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Tuesday
August 18, 1998

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–002–2]

Change in Disease Status of Great Britain Because of Exotic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are recognizing Great Britain as free of exotic Newcastle disease (END). This action is based on information received from Great Britain's Ministry of Agriculture, Fisheries, and Food, and is in accordance with standards set by the Office International des Epizooties for recognizing a country as free of END. This action will relieve restrictions on the importation of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds from Great Britain. It will relieve the END-specific restrictions on the importation of eggs (other than hatching eggs) laid by poultry, game birds, or other birds from Great Britain. This action will also relieve the quarantine requirements for poultry hatching eggs imported from Great Britain.

EFFECTIVE DATE: September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: john.w.cougill@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various animal diseases, including exotic Newcastle disease (END), into the United States. END is a contagious, infectious, and communicable disease of birds and poultry.

On April 21, 1998, we published in the **Federal Register** (63 FR 19667–19668, Docket No. 98–002–1) a proposal to recognize Great Britain as free of exotic Newcastle disease (END). The proposed action was based on information received from Great Britain's Ministry of Agriculture, Fisheries, and Food, and standards set by the Office International des Epizooties (OIE) for recognizing a country as free of END. Recognizing Great Britain as free of END would relieve restrictions on the importation of carcasses, or parts or products of carcasses, of poultry, game girds, or other birds from Great Britain, relieve the END-specific restrictions on the importation of eggs (other than hatching eggs) laid by poultry, game birds, or other birds from Great Britain, and relieve the quarantine requirements for poultry hatching eggs imported from Great Britain.

We solicited comments concerning our proposal for 60 days ending June 22, 1998. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves certain restrictions on the importation into the United States of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds from Great Britain. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of these changes in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule will recognize Great Britain as free of END. This action is based on information received from Great Britain's Ministry of Agriculture, Fisheries, and Food and is in accordance with OIE standards for recognizing a country as free of END. This rule will relieve restrictions on the importation of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds from Great Britain. It will relieve the END-specific restrictions on the importation of eggs (other than hatching eggs) laid by poultry, game birds, or other birds from Great Britain. This rule will also relieve the quarantine requirements for poultry hatching eggs imported from Great Britain.

The United States imports few eggs, only about 0.1 percent of U.S. production. The United States is a very strong net exporter of poultry products, with imports of only 3,546 metric tons and exports of more than 2 million metric tons in 1996 (''World Trade Atlas,'' June 1997). More than 99 percent of U.S. poultry product imports originate in Canada. Prior to January 31, 1997, when APHIS removed Great Britain from the list of END-free regions, U.S. imports of poultry products from the United Kingdom, which includes Great Britain and Northern Ireland, accounted for less than 2 percent of the total U.S. imports of poultry products.[1]

U.S. producers, consumers, and importers of poultry products may be potentially affected by this rule. However, because the volume of poultry products previously imported from the United Kingdom was so small compared to the amount produced domestically, and because the total volume of overall poultry product imports is also very small, little or no impact on consumer and producer prices and on importers is expected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has

[1] Trade data for Great Britain alone was not available.

determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.6 [Amended]

2. In § 94.6, paragraph (a)(2) is amended by adding the words ''Great Britain (England, Scotland, Wales, and the Isle of Man),'' immediately after the word ''Finland,''.

Done in Washington, DC, this 10th day of August 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22182 Filed 8–17–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–34]

Amendment to Class E Airspace; Kearney, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Kearney Municipal Airport, Kearney, NE. A review of the Class E airspace area for Kearney Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, December 3, 1998.

