attached is the subject of a violation, the tag need only be recognized for that purpose. The tag should not contain any information, it should merely be identifiable by employees, who can then read the citation on the bulletin board, where citations are generally posted. If employees have to read a tag, which may be attached to moving equipment or equipment being used, employees could be endangered.

However, OSHA does not share this view, because for employees to have the

information they need to protect themselves and their co-workers from cited equipment hazards, the warning tag must identify the specific equipment cited, state that a citation has been issued by OSHA, and specify where the citation is posted for employee review. This minimal amount of information will alert employees to the hazard and allow them to confirm which equipment (or component) has been cited. Identifying the location of the posted citation will permit employees to find and review the citation for more specific and detailed information about the violation. The Agency does believe, however, that a brief description of the violation is all that is needed on the tag (e.g., ''no guard for blade'').

The proposed rule contained a paragraph stating that employers who fail to comply with the requirements of this abatement verification regulation will be subject to citation and penalties under the OSH Act. This provision has not been included in the final regulation, in response to comments on this issue (Exs. 4–6, 4–25, 4–29, 4–33, 4–63). For example, the American Forest & Paper Association (Ex. 4–29) recommended that this paragraph not be included in the final regulation because this information was communicated adequately in the preamble. Another commenter (Ex. 4–33) stated that this paragraph should not be included in the final regulation because the regulated community already understands that OSHA has statutory authority to impose penalties on employers who violate OSHA standards and regulations and thus that describing this authority was unnecessary. OSHA agrees with these commenters, and this provision is not included in the final regulation.

As previously described, OSHA has included in the final regulation three non-mandatory appendices (A, B, and C) to assist employers in complying with this regulation. These appendices were the direct result of numerous favorable comments received to a question raised in the proposal asking whether or not OSHA should develop sample abatement certification forms. By supplying employers with samples of most of the documents this regulation requires, OSHA is reducing burdens on employers, facilitating compliance, and, in turn, enhancing employee protection.

## III. References

Government Accounting Office (1991). OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards. GAO/HRD–91–35, Report to Congressional Requesters, May 1991.

OSHA Instruction CPL 2.45B, June 15, 1989, and associated revisions (CH–1 through CH–5 dated March 3, 1995), Field Operations Manual (FOM).

OSHA Instruction CPL 2.103, September 26, 1994, Field Inspection Reference Manual (FIRM).

## IV. Pertinent Legal Authority

This final regulation is authorized by Sections 8(c)(1), 8(g)(2), and 9(b) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 657 and 658. Under Section 8(c)(1) ''[e]ach employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health [and Human Services] * * *, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health [and Human Services] * * *, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses.'' Additionally, pursuant to Section 8(c)(1), the Secretary has authority to issue regulations requiring employers to keep their employees informed of the employers' responsibilities under the Act. Section 8(g)(2) empowers the Secretary of Labor to ''prescribe such rules and regulations as he may deem necessary to carry out [his] responsibilities under this Act.'' Section 9(b) authorizes the Secretary to promulgate regulations associated with the posting of citations.

The Agency's responsibilities under the Act are defined largely by the enumerated purposes, including: Providing for appropriate reporting procedures that will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem (29 U.S.C. 651(b)(12)); developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems (29 U.S.C. 651(b)(5)); and providing an effective enforcement program (29 U.S.C. 651(b)(10)).

For the reasons set forth in the preamble, the Assistant Secretary asserts that this final regulation is necessary and appropriate to conduct enforcement responsibilities under the Act, to develop information about the prevention of occupational accidents and illnesses, and to inform employees of their protections and obligations under the Act.

## V. Paperwork Reduction Act of 1995

The final rule does not contain a collection of information within the meaning of the Paperwork Reduction Act (''PRA''). The PRA applies to collections of information that establish ''identical'' recordkeeping or reporting requirements applicable to ten or more persons. The Act exempts information obtained ''during the conduct of * * * an administrative action or investigation involving an agency against specific individuals or entities * * *'' 44 U.S.C. 3518(c)(1)(B)(ii). In addition, ''information'' does not include simple certifications.

The final rule addresses OSHA's investigation procedures for assuring abatement in specific cases, i.e., those where a case file is open for the conduct of an inspection of safety and health conditions in the particular employer's workplace and where specific violations are found. The purpose of an OSHA inspection or administrative action is to protect employees by achieving abatement of the hazards identified at the workplace. This purpose is not fulfilled, and the case file is not closed, until OSHA is satisfied that abatement has in fact occurred. The hazards cited and the abatement measures undertaken are specific to the equipment, workplace configuration, and other characteristics of a given workplace and the work operations conducted at that site.

OSHA has tailored the requirements of the final rule to the seriousness of the particular cited hazard, the time that will be needed for abatement, and the response the employer has taken toward abating the hazard. If the employer abates the hazard during inspection or within 24 hours thereafter, no abatement certification is required. Further, if the cited condition involves an other-than-serious violation or where the circumstances otherwise make it appropriate, only a certification of abatement is required. Only in individual cases where more serious hazards are encountered (e.g., violative conditions resulting in a willful or repeat citation or in a serious citation which the Agency specifically identifies as requiring additional evidence) does the final rule require a cited employer to submit additional proof of abatement. The documentation submitted will vary with the individual circumstances of the case.

The determination that this final rule is not within the coverage of the Paperwork Reduction Act has been made by OSHA after careful review of the Act, its legislative history, the implementing regulations (5 CFR Part 1320), and OMB's 1989 ''Information Collection Handbook.'' This determination is consistent with OSHA's traditional practice. As discussed above, OSHA's field offices have traditionally collected from employers evidence that cited violations have been abated, and these

submissions have not been treated as subject to the Paperwork Reduction Act. OSHA notes, however, that at the time the proposed rule was published in 1994, the Agency submitted a request for clearance of the rule under the PRA to OMB and invited public comment on the request. OSHA has now determined that the final rule does not contain a collection of information within the meaning and scope of the Paperwork Reduction Act of 1995.

## VI. Summary of the Economic Analysis of the Final Abatement Verification Rule

Under Executive Order (EO) 12866, OSHA is required to conduct an economic analysis of the costs, benefits, and economic impacts of major rules promulgated by the Agency. There are several criteria for determining which rules are major, as defined by the EO. The final abatement verification rule does not meet any of the criteria for a major rule. However, to provide employers, employees, and other interested parties with information on the data and reasoning relied on by the Agency, OSHA has analyzed the economic impacts of this rule. The complete Final Economic Analysis is available in the docket for this rulemaking [Docket C–03].

The final abatement verification regulation requires employers who have been cited for violations of the Occupational Safety and Health Act to certify that they have abated the hazardous condition for which they were cited, to document the methods they have used to abate the hazard, and to notify those employees who were exposed to the hazard of the abatement actions they have taken. In most cases, employers will be able to certify abatement using a simple one-page form letter supplied by OSHA. In cases involving more serious violations, additional abatement documentation is required.

OSHA has required employers to provide evidence of abatement for cited hazardous conditions for more than 20 years, following the procedures for abatement verification set forth in the *Field Operations Manual* and its successor publication, the *Field Inspection Reference Manual.* When employers did not provide the requested information, or provided insufficient information, the Agency wrote or phoned employers to prompt them to supply the requested information. If necessary, the Agency contacted employers repeatedly or made follow-up inspections to ensure that the cited violations had been abated. These dunning efforts are unnecessarily resource-intensive for both the Agency and cited employers. Employers who have in the past ignored Federal and State-plan agency requests for verification that abatement has taken place will now be required to provide these materials or risk being cited by OSHA.

The final regulation reduces the burden on cited employers by generally requiring less abatement information than before and by providing simple forms to assist employers to comply. (Employers may also use forms of their own design that contain the same information.)