Comments for inclusion in the Rules Docket must be received on or before September 25, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–34, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Kearney, NE. A review of the Class E airspace for Kearney Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Kearney Municipal Airport, NE, will provide additional airspace for aircraft operating under IFR and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a writtin notice of intent to submit an adverse or negaitve comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting

such writtin data, views, or arguments as they may desire. Communications shoud 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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, stampted postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–34.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transporation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a signficant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005. Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Kearney, NE [Revised]

Kearney Municipal Airport, NE
(lat. 40°843′37″ N., long. 99°00′24″ W.)
Kearney VOR
(lat. 40°43′32″ N., long. 99°00′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Kearney Municipal Airport and within 3.8 miles each side of the Kearney VOR 001° radial extending from the 6.7-mile radius to 10 miles north of the VOR and within 3.8 miles each side of the 194° radial of the Kearney VOR extending from the 6.7-mile radius to 10 miles south of the VOR and within 3.8 miles each side of the 329° radial of the Kearney VOR extending from the 6.7-mile radius to 10 miles northwest of the VOR.

* * * * *

Issued in Kansas City, MO, on July 28, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–22174 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–32]

Amendment to Class E Airspace; Beatrice, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Beatrice Municipal Airport, Beatrice, NE. A review of the Class E airspace for Beatrice Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area is enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the geographic coordinates for the Shaw Nondirectional Radio Beacon (NDB) is included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), comply with the criteria of FFA Order 7400.2D, and amend the geographic coordinates for the Shaw NDB.

DATES: Effective date: 0901 UTC, December 3, 1998.

Comments for inclusion in the Rules Docket must be received on or before September 25, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–32, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Beatrice, NE. A

review of the Class E airspace for Beatrice Municipal Airport indicates it does not meeet with the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile.

In addition, the Class E airspace area includes a minor revision to the geographic coordinates for the Shaw NDB. The amendment at Beatrice Municipal Airport, NE, will provide additional controlled airspace for aircraft operating under IFR, comply with the criteria of FAA Order 7400.2D and amend the coordinates for the Shaw NDB. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule becomes effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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 No. 98–ACE–32.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The corporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Beatrice, NE [Revised]

Beatrice Municipal Airport, NE
(lat. 40°18′05″N., long. 96°45′15″W.)
Beatrice VOR
(lat. 40°18′05″N., long. 96°45′17″W.)
Shaw NDB
(lat. 40°15′54″N., long. 96°45′26″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Beatrice Municipal Airport and 4.4 miles each side of the 325° radial of the Beatrice VOR extending from the 6.6-mile radius to 12.1 miles northwest of the airport and within 3.1 miles each side of the 185° bearing from the Shaw NDB extending from the 6.6-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on July 28, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–22173 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–27]

Amendment to Class E Airspace; Ottumwa, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Ottumwa Industrial Airport, Ottumwa, IA. A review of the Class E airspace area for Ottumwa Industrial Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace area has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition the Class E airspace areas are revised to indicate a minor revision to the Airport Reference Point (ARP) and are included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), comply with the criteria of FAA Order 7400.2D, and revise the ARP coordinates.

DATES: Effect date: 0901 UTC, December 3, 1998.

Comments for inclusion in the Rules Docket must be received on or before September 19, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–27, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informed docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Ottumwa, IA. A review of the Class E airspace for Ottumwa Industrial Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1,200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile.

In addition the Class E airspace areas are amended to indicate the revised ARP coordinates. The amendment at Ottumwa Industrial Airport, IA will provide additional airspace for aircraft operating under IFR, comply with the criteria of FAA Order 7400.2D, and revise the ARP coordinates. The areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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 No. 98–ACE–27''. The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant

regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ACE IA E2 Ottumwa, IA [Revised]

Ottumwa Industrial Airport, IA
(lat. 41°06′24″N., long 92°26′53″W.)
Ottumwa VORTAC
(lat. 41°01′45″N., long 92°14′33″W.)

Within a 4.1-mile radius of Ottumwa Industrial Airport and within 1.8 miles each side of the 309° radial of the Ottumwa VORTAC extending from the 4.1-mile radius to the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Ottumwa, IA [Revised]

Ottumwa Municipal Airport, IA
(lat. 41°06′24″N., long 92°26′53″W.)
Ottumwa VORTAC
(lat. 41°01′45″N., long 97°19′33″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Ottumwa Industrial Airport and within 1.8 miles each side of the Ottumwa VORTAC 309° radial extending from the 6.6-mile radius to 11.2 miles northwest of the airport and within 2 miles each side of the 129° radial of the Ottumwa VORTAC extending from the 6.6-mile radius to 1 mile southeast of the VORTAC.

* * * * *

Issued in Kansas City, MO, on July 24, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–22172 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–21]

Establish Class E Airspace; Davenport, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace surface area at Davenport, IA. The FAA received a request to establish a Class E airspace surface area at Davenport Municipal Airport, Davenport, IA. The commissioning of the Davenport Automated Surface Observation System (ASOS) qualified the Davenport Municipal Airport for a Class E airspace surface area. The airport meets the minimum communications and weather observations and reporting requirements for controlled airspace extending upward from the surface. A minor correction is also being made in the text header for Davenport, IA.

EFFECTIVE DATE: 0901 UTC October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On June 29, 1998, the FAA proposed to amend 14 CFR part 71 of the Federal Regulations (14 CFR part 71) by establishing Class E airspace surface area at Davenport, IA (63 FR 35166). The proposed action will provide additional controlled airspace to accommodate instrument operations at the Davenport Municipal Airport. A minor correction is also being made in the text header for Davenport, IA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) establishes Class E airspace surface area at Davenport, IA, to accommodate aircraft executing instrument approach procedures at Davenport Municipal Airport. The area will be depicted on appropriate aeronautical charts. This action also corrects the text header for Davenport, IA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ACE IA E2 Davenport, IA [New]

Davenport Municipal Airport, IA
(Lat. 41°36′38″N., long. 90°35′19″W.)

Within a 4.1-mile radius of the Davenport Municipal Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO on July 24, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–22170 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29300; Amdt. No. 1885]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 7, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * *Effective upon publication.

FDC date	State	City	Airport	FDC No.	SIAP
07/07/98	MA	Orange	Orange Muni	8/4678	GPS Rwy 32 Orig-A...
07/20/98	NY	New York	La Guardia	8/5109	LOC Rwy 31 Amdt 1...
07/23/98	AL	Dothan	Dothan	8/5207	ILS Rwy 32, Amdt 7C...
07/23/98	KY	Louisville	Louisville Intl-Standiford Field	8/5197	ILS Rwy 35R Amdt 1...
07/23/98	WY	Cheyenne	Cheyenne	8/5212	GPS Rwy 12, Amdt 1...
07/24/98	VA	Newport News	Newport News/Williamsburg Intl	8/5233	NDB Rwy 7, Amdt 3A...
07/24/98	VA	Newport News	Newport News/Williamsburg Intl	8/5235	NDBorGPS Rwy 2, Amdt 4...
07/24/98	VA	Newport News	Newport News/Williamsburg Intl	8/5236	NDB or GPS Rwy 20 Amdt 3A...
07/24/98	VA	Newport News	Newport News/Williamsburg Intl	8/5237	LOC BC Rwy 25 Amdt 13A
07/24/98	VA	Newport News	Newport/Williamsburg Intl	8/5238	NDB Rwy 25 Amdt 4...
07/24/98	VA	Newport News	Newport News/Williamsburg Intl	8/5239	IL Rwy 7 Amdt 30...
07/24/98	VA	Richmond	Richmond Intl	8/5232	ILS Rwy 2, Orig-A...
07/28/98	SC	Greer	Greenville-Spartanburg	8/5303	GPS Rwy 21 Amdt 1...
07/30/98	AR	Ash Flat	Cherokee Village	8/5379	NDB Rwy 4, Amdt 1...
07/30/98	AR	Ash Flat	Cherokee Village	8/5380	NDB Rwy 4, Orig...
07/30/98	NC	North Wilkesboro	Wilkes County	8/5320	GPS Rwy 1, Orig-A...
07/30/98	NC	North Wilkesboro	Wilkes County	8/5370	NDB Rwy 1, Amdt 2...
07/30/98	TN	Chattangooga	Lovell Field	8/5340	ILS Rwy 20 (CAT I, II) Amdt 35A...
08/03/98	MN	Maple Lake	Maple Lake Muni	8/5456	VOR–A, Amdt 2B...
08/04/98	IN	Kendallville	Kendallville Muni	8/5482	VOR/DME–A, Orig...
08/05/98	MO	St Louis	Lambert-St Louis Intl	8/5490	ILS Rwy 12R, Amdt 21A...