Several significant revisions made to the regulation since the proposal have reduced the costs employers will incur to comply. For example, under the final regulation:

- Violations that are immediately abated require no abatement certification.
- For other-than-serious violations, and for most serious violations, only a simple abatement letter is required to verify abatement (a sample format for this letter is provided by OSHA). Overall, OSHA estimates that 90 percent of all violations will require only a simple letter certifying that abatement has occurred.
- Employers are required to provide additional documentation (proof) of abatement only for the more serious violations. The Agency estimates that no more than sixteen percent of all serious violations will require such additional documentation.
- Abatement plans, when required, will generally be simple, one-page documents (see Appendix B).
- Progress reports, when required, have been simplified to require only a single-sentence description of the interim actions taken. OSHA is also providing a sample form for abatement plans and progress reports.
- For employers who have movable equipment that has been cited as a serious hazard by OSHA, the final regulation allows employers either to post a copy of the citation on the cited equipment or to attach a warning tag, supplied by OSHA or devised by the employer, to this equipment to alert affected employees to the presence of the hazard.

### *Summary of the Costs and Benefits of the Final Regulation*

In most cases, OSHA estimates that the final regulation will reduce the costs that cited employers currently incur to verify abatement. This conclusion is based primarily on the fact that the final regulation will only affect those employers who are actually cited for violations (i.e., about two-thirds of inspected employers currently) and on evidence that most of these cited employers already supply Federal and State-plan enforcement agencies with more information on abatement than will be required under the final regulation. Overall, the cost of compliance for employers to verify abatement is estimated to be $2 million less per year than employers are currently incurring (estimated to be $4.4 million) to comply with OSHA's administrative procedures for abatement verification.

The Agency estimates that the final abatement verification regulation will save employers an additional $4 million annually because they will no longer expend their time and money to respond to dunning efforts to ensure that abatement has taken place. The final rule's net benefits, or cost savings, for employers are estimated to be $6 million annually: a $2 million savings in reduced paperwork to complete abatement verification forms and a $4 million savings in reduced personnel time and effort to respond to OSHA phone and mail inquiries about the status of abatement. In addition, the Agency estimates that Federal and State-plan agencies will experience resource savings of $4.5 million annually under the final regulation (i.e., will save this amount in personnel costs formerly expended in dunning activity and follow-up inspections). Other benefits of the final regulation include enhanced worker protection because hazards will be abated more quickly, and greater employee awareness of, and participation in, the employer's abatement activities.

For a complete discussion of the methodology used to develop the costs of compliance, cost savings, and net benefits of the final abatement verification regulation, see the Final Economic Analysis in the docket for this rulemaking.

## VII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, OSHA has performed a screening analysis to identify any significant economic impacts of the final regulation on a substantial number of small businesses. At the time of the proposal, OSHA's Preliminary Regulatory Impact Assessment specifically stated that the regulation would not have such impacts. OSHA received no comments on this conclusion or the methodology used to reach that determination. Accordingly, the Agency certifies that the final regulation will not have a significant impact on a substantial

number of small businesses, defined for the purpose of this regulation as those with fewer than 20 employees.

As discussed in Section VI of this preamble, the final regulation will reduce the costs small establishments currently incur to comply with OSHA's procedural requirements for abatement verification. The cost of the final regulation for employers in those small establishments that receive OSHA citations, including those for small governmental entities regulated under State-plan programs, is well below any measure of significant economic impact. The Agency therefore concludes that this regulation will not have a significant impact on a substantial number of small entities.

## VIII. Environmental Impact Assessment

*Finding of No Significant Impact*

This final regulation has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and the Department of Labor's NEPA procedures (29 CFR Part 11). Because the regulation exclusively addresses reporting requirements, it will not have an impact on the environment or result in the release of materials that contaminate natural resources or the environment.

## IX. Federalism

The final regulation has been reviewed in accordance with Executive Order 12612 (52 FR 41685), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with States prior to taking any actions that would restrict state policy options, and take such actions only if clear constitutional authority exists and the problem is of national scope. The Order provides for preemption of State law only if a clear Congressional intent has been expressed for the Agency to do so. Any such preemption is to be limited to the extent possible.

With respect to states that do not have OSHA-approved occupational safety and health State plans, the final regulation conforms to the preemption provisions of Section 18 of the OSH Act (29 U.S.C. 667); this section preempts State promulgation and enforcement of requirements dealing with occupational safety and health issues covered by Federal OSHA standards unless the state has an OSHA-approved Sate plan. (*See Gade* v. *National Solid Wastes Management Association,* 112 S.Ct. 2374 (1992).) Since states without State plans are prohibited already from issuing citations for violations of requirements covered by Federal OSHA standards, this final regulation does not expand this limitation.

The Agency certifies that this final regulation has been assessed in accordance with the principles, criteria, and requirements set forth under Sections 2 through 5 of Executive Order 12612. Section 18(c)(2) of the OSH Act (29 U.S.C. 667(c)((2)) provides that an OSHA-approved State plan must provide for the development and enforcement of safety and health standards that are, or will be, at least as effective as the Federal program. In implementing this requirement, 29 CFR 1902.3(d)(1) requires a State plan to establish a program for the enforcement of state standards that is, or will be, at least as effective as the standard provided under the OSH Act, and provide assurances that the State plan enforcement program will continue to be at least as effective as the Federal program. Furthermore, 29 CFR 1902.4(a) requires state plans to establish the same procedures and rules that are established by Federal OSHA, or alternative procedures and rules as effective as the Federal procedures and rules. In particular, a State plan must provide that employees be informed of their protections and obligations under the Act. (See 29 CFR 1902.4(c)(2)(iv).) The plan also must provide for prompt notice to employers and employees when an alleged violation of standards has occurred, including the proposed abatement requirements, by such means as the issuance and posting of citations. (See 29 CFR 1902.4(c)(2)(x).) Since this final regulation will improve Federal OSHA's enforcement of the OSH Act and, in particular, will foster the abatement of violations and communication to employees about their protections under the Act, State plans will be required to adopt an identical regulation, or an equivalent regulation that is at least as effective as the Federal regulation, within six months of Federal promulgation. Thus, the final regulation complies with Executive Order 12612 with respect to State Plan States because (1) the final regulation deals with a problem of national scope, and (2) the OSH Act requires that State Plan States adopt the OSHA regulation or an equally-effective regulation. Since a number of State Plan States already have abatement-verification and employee-notification procedures similar to the requirements specified under this regulation, they will only need to reissue the requirement as an enforceable regulation.

State comments were invited on prepublication drafts of both the proposed and final regulation, and these comments were fully considered before a final regulation was promulgated. Two State Plan States, Michigan and Minnesota, commented (Exs. 4–86 and 4–87, respectively) on the draft proposed regulation. Michigan and Minnesota again submitted comments on the draft final regulation, along with Maryland (Exs. 4–89, 4–90, and 4–91, respectively). These states expressed concern about the tagging and posting requirements, the paperwork burden these requirements impose on employers, and the use of additional state resources to implement the regulation. Minnesota also wanted a number of items clarified in the compliance guidance that OSHA will issue with this regulation (e.g., the application of the tagging and reporting requirements in contested cases). The final regulation has addressed the States' concerns regarding the tagging and posting requirements, and lessened the paperwork burden for both employers and the enforcement agencies (i.e., OSHA and State Plan States). This reduced paperwork burden, the compliance guidance that will accompany this final regulation, and the economic benefits that will accrue to enforcement agencies under the final regulation (see ''Economic Analysis'' above) will reduce the burden to, and enhance the economic resources of, the Federal and State agencies responsible for enforcing the final regulation.

OSHA also sought information from the State Plan States that require abatement documents on their experience with employers providing false information on the documents. On average, these states reported a false-information rate of five per cent or less.