[FR Doc. 98–22176 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29299; Amdt. No. 1884]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Program Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or

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

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

The Rule

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

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

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on August 7, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoptoin of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective 10 September 1998*

Savannah, GA, Savannah International, MLS RWY 27, Orig
Shawnee, OK, Shawnee Muni, NDB RWY 17, Amdt 1, CANCELLED
Necedah, WI, Necedah, NDB RWY 36, Amdt 1, CANCELLED

** * * Effective 8 October 1998*

Anchorage, AK, Merrill Field, GPS–A, Orig
Monterey, CA, Monterey Peninsula, GPS RWY 10L, Orig
Monterey, CA, Monterey Peninsula, GPS RWY 10R, Orig
Monterey, CA, Monterey Peninsula, GPS RWY 28L, Orig
Monterey, CA, Monterey Peninsula, GPS RWY 28R, Orig
Keystone Heights, FL, Keystone Airpark, GPS RWY 4, Orig
Wichita, KS, Colonel James Jabara, VOR OR GPS–A, Amdt 3
Wichita, KS, Colonel James Jabara, GPS RWY 18, Orig
Wichita, KS, Colonel James Jabara, VOR/DME RNAV RWY 18, Amdt 3
Faribault, MN, Faribault Muni, VOR OR GPS–A, Amdt 5
Faribault, MN, Faribault Muni, VOR/DME RNAV OR GPS RWY 12, Amdt 5
Faribault, MN, Faribault Muni, GPS RWY 30, Orig
Minneapolis, MN, Anoka County Blaine Arpt (Janes Field), GPS RWY 35, Orig, CANCELLED
Manville, NJ, Central Jersey Regional, GPS RWY 7, Orig
Arlington, TX, Arlington Muni, VOR/DME RWY 34, Amdt 6, CANCELLED
Arlington, TX, Arlington Muni, VOR/DME RWY 34, Amdt 5, CANCELLED
Arlington, TX, Arlington Muni, VOR/DME RWY 34, Orig
Arlington, TX, Arlington Muni, GPS RWY 34, Amdt 1
Dallas, TX, Addison, VOR/DME RNAV OR GPS RWY 33, Amdt 1, CANCELLED
Dallas, TX, Addison, GPS RWY 33, Orig
Menomonie, WI, Menomonie Municipal-Score Field, GPS RWY 27, Orig

[FR Doc. 98–22175 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–6142–9]

OMB Approval Numbers Under the Paperwork Reduction Act; Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for the Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills.

EFFECTIVE DATE: This final rule is effective September 17, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5256.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to list those information requirements promulgated under the Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills which appeared in the **Federal Register** on June 16, 1998 (63 FR 32743). The affected regulations are codified at 40 Code of Federal Regulations (CFR) part 60. The EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the EPA's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of September 17, 1998. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 31, 1998.

Jack Edwardson,

Acting Director, Emission Standards Division.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries in numerical order under the indicated heading in the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.[1]
* * * * *	
Standards of Performance for New Stationary Sources [1]	
* * * * *	
60.35c	2060–0220
* * * * *	
60.757	2060–0220
60.758	2060–0220
* * * * *	

[1] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 60, subpart A, which are not independent information collection requirements.

[FR Doc. 98–22199 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 181–0081a FRL–6141–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP.) These revisions concern rules from the following districts: the Mojave Desert Air Quality Management District (MDAQMD) and the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from wood product coating operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality

standards and plan requirements for nonattainment areas.