## X. State Plans

Currently, 25 states and other jurisdictions have OSHA-approved occupational safety and health plans. These 25 jurisdictions are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming; Connecticut and New York have State Plan jurisdiction for state and local government employees only.

The 25 jurisdictions with their own OSHA-approved occupational safety and health plans are required to adopt a regulation on abatement verification

and employee notification that is at least as effective as this Federal regulation within six months of the publication date of the final regulation.

Current State abatement-verification and employee-notification procedures are described in State field operations manuals and/or directives. Although these state procedures may differ from the federal procedures, the State Plan States, like Federal OSHA, generally lack regulations or statutory provisions specifically addressing this issue, and thus do not by regulation compel employers to submit abatement-certification letters or other documents to them; the exceptions are Wyoming and California, which have a regulation and legislation, respectively, that require employers to submit abatement-certification documents be submitted to the state occupational safety and health agencies.

Existing State abatement-certification procedures are identical to the current Federal practices except as described below:

(1) The following nine States have abatement-certification forms: Alaska, California, Kentucky, Michigan, North Carolina, Oregon, South Carolina, Washington, and Wyoming. On these forms, employers describe the specific actions taken to correct each alleged violation. Alaska, Oregon, Washington, Michigan, and Kentucky also ask for documentary evidence of abatement. Alaska requires employers to certify, under penalty of perjury, that the violations were abated by the dates specified.

(2) For serious violations, California has adopted legislation that requires an abatement statement to be signed under penalty of perjury.

(3) Minnesota requests a progress report for all serious, and most other, violations of the State's general industry and construction standards.

(4) Washington schedules follow-up inspections every six months to assess progress made on lengthy or multi-step abatement plans.

(5) Some states (e.g., South Carolina and California) send a reminder letter to employers just before the abatement-certification form is due. Washington reminds employers of this event by letter or telephone. Kentucky and California also send follow-up letters if the form is overdue.

(6) Maryland tracks informal conference settlements to determine if the abatement documentation is adequate.

(7) Wyoming has an enforcement regulation requiring submission of written documents stating the date abatement was accomplished. Failure to do so can result in a civil penalty. Wyoming also can take legal action to enforce submission of abatement letters.

(8) New York, which covers only state and local government employees, conducts follow-up inspections to validate abatement of every violation; employers are not asked to send abatement-certification information to the state agency.

A number of states have ''red-tag'' authority, which allows them to issue a restraining order in an immediate-danger situation involving hazardous equipment (or other condition or practice). This red tag authority is different from the orange warning tag required by the abatement verification and employee notification regulation; use of orange warning tags does not prohibit operation of cited equipment, while use of red tags does prohibit such operation.

## List of Subjects in 29 CFR Part 1903

Abatement; Abatement certification; Abatement plan; Progress reports; Abatement verification; Employee notification; Movable equipment; Occupational safety and health; Posting; Tags.

## Authority

This document was prepared under the direction of Gregory R. Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210. The final regulation is issued pursuant to Sections 8(c)(1), 8(g), and 9(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658).

Signed in Washington, D.C., this 19th day of March 1997.

**Gregory R. Watchman,**

*Acting Assistant Secretary of Labor.*

Part 1903 of CFR 29 is hereby amended as set forth below.

## Regulatory Text

## PART 1903—[AMENDED]

1. The authority citation for Part 1903 of Title 29 of the Code of Federal Regulations is revised to read as follows:

**Authority:** Sections 8 and 9 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658); 5 U.S.C. 553; Secretary of Labor's Order No. 1–90 (55 FR 9033) or 6–96 (62 FR 111), as applicable.

2. 29 CFR Part 1903 is amended by redesignating §§ 1903.19, 1903.20, and 1903.21 as §§ 1903.20, 1903.21, and 1903.22, respectively, and by adding a new § 1903.19, to read as follows:

### § 1903.19 Abatement verification.

*Purpose.* OSHA's inspections are intended to result in the abatement of violations of the Occupational Safety and Health Act of 1970 (the OSH Act). This section sets forth the procedures OSHA will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.

(a) *Scope and application.* This section applies to employers who receive a citation for a violation of the Occupational Safety and Health Act.

(b) *Definitions.* (1) *Abatement* means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

(2) *Abatement date* means:

(i) For an uncontested citation item, the later of:

(A) The date in the citation for abatement of the violation;

(B) The date approved by OSHA or established in litigation as a result of a petition for modification of the abatement date (PMA); or

(C) The date established in a citation by an informal settlement agreement.

(ii) For a contested citation item for which the Occupational Safety and Health Review Commission (OSHRC) has issued a final order affirming the violation, the later of:

(A) The date identified in the final order for abatement; or

(B) The date computed by adding the period allowed in the citation for abatement to the final order date;

(C) The date established by a formal settlement agreement.

(3) *Affected employees* means those employees who are exposed to the hazard(s) identified as violation(s) in a citation.

(4) *Final order date* means:

(i) For an uncontested citation item, the fifteenth working day after the employer's receipt of the citation;

(ii) For a contested citation item:

(A) The thirtieth day after the date on which a decision or order of a commission administrative law judge has been docketed with the commission, unless a member of the commission has directed review; or

(B) Where review has been directed, the thirtieth day after the date on which the Commission issues its decision or order disposing of all or pertinent part of a case; or

(C) The date on which a federal appeals court issues a decision affirming the violation in a case in which a final order of OSHRC has been stayed.

(5) *Movable equipment* means a hand-held or non-hand-held machine or device, powered or unpowered, that is

used to do work and is moved within or between worksites.

(c) *Abatement certification.* (1) Within 10 calendar days after the abatement date, the employer must certify to OSHA (the Agency) that each cited violation has been abated, except as provided in paragraph (c)(2) of this section.

(2) The employer is not required to certify abatement if the OSHA Compliance Officer, during the on-site portion of the inspection:

(i) Observes, within 24 hours after a violation is identified, that abatement has occurred; and

(ii) Notes in the citation that abatement has occurred.

(3) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by paragraph (h) of this section, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

**Note to paragraph (c):** Appendix A contains a sample Abatement Certification Letter.

(d) *Abatement documentation.* (1) The employer must submit to the Agency, along with the information on abatement certification required by paragraph (c)(3) of this section, documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the Agency indicates in the citation that such abatement documentation is required.

(2) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

(e) *Abatement plans.* (1) The Agency may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.

(2) The employer must submit an abatement plan for each cited violation within 25 calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

**Note to paragraph (e):** Appendix B contains a Sample Abatement Plan form.

(f) *Progress reports.* (1) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

(i) That periodic progress reports are required and the citation items for which they are required;

(ii) The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;

(iii) Whether additional progress reports are required; and

(iv) The date(s) on which additional progress reports must be submitted.

(2) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

**Note to paragraph (f):** Appendix B contains a Sample Progress Report Form.

(g) *Employee notification.* (1) The employer must inform affected employees and their representative(s) about abatement activities covered by this section by posting a copy of each document submitted to the Agency or a summary of the document near the place where the violation occurred.

(2) Where such posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer must:

(i) Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

(ii) Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the Agency.

(i) An employee or an employee representative must submit a request to examine and copy abatement documents within 3 working days of receiving notice that the documents have been submitted.

(ii) The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within 5 working days of receiving the request.

(4) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the Agency and that abatement documents are:

(i) Not altered, defaced, or covered by other material; and

(ii) Remain posted for three working days after submission to the Agency.

(h) *Transmitting abatement documents.* (1) The employer must include, in each submission required by this section, the following information:

(i) The employer's name and address;

(ii) The inspection number to which the submission relates;

(iii) The citation and item numbers to which the submission relates;

(iv) A statement that the information submitted is accurate; and

(v) The signature of the employer or the employer's authorized representative.

(2) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Agency receives the document is the date of submission.

(i) *Movable equipment.* (1) For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites.

**Note to paragraph (i)(1):** Attaching a copy of the citation to the equipment is deemed by OSHA to meet the tagging requirement of paragraph (i)(1) of this section as well as the posting requirement of 29 CFR 1903.16.

(2) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued.

**Note to paragraph (i)(2):** Non-Mandatory Appendix C contains a sample tag that employers may use to meet this requirement.

(3) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

(i) For hand-held equipment, immediately after the employer receives the citation; or

(ii) For non-hand-held equipment, prior to moving the equipment within or between worksites.

(4) For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by OSHA to meet the requirements of this section when the information required by paragraph (i)(2) is included on the tag.

(5) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

(6) The employer must assure that the tag or copy of the citation attached to

movable equipment remains attached until:

(i) The violation has been abated and all abatement verification documents required by this regulation have been submitted to the Agency;

(ii) The cited equipment has been permanently removed from service or is no longer within the employer's control; or

(iii) The Commission issues a final order vacating the citation.

## Appendices to § 1903.19—Abatement Verification

**Note:** Appendices A through C provide information and nonmandatory guidelines to assist employers and employees in complying with the appropriate requirements of this section.

### Appendix A to Section 1903.19—Sample Abatement–Certification Letter (Nonmandatory)

(Name), Area Director
U. S. Department of Labor—OSHA
Address of the Area Office (on the citation)

[Company's Name]
[Company's Address]

The hazard referenced in Inspection Number [insert 9-digit #] for violation identified as:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____
_____.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____
_____.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____
_____.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____
_____.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____
_____.

Citation [insert #] and item [insert #] was corrected on insert date by:

_____
_____.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____
_____.

I attest that the information contained in this document is accurate.

_____
Signature

_____
Typed or Printed Name

### Appendix B to Section 1903.19—Sample Abatement Plan or Progress Report (Nonmandatory)

(Name), Area Director
U. S. Department of Labor—OSHA
Address of Area Office (on the citation)

[Company's Name]
[Company's Address]

Check one:
Abatement Plan [ ]
Progress Report [ ]

Inspection Number _____

Page _____ of _____
Citation Number(s)* _____
Item Number(s)* _____

| Action | Proposed Completion Date (for abatement plans only) | Completion Date (for progress reports only) |
|---|---|---|
| 1. ..... | ..... | ..... |
| 2. ..... | ..... | ..... |
| 3. ..... | ..... | ..... |
| 4. ..... | ..... | ..... |
| 5. ..... | ..... | ..... |
| 6. ..... | ..... | ..... |
| 7. ..... | ..... | ..... |

Date required for final abatement: _____
I attest that the information contained in this document is accurate.

_____
Signature

_____
Typed or Printed Name

Name of primary point of contact for questions: [optional]
Telephone number: _____

*Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

BILLING CODE 4510–26–P

**Appendix C to Section 1903.19--Sample Warning Tag (Nonmandatory)**

# WARNING:

EQUIPMENT HAZARD
CITED BY OSHA

EQUIPMENT CITED:

_____
_____
_____

HAZARD CITED:

_____
_____
_____

FOR DETAILED INFORMATION
SEE OSHA CITATION POSTED AT:

_____
_____

BACKGROUND COLOR—ORANGE
MESSAGE COLOR—BLACK

[FR Doc. 97–7959 Filed 3–28–97; 8:45 am]
BILLING CODE 4510–26–C

federal register

Monday
March 31, 1997

# Part VI

# Department of Health and Human Services

## Food and Drug Administration

**21 CFR Parts 101 and 102**

**Foods and Drugs: Technical Amendments and Food Labeling: Soluble Fiber From Whole Oats and Risk of Coronary Heart Disease Health Claims; Final Rules**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 101 and 102

## Foods and Drugs; Technical Amendments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulations to correct those portions that pertain to foods. This action is being taken to improve the accuracy and clarity of the regulations.

**EFFECTIVE DATE:** March 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

**SUPPLEMENTARY INFORMATION:** FDA is amending its regulations in parts 101 and 102 (21 CFR parts 101 and 102) to correct certain portions that pertain to foods.

1. In the **Federal Register** of April 2, 1993 (58 FR 17328), FDA published corrections to the January 6, 1993, final rule entitled ''Food Labeling; Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label'' (58 FR 2079). In the April 2, 1993, document, FDA corrected the word ''Foods'' at the beginning of the fourth sentence of paragraph (j)(4) in § 101.9 to read ''Examples of foods'' (58 FR 17328 at 17331). However, in the August 18, 1993, technical corrections to § 101.9 (58 FR 44063 at 44083), the April 2, 1993, correction to § 101.9(j)(4) was inadvertently omitted. In this document, the agency is correcting the word ''Foods'' that occurs at the beginning of the fourth sentence in § 101.9(j)(4) to read ''Examples of foods''.

2. In the **Federal Register** of January 4, 1994 (59 FR 378), FDA published a final rule entitled ''Food Labeling; Requirements for Nutrient Content Claims for Dietary Supplements of Vitamins, Minerals, Herbs, and Other Similar Nutritional Substances.'' In that document, the agency amended § 101.60 by redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(5) and (c)(6). In making this change, the agency inadvertently failed to change a reference to old § 101.60(c)(4) in the first sentence of redesignated paragraph (c)(6) to reflect that old paragraph (c)(4) had been redesignated as paragraph (c)(5). In this document, the agency is correcting that oversight.

3. In the **Federal Register** of January 6, 1993 (58 FR 2665), FDA published a final rule entitled ''Food Labeling: Health Claims; Calcium and Osteoporosis.'' This rule, among other things established the requirements that must be met for a food to bear a health claim regarding the relationship between calcium and osteoporosis. One of these requirements, § 101.72(c)(2)(ii)(A), specifies that the food shall meet or exceed the requirements for a ''high'' level of calcium. However, in § 101.72(c)(2)(ii)(A) when referencing the section in which the term ''high'' is defined in § 101.54, the agency inadvertently referred to paragraph (c), which defines the term ''good source,'' instead of paragraph (b), which defines the term ''high.'' FDA is correcting this inadvertent error.

4. In the **Federal Register** of January 6, 1993 (58 FR 2302), FDA published a final rule entitled ''Food Labeling: Nutrient Content Claims, General Principles, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food.'' This final rule, among other things, revoked § 101.25 (58 FR 2302 at 2413). In the **Federal Register** of June 3, 1996 (61 FR 27771), FDA published a final rule entitled ''Revocation of Certain Regulations Affecting Food.'' This final rule, among other things, revoked §§ 105.67 and 105.69 (21 CFR 105.67 and 105.69) (61 FR 27771 at 27779). However, in issuing these two final rules, the agency inadvertently neglected to remove the cross references to these three sections in § 101.108(a) and (b). In this document, FDA is modifying § 101.108(a) and (b) to correct this inadvertent omission.

5. In the **Federal Register** of July 2, 1991 (56 FR 30452), FDA published a notice of proposed rulemaking entitled ''Food Labeling; Declaration of Ingredients, Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages.'' In that proposed rule, FDA proposed to, among other things, establish common or usual name requirements for beverages that contain less than 100 percent and more than 0 percent fruit or vegetable juice. In response to comments to the proposal, in the final rule, FDA acknowledged that the difference in phrasing that appeared in § 102.33(b) and (c) in the notice of proposed rulemaking of July 2, 1991; i.e., ''diluted, multiple-juice'' versus ''multiple-juice beverage'' was inadvertent, and that both should say ''diluted, multiple-juice beverage'' (58 FR 2897 at 2918, January 6, 1993). However, the agency inadvertently neglected to make the change in § 102.33(c). Additionally, in that proceeding, in response to a comment, in the final rule FDA included a new paragraph (d) in § 102.33 that contained the phrasing ''multiple-juice beverage'' instead of the preferred phrasing ''diluted, multiple-juice beverage.'' FDA is correcting these inadvertent errors.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

### List of Subjects

*21 CFR Part 101*

Food labeling, Nutrition, Reporting and recordkeeping requirements.

*21 CFR Part 102*

Beverages, Food grades and standards, Food labeling, Frozen foods, Oils and Fats, Onions, Potatoes, Seafood.

## PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 is revised to read as follows:

**Authority:** Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

### § 101.9 [Amended]

2. Section 101.9 *Nutrition labeling of food* is amended in paragraph (j)(4) by removing the first word in the fourth sentence, ''Foods'', and adding in its place ''Examples of foods''.

### § 101.60 [Amended]

3. Section 101.60 *Nutrient content claims for the calorie content of foods* is amended in paragraph (c)(6) by removing the phrase ''in paragraph (c)(4)'' and adding in its place ''in paragraph (c)(5)''.

### § 101.72 [Amended]

4. Section 101.72 *Health claims: calcium and osteoporosis* is amended in paragraph (c)(2)(ii)(A) by removing the citation ''§ 101.54(c)'' and adding in its place ''§ 101.54(b)''.

### § 101.108 [Amended]

5. Section 101.108 *Temporary exemptions for purposes of conducting authorized food labeling experiments* is amended in paragraph (a) by removing the phrase ''§§ 101.9 and 101.25 and

with §§ 105.66, 105.67, and 105.69'' and adding in its place ''§§ 101.9 and 105.66'' and in paragraph (b) by removing the phrase ''§§ 101.9 and 101.25 and §§ 105.66, 105.67, and 105.69'' and adding in its place ''§§ 101.9 and 105.66''.

## PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

6. The authority citation for 21 CFR part 102 continues to read as follows:

**Authority:** Secs. 201, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371).

### § 102.33 [Amended]

7. Section 102.33 *Beverages that contain fruit or vegetable juice* is amended in paragraphs (c) and (d) by adding the word ''diluted,'' before the phrase ''multiple-juice beverage''.

Dated: March 24, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97–7973 Filed 3–28–97; 8:45 am]

BILLING CODE 4160–01–F

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## 21 CFR Part 101

**[Docket No. 95P–0197]**

**RIN 0910–AA19**

## Food Labeling: Health Claims; Soluble Fiber From Whole Oats and Risk of Coronary Heart Disease

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulation that authorizes health claims about the relationship between soluble fiber from whole oats and coronary heart disease (CHD) to clarify and correct its provisions. This action is being taken in response to inquiries that FDA has received since it issued this regulation.

**EFFECTIVE DATE:** March 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204,202–205–5483.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of January 23, 1997 (62 FR 3584), FDA published a final rule announcing its decision to authorize the use of health claims on the relationship between soluble fiber from whole oats (i.e., oat bran, rolled oats, and whole oat flour) and the risk of CHD (§ 101.81 (21 CFR 101.81)). Since then, questions have been raised regarding the meaning of the regulation. Therefore, FDA is amending § 101.81 to correct and clarify the regulation.

### II. Nature of the Claim (§ 101.81(c)(2)(i))

Section 101.81(c)(2)(i)(C) states that ''in specifying the substance, the claim uses the term 'soluble fiber' qualified by either the use of the name of the eligible source of whole oat soluble fiber (provided in paragraph (c)(2)(ii) of this section) or the name of the food product.''

The agency is amending § 101.81(c)(2)(i)(C) to clarify that the claim must state the name of the source of eligible soluble fiber, and that it may state the name of the food product that contains the source of the soluble fiber. In the preamble to the whole oats final rule (62 FR 3584 at 3595), the agency gave examples of statements that complied with § 101.81(c)(2)(i)(C). Those examples were: ''Soluble fiber from whole oats * * *'' and ''Soluble fiber from oatmeal * * *.'' The agency stated that:

> In each case, the inclusion of information about the source or the product qualifies the term soluble fiber so that the consumer is not misled to believe that all soluble fiber may reduce the risk of CHD. The manufacturer may also clarify the information for those product names that do not indicate the name of the soluble fiber source, for instance: ''Soluble fiber from the oat bran in this product * * *.''
>
> 62 FR 3584 at 3595

As the discussion of this provision in the final tried to make clear, it was the agency's intention that the claim use the name of the whole oat food, i.e., oat bran, rolled oats, or whole oat flour, that is the source of soluble fiber, so that the consumer would not be misled to believe that all soluble fibers that may be present in the food may reduce the risk of CHD. However, the agency has come to recognize that a claim such as ''Soluble fiber from Today's Cereal as part of a diet low in saturated fat and cholesterol may reduce the risk of heart disease,'' which does not identify the source of the soluble fiber that provides the basis for the claim, satisfies § 101.81(c)(2)(i)(C) in that it uses the term ''soluble fiber'' qualified by the name of the product. Thus, the regulation does not set out the rule the agency intended to embody in the regulation.

Consequently, FDA finds it necessary to amend § 101.81(c)(2)(i)(C) to make clear that the food source of the beta (β)-glucan soluble fiber in the product that bears the claim must be identified in the health claim, and that use of the product name is optional. Therefore, in this document, the agency is correcting § 101.81(c)(2)(i)(C) to state:

> In specifying the substance, the claim uses the term 'soluble fiber' qualified by the name of the eligible source of soluble fiber (provided in paragraph (c)(2)(ii) of this section). Additionally, the claim may use the name of the food product that contains the eligible source of soluble fiber.

### III. Nature of the Food Eligible to Bear the Claim (§ 101.81(c)(2)(iii))

Section 101.81(c)(2)(iii)(A) states that, ''the food shall contain at least 0.75 gram (g) per reference amount customarily consumed of whole oat soluble fiber from the eligible sources listed in paragraph (c)(2)(ii) of this section.'' Section 101.81(c)(2)(ii) lists three whole oat foods that are eligible sources of β-glucan soluble fiber: Oat bran (§ 101.81(c)(2)(ii)(A)(*1*)), rolled oats or oatmeal (§ 101.81(c)(2)(ii)(A)(*2*)), and whole oat flour (§ 101.81(c)(2)(ii)(A)(*3*)).

Questions have been raised regarding whether an extract of whole oat β-glucan soluble fiber, such as an extract of β-glucan from oat bran, could be used to fortify a product and thus qualify for the health claim.

FDA intended to make clear in § 101.81 that an extract of an eligible oat food could not justify the use of the authorized health claim. In the preamble to the whole oat final rule, the agency stated that the β-glucan soluble fiber in whole oat products is the primary, but not the only, component in whole oats that affects serum lipids (62 FR 3584 at 3585). The agency also stated that:

> Other food sources of β-glucan soluble fiber (such as oat gum and non-oat sources) have not been carefully reviewed by the agency, nor has the totality of the evidence on these other sources of the fiber been submitted to the agency for review. Thus, the basis for including a wider range of food sources of β-glucan beyond whole oats in the regulation authorizing health claims is not presented by the administrative record, and consideration of these other sources is beyond the scope of this rulemaking.
>
> 62 FR 3584 at 3587

It was the agency's intention that the provisions in § 101.81(c)(2)(iii)(A) define the nature of the whole oat foods that are eligible sources of β-glucan soluble fiber, and not to suggest that β-glucan soluble fiber by itself could be used to fortify a product for purposes of making a claim.

The inquiries that FDA has received, however, stated that FDA needs to make its meaning even clearer in § 101.81(c)(2)(iii)(A). Therefore, in this document, the agency is amending this provision to state: ''The food product shall include one or more of the whole oat foods from § 101.81(c)(2)(ii), and the

whole oat foods shall contain at least 0.75 gram (g) of soluble fiber per reference amount customarily consumed of the food product.''

## IV. Model Health Claim (§ 101.81(e))

In light of the revision to § 101.81(c)(2)(i)(C) in section II of this document, the agency is making minor changes to the model claims in § 101.81(e)(1) and (e)(2). In current paragraphs (e)(1) and (e)(2) in the model claims, the name of the soluble fiber source from § 101.81(c)(2)(ii) or the name of the food product may be provided. In this document, the agency is revising the model claims to clarify that the name of the soluble fiber source from § 101.81(c)(2)(ii) must be presented and, if desired, the name of the food product may also be provided. For example, FDA is amending § 101.81(e)(1) to state, ''Soluble fiber from foods such as [name of soluble fiber source from section (c)(2)(ii) and, if desired, the name of food product], as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease.'' Therefore, a claim for an oat bran-containing food may state, ''Soluble fiber from foods such as oat bran in Brand Name Cereal, as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease.''

## List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

## PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

**Authority:** Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.81 is amended by revising paragraphs (c)(2)(i)(C), (c)(2)(iii)(A), (e)(1), and (e)(2) to read as follows:

### § 101.81 Health claims: Soluble fiber from whole oats and risk of coronary heart disease (CHD).

* * * * *

(c) * * *

(2) * * *

(i) * * *

(C) In specifying the substance, the claim uses the term ''soluble fiber'' qualified by the name of the eligible source of soluble fiber (provided in paragraph (c)(2)(ii) of this section). Additionally, the claim may use the name of the food product that contains the eligible source of soluble fiber;

* * * * *

(iii) * * *

(A) The food product shall include one or more of the whole oat foods from paragraph (c)(2)(ii) of this section, and the whole oat foods shall contain at least 0.75 gram (g) of soluble fiber per reference amount customarily consumed of the food product;

* * * * *

(e) * * *

(1) Soluble fiber from foods such as [name of soluble fiber source from paragraph (c)(2)(ii) of this section and, if desired, the name of food product], as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease.

(2) Diets low in saturated fat and cholesterol that include soluble fiber from [name of soluble fiber source from paragraph (c)(2)(ii) of this section and, if desired, the name of food product] may reduce the risk of heart disease.

Dated: March 25, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97–7972 Filed 3–28–97; 8:45 am]

BILLING CODE 4160–01–F

federal register

Monday
March 31, 1997

## Part VII

# Department of Housing and Urban Development

**24 CFR Parts 882 and 982**

**Housing Opportunity Program Extension Act of 1996 Implementation Provisions and Section 8 Certificate, Voucher, and Moderate Rehabilitation Admission and Occupancy Policies Revisions; Proposed Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 882 and 982**

**[Docket No. FR–4159–P–01]**

**RIN 2577–AB72**

# Implementing Provisions of the Housing Opportunity Program Extension Act of 1996; and Revising Section 8 Certificate, Voucher, and Moderate Rehabilitation Admission and Occupancy Policies

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the admission and occupancy requirements for the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs as follows: Make certain applicants ineligible for admission if evicted from housing assisted under the United States Housing Act of 1937; Terminate assistance to tenant-based certificate and voucher participants evicted for serious lease violations; Screen out illegal drug users and alcohol abusers; and Terminate assistance to illegal drug users and alcohol abusers.

**DATES:** Comment due date: May 30, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Madeline Hastings, Associate Deputy Assistant Secretary for the Office of Public and Assisted Housing Operations, Room 4228, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone number (202) 708–1842. (This telephone number is not toll-free.) For hearing- and speech-impaired persons, this number may be accessed via text telephone (TTY) by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Statutory Change and Related Change to Bar Admission of Certain Evicted Tenants

The statutory foundation for the Section 8 program is the United States Housing Act of 1937 (42 U.S.C. 1437a et seq.) (the Act). On March 28, 1996, the Act was amended by the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120; 110 Stat. 834) (the Extension Act). It makes an individual who has been evicted from housing assisted under the United States Housing Act of 1937 (public housing, Indian housing, Section 23, or any Section 8 program) for drug-related criminal activity ineligible for admission to Section 8 housing for a 3-year period beginning from the date of the eviction. The Public Housing Agency (HA) has the discretion, however, to determine that the evicted individual's family is eligible for admission if the HA determines that the evicted individual has successfully completed a rehabilitation program approved by the HA or that the circumstances leading to the eviction no longer exist (e.g., the individual involved in drugs is no longer in the household because of incarceration). In this proposed rule, HUD would interpret the 3-year period to be at least 3 years, so that an HA can determine the period of time it believes reasonable for particular types of drug-related criminal activity, as long as that period is at least 3 years long.

The Extension Act also requires HAs to establish standards for prohibiting occupancy in any Section 8 unit by any person who the HA determines is illegally using a controlled substance, or whose pattern of illegal use of a controlled substance or pattern of alcohol abuse would interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents of the project. In this connection, the Extension Act authorizes the HA administering the program to determine whether an applicant has been rehabilitated from drug or alcohol abuse.

In this proposed rule, HUD also proposes two related changes for tenants evicted from assisted housing: (1) Tenants evicted from housing assisted under the United States Housing Act of 1937 for serious lease violations would be ineligible for admission to units assisted under the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs for an appropriate period of time; and (2) Section 8 tenant-based certificate and voucher participants evicted for serious lease violations would be ineligible for continued assistance by the HA. For example, families evicted for a serious lease violation (such as committing crimes against persons or property or other acts that affect the health, safety, or right to peaceful enjoyment of the premises by other residents) would be barred from admission to Section 8 housing for a specified period and, if applicable, be terminated from the Rental Certificate or Voucher Program. HUD is also proposing a similar requirement for the public housing program barring the admission of residents evicted from housing assisted under the United States Housing Act of 1937 for serious lease violations. These proposals would facilitate efforts by HUD and HAs to eliminate crime and to impose tougher expectations on Federally assisted tenants, holding them responsible for their actions.

In order to determine the eligibility of an applicant under this proposed rule, an HA needs to know whether the applicant was evicted from housing assisted under the U.S. Housing Act of 1937 and whether the eviction involved drug-related criminal activity. HUD is specifically requesting public comment on ways HAs can share this information with each other, and the best means to obtain information on evictions from privately owned assisted projects such as Section 8 new construction projects.

## II. Regulatory Reinvention

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal departments and agencies on the subject of Regulatory Reinvention, HUD is reviewing all its regulations to determine whether they can be eliminated, streamlined, or consolidated with other regulations. As part of this review, this proposed rule, at the final rule stage, may undergo revisions in accordance with the President's regulatory reform initiatives. In addition to comments on the substance of these regulations, HUD welcomes comments on how this proposed rule may be made more understandable and less burdensome.

## III. Findings and Certifications

### *A. Paperwork Reduction Act*

The proposed information collection requirements contained at §§ 882.514(g) and 982.553(b) of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) *Title of the information collection proposal:* Implementing Provisions of the Housing Opportunity Program Extension Act of 1996; and Revising Section 8 Certificate, Voucher, and Moderate Rehabilitation Admission and Occupancy Policies.

(2) *Summary of the collection of information:* HAs have local admission and subsidy termination policies that detail when applicants are eligible, how applicants are selected, waiting list management, denial of assistance to applicants, and termination of assistance to participants. This rulemaking requires HAs to (1) deny admission because of drug-related criminal activity and certain evictions from housing assisted under the 1937 Housing Act, (2) terminate assistance when a family is evicted from a tenant-based subsidy unit for serious lease violations, and (3) establish admission and termination standards concerning drug use and alcohol abuse.

(3) *Description of the need for the information and its proposed use:* The information collected is needed to assure that subsidy is only provided to eligible families, and to monitor compliance with HUD Section 8 program admission and termination requirements authorized by statute.

(4) *Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:* Respondents will be the 2500 HAs administering the Section 8 program. The proposed frequency of responses is once annually.

(5) *Estimate of the total reporting and recordkeeping burden that will result from the collection of information:* HA admission and termination policies are contained in the HA administrative plan. When an HA first begins to administer the Section 8 program, the HA develops an administrative plan in conjunction with its first funding application. Thereafter, the HA updates the administrative plan periodically on an as-needed basis (estimated not to exceed an average of once a year). HUD approval of the administrative plan is not required and it is maintained locally. Additional burden to HAs required by this rule is minimal since the collections are a part of the day-to-day operation of the HAs, the rule simply requires HAs to consider additional factors when making admission and termination determinations, HAs already update the administrative plan periodically to reflect new statutory requirements and changes in local policies, and the collection requirements for the administrative plan are already included in the burden hours attributed to preparing a funding application and periodically updating the administrative plan. The reporting and recordkeeping burden for the application form HUD–52515 (which includes the administrative plan) were previously approved by the Office of Management and Budget (OMB), and assigned OMB control number 2577–0169, as follows:

| | Number of respondents | Freq. of response | Est. avg. response time (Hours) | Est. annual burden (Hrs.) |
|---|---|---|---|---|
| Reporting Burden | 2,500 | 1 | 2.0 | 5000 |
| Total Reporting Burden | | | | 5000 |

*B. Regulatory Review*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*C. Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. While this rule would amend occupancy and tenant selection policies in the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs, it would not have a significant economic impact on small entities.

*D. Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*E. 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 proposed rule would 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, this proposed rule is not subject to review under the Order. The proposed rule would merely implement statutory and related requirements with respect to admission and occupancy of housing funded by the Federal Government.

*F. Impact on the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this proposed rule would not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. This proposed rule would increase the safety and security of families living in assisted housing. Since the impact of this proposed rule on the family would be beneficial, no further review is considered necessary.

*G. Unfunded Mandates Reform Act*

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

approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this proposed rule are 14.855 (Vouchers), 14.856 (Moderate Rehabilitation) and 14.857 (Certificates).

**List of Subjects**

*24 CFR Part 882*

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 982*

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, parts 882 and 982 of title 24 of the Code of Federal Regulations, are proposed to be amended as follows:

## PART 882—SECTION 8 CERTIFICATE AND MODERATE REHABILITATION PROGRAMS

1. The authority citation for part 882 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

2. In § 882.413, paragraph (b) is amended by adding a new sentence after the first sentence, to read as follows:

**§ 882.413 Responsibility of the Family.**

* * * * *

(b) * * * No Family member may abuse alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. * * *

* * * * *

3. Section 882.514 is amended as follows:

a. By revising paragraph (a)(2);

b. By redesignating paragraph (a)(3) as paragraph (a)(4);

c. By adding a new paragraph (a)(3);

d. By revising paragraph (g); and

e. By adding a new paragraph (h); to read as follows:

**§ 882.514 Family participation.**

(a) * * *

(2) A Family is ineligible for admission if:

(i) The Family contains any Family member evicted from housing assisted under the 1937 Act for drug-related criminal activity during a reasonable time period specified by the PHA, which is not less than 3 years from the date of the eviction. Notwithstanding the immediately preceding sentence, the PHA may, in its discretion, determine that the Family is eligible for admission if the PHA determines that the evicted Family member who was engaged in drug-related criminal activity has successfully completeed a rehabilitation program approved by the PHA or that the circumstances leading to the eviction no longer exist (e.g., the evicted Family member involved in drugs is no longer in the household because of incarceration); or

(ii) The Family contains any Family member evicted from housing assisted under the 1937 Act for other serious violation of the lease during a reasonable time period specified by the PHA, unless the PHA determines that the circumstances leading to the eviction no longer exist.

(3) A PHA may determine to deny assistance to an applicant Family because one or more Family members have engaged in violent criminal activity or drug-related criminal activity as defined in § 882.413, illegal use of a controlled substance, or abuse of alcohol that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. See paragraph (g) of this section.

* * * * *

(g) *Considerations in certain denials and terminations.* (1) The PHA must establish standards for denying program assistance if the PHA determines that:

(i) Any Family member is illegally using a controlled substance; or

(ii) There is reasonable cause to believe that a Family member's illegal use or pattern of illegal use of a controlled substance or abuse or pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) The PHA must establish standards for determining whether to terminate program assistance if the PHA determines that:

(i) Any Family member is illegally using a controlled substance; or

(ii) A Family member's use of a controlled substance or abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) In determining whether to deny or terminate program assistance for illegal use or pattern of use of a controlled substance or for abuse or a pattern of abuse of alcohol, by a Family member, the PHA may consider whether the person:

(i) Is no longer engaging in illegal use of a controlled substance or in abuse of alcohol (as applicable); or

(ii) Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable), has otherwise been rehabilitated successfully, or is participating in a supervised drug or alcohol rehabilitation program (as applicable).

(4) The PHA may require a Family member who has engaged in the illegal use of a controlled substance, or in alcohol abuse activity that interfered with the health, safety, and peaceful enjoyment of the premises by other residents, to submit evidence of participation in, or successful completion of, a supervised drug or alcohol rehabilitation program (as applicable) as a condition to being allowed to reside in the unit.

(5) At any time, the HA may deny program assistance to an applicant or terminate program assistance to a participant Family if the PHA determines that any Family member has engaged in drug-trafficking or violent criminal activity. In determining whether to deny or terminate program assistance based on drug-related criminal activity, violent criminal activity, or alcohol abuse, the PHA may deny or terminate program assistance if the preponderance of evidence indicates that a Family member has engaged in such activity, regardless of whether the Family member has been arrested or convicted.

(h) *Inapplicability to a program administered by an IHA.* Paragraphs (a)(2)(i) and (g)(1) through (g)(5) of this section are not applicable to a program administered by an IHA.

## PART 982—TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

4. The authority citation for part 982 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

5. In § 982.201, paragraph (a) is revised to read as follows:

**§ 982.201 Eligibility.**

(a) *When applicant is eligible: general.* (1) The HA may only admit an eligible family to a program. To be eligible, the

applicant must be a ''family'', must be income-eligible, and the members of the family must be citizens or noncitizens who have eligible immigration status as determined in accordance with 24 CFR part 5.

(2) The family must not contain any family member evicted from housing assisted under the 1937 Act for drug-related criminal activity during a reasonable time period specified by the HA, which is not less than 3 years from the date of the eviction. Notwithstanding the immediately preceding sentence, the HA may, in its discretion, determine that the family is eligible for admission if the HA determines that the evicted family member who was engaged in drug-related criminal activity has successfully completed a rehabilitation program approved by the HA or that the circumstances leading to the eviction no longer exist (e.g., the individual involved in drugs is no longer in the household because the person is incarcerated).

(3) The family must not contain any family member evicted from housing assisted under the 1937 Act for other serious violation of the lease during a reasonable time period specified by the HA, unless the HA determines that the circumstances leading to the eviction no longer exist.

(4) Paragraph (a)(2) of this section is not applicable to a program administered by an IHA.

* * * * *

6. Section 982.551 is amended by redesignating paragraph (m) as paragraph (n), and by adding a new paragraph (m), to read as follows:

**§ 982.551 Obligations of participant.**

* * * * *

(m) *Alcohol abuse by family members.* The members of the family may not abuse alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

* * * * *

7. Section 982.552 is amended as follows:

a. By removing paragraph (b)(2);

b. By redesignating paragraphs (b)(3) through (b)(10) as paragraphs (b)(2) through (b)(9), respectively;

c. By redesignating paragraph (f) as paragraph (h); and

d. By adding new paragraphs (f) and (g); to read as follows:

**§ 982.552 HA denial or termination of assistance for family.**

* * * * *

(f) *Eviction from 1937 Act housing: Requirement to deny admission.* See § 982.201(a) for a statement of the circumstances in which the HA must deny program assistance for an applicant if any family member has been evicted from housing assisted under the 1937 Act.

(g) *Eviction for serious lease violation: Requirement to terminate assistance.* The HA must terminate program assistance for a participant family (i.e., all family members) if the family is evicted from housing assisted under the program for serious violation of the lease.

* * * * *

8. Section 982.553 is revised to read as follows:

**§ 982.553 Crime or alcohol abuse by family members.**

(a) *Drug-trafficking or violent criminal activity: Authority to deny admission or terminate assistance.* At any time, the HA may deny program assistance to an applicant or terminate program assistance to a participant family if the HA determines that any family member has engaged in drug-trafficking or violent criminal activity.

(b) *Illegal drug use and alcohol abuse: Requirement to establish standards for denial of admission or termination of assistance.* (1) The HA must establish standards for denying program assistance if the HA determines that:

(i) Any family member is illegally using a controlled substance; or

(ii) There is reasonable cause to believe that a family member's illegal use or pattern of illegal use of a controlled substance or abuse or pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) The HA must establish standards for determining whether to terminate program assistance if the HA determines that:

(i) Any family member is illegally using a controlled substance; or

(ii) A family member's use of a controlled substance or abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) In determining whether to deny or terminate program assistance for illegal use or pattern of use of a controlled substance or for abuse or pattern of abuse of alcohol by a family member, the HA may consider whether the person:

(i) Is no longer engaging in illegal use of a controlled substance or in abuse of alcohol (as applicable); or

(ii) Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable), has otherwise been rehabilitated successfully, or is participating in a supervised drug or alcohol rehabilitation program (as applicable).

(4) The HA may require a family member who has engaged in the illegal use of a controlled substance, or in alcohol abuse activity that interfered with the health, safety, and peaceful enjoyment of the premises by other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program (as applicable) as a condition to being allowed to reside in the unit.

(c) *Eviction for drug-related criminal activity from 1937 Act housing: Requirement to deny admission.* See § 982.201(a) for a statement of the circumstances in which the HA must deny program assistance for an applicant if any family member has been evicted from housing assisted under the 1937 Act for drug-related criminal activity.

(d) *Evidence of criminal activity or alcohol abuse.* In determining whether to deny or terminate program assistance based on drug-related criminal activity, violent criminal activity, or alcohol abuse, the HA may deny or terminate program assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

(e) *Inapplicability to a program administered by an IHA.* Paragraph (b) of this section is not applicable to a program administered by an IHA.

Dated: March 4, 1997.

**Kevin Emanuel Marchman,**

*Acting Assistant Secretary for Public and Indian Housing.*

[FR Doc. 97–7999 Filed 3–28–97; 8:45 am]

BILLING CODE 4210–33–P

federal register

Monday
March 31, 1997

## Part VIII

# The President

**Presidential Determination No. 97–20—U.S. Contribution to KEDO**

**Federal Register**
Vol. 62, No. 61
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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 97–20 of March 18, 1997**

## U.S. Contribution to KEDO: Certification Under the Heading ''Nonproliferation, Anti-Terrorism, Demining and Related Programs'' in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as Enacted in Public Law 104–208)

**Memorandum for the Secretary of State**

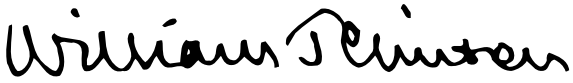
Pursuant to the requirements set forth under the heading ''Nonproliferation, Anti-Terrorism, Demining and Related Programs'' in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as enacted in Public Law 104–208), I certify that:

(1)(A) the United States is taking steps to assure that progress is made on the implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula and the implementation of the North-South dialogue, and (B) North Korea is complying with the other provisions of the Agreed Framework between North Korea and the United States and with the Confidential Minute;

(2) North Korea is cooperating fully in the canning and safe storage of all spent fuel from its graphite-moderated nuclear reactors and that such canning and safe storage is scheduled to be completed by the end of fiscal year 1997; and

(3) North Korea has not significantly diverted assistance provided by the United States for purposes for which it was not intended.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
*Washington, March 18, 1997.*

[FR Doc. 97–8268
Filed 3–28–97; 8:45 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Alaska; fisheries of Exclusive Economic Zone—
  - Federal regulatory reform; technical amendment; published 3-31-97
- Northeastern United States fisheries—
  - Northeast multispecies; published 3-3-97

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- Colorado; published 1-30-97

Clean Air Act:
- State operating permits programs—
  - California; published 2-27-97

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- Kansas; published 2-24-97

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- Cable television systems—
  - Low-price cable television system rate regulation; published 3-31-97

**HEALTH AND HUMAN SERVICES DEPARTMENT**

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- New drug applications—
  - Ronnel; technical amendment; published 3-31-97

Food for human consumption:
- Food labeling—
  - Health claims; soluble fiber from whole oats and reduced risk of coronary heart disease; published 3-31-97
  - Nutrition labeling, mandatory status; and nutrient content revision nutrition label format; published 3-31-97

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- Intraocular lenses; investigational exemptions; published 1-29-97

**INTERIOR DEPARTMENT**

**Land Management Bureau**

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- Mining claims under general mining laws; surface management; published 2-28-97

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**Surface Mining Reclamation and Enforcement Office**

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  - Hope Tribe; published 3-31-97

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- Alaska; published 3-31-97

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- Executive Office for Immigration Review; free legal services list responsibility; published 2-28-97

**SECURITIES AND EXCHANGE COMMISSION**

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- Investment advisory programs status; published 3-31-97

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**Federal Aviation Administration**

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- Airbus Industrie; published 2-21-97
- Boeing; published 2-26-97
- British Aerospace; published 2-24-97
- Empresa Brasileira de Aeronautica S.A.; published 2-26-97
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Fresh cut flowers and fresh cut greens promotion and information order; referendum procedures; comments due by 4-3-97; published 3-19-97

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

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- Cotton and cotton products; comments due by 3-31-97; published 12-30-96

**AGRICULTURE DEPARTMENT**

**Federal Crop Insurance Corporation**

Crop insurance regulations:
- Rice; comments due by 3-31-97; published 1-29-97

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:
- Atlantic coastal fisheries; comments due by 4-1-97; published 3-5-97
- Atlantic highly migratory species; comments due by 3-31-97; published 3-4-97
- Atlantic tuna; comments due by 3-31-97; published 3-12-97
- Northeastern United States fisheries—
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Marine mammals:
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  - Pacific offshore cetacean take reduction plan; comments due by 3-31-97; published 2-14-97

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**Air Force Department**

Privacy Act; implementation; comments due by 3-31-97; published 1-28-97

**DEFENSE DEPARTMENT**

DOD newspapers, magazines, and civilian enterprise publications; comments due by 4-4-97; published 2-3-97

**ENERGY DEPARTMENT**

Occupational radiation protection:
- Primary standards amendments; comments due by 3-31-97; published 2-24-97

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**ENERGY DEPARTMENT**

**Energy Efficiency and Renewable Energy Office**

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- Fluorescent lamp ballasts, revised life cycle cost and engineering analysis; public workshop; comments due by 4-1-97; published 2-7-97

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Practice and procedure:
- Hydroelectric projects; relicensing procedures; rulemaking petition; comments due by 4-4-97; published 1-30-97

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Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 3-31-97; published 2-28-97
- Missouri; comments due by 4-4-97; published 3-5-97

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  - Radionuclides; maximum contaminant levels; analytical methods; comments due by 4-4-97; published 3-5-97
  - Radionuclides; maximum contaminant levels; analytical methods; comments due by 4-4-97; published 3-5-97

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  - Characteristc metal wastes; treatment standards (Phase IV); data availability; comments due by 4-4-97; published 3-5-97

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

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