DATES: This rule is effective on October 19, 1998 without further notice, unless EPA receives relevant adverse comments by September 17, 1998. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

South Coast Air Quality Management District, 218 East Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: MDAQMD, Rule 1114—Wood Product Coating Operations and SCAQMD, Rule 1136—Wood Product Coatings. These rules were submitted by the California Air Resource Board to EPA on March 3, 1997 and August 28, 1996, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act (CAA), as amended in 1977 (1977 Act or pre-amended Act), that included the Mojave Desert (or San Bernardino County) and the South Coast, 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Mojave Desert and South Coast nonattainment areas are classified as severe and extreme, respectively;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on March 3, 1997 and August 28, 1996, including the rules being acted on in this document. This document addresses EPA's direct-final action for MDAQMD, Rule 1114—Wood Product Coating Operations and SCAQMD, Rule 1136—Wood Product Coatings. MDAQMD adopted Rule 1114 on November 25, 1996. This submitted rule was found to be complete on August 12, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V.[3] SCAQMD adopted Rule 1136 on June 14, 1996. This submitted rule was found to be complete on February 28, 1997, pursuant to EPA's completeness criteria and by operation of law.

Both MDAQMD Rule 1114 and SCAQMD Rule 1136 are rules designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in preparing and coating wood products such as furniture, cabinets, shutters, frames, and art objects. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of MDAQMD and SCAQMD effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to both of these rules is entitled, ''Guideline Series: Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations,'' USEPA, April, 1996. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On April 30, 1996, EPA approved into the SIP a version of Rule 1114—Wood Product Coating Operations that had

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Mojave Desert and the South Coast retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

been adopted by MDAQMD on February 22, 1995. MDAQMD's submitted Rule 1114—Wood Product Coating Operations includes the following significant changes from the current SIP:

—Updated definitions including those concerning exempt compounds;
—Modified the VOC content limits and compliance dates;
—A revised VOC content limit format;
—Provided exemptions for billiard table manufacturing, production of replica furniture, touch-up, repair, and stencil coatings, and sources using very low VOC coatings; and,
—Revised record keeping requirements to allow monthly record keeping by sources using compliant coatings.

The modified VOC content limits and compliance dates in the submitted Rule 1114 do not interfere with reasonable further progress or attainment of NAAQS. In this instance, MDAQMD did not assign the emission reductions attributed to Rule 1114 to either their 15% VOC Reductions Plan, or their 1994 Attainment Plan. Thus, EPA did not make the emission reductions attributed to Rule 1114 part of the SIP's progress or attainment requirements (see 62 FR 1182, January 8, 1997.) Consequently, the emission limit changes will not affect either plan's estimate of progress or attainment. Regarding VOC emission increases, the relaxed emission limits and exemptions in the submitted rule amount to approximately 0.03% of the 1994 VOC emissions inventory for the nonattainment area. For these reasons, the changes within submitted Rule 1114 are consistent with the requirements of Section 110(l) of the CAA.

EPA has evaluated submitted Rule 1114 and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD, Rule 1114—Wood Product Coating Operations is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Although the VOC emissions increases due to Rule 1114 can be considered a de minimis amount by themselves, MDAQMD should address the cumulative effects of such emission increases in future attainment plan revisions.

On October 31, 1995, EPA approved into the SIP a version of Rule 1136—Wood Product Coatings that had been adopted by SCAQMD on September 8, 1995. SCAQMD submitted Rule 1136—Wood Product Coatings includes the following significant changes from the current SIP:

—Modified VOC content limits and compliance dates;
—A revised VOC content limit format;
—Moved and modified emissions averaging provisions;
—Revised the record keeping requirements;
—Modified reference ASTM test method for determining dry film thickness;
—Aadded a requirement to submit a progress report; and
—Added a requirement for SCAQMD staff to complete a technology audit of the rule by July 1, 2003.

The modified VOC content limits and compliance dates in the submitted Rule 1136 do not interfere with reasonable further progress or attainment of the NAAQS. Considering progress requirements, enough surplus emission reductions exist between 1996 and 2005 in the EPA approved ozone attainment plan to allow a delay in emission reductions from 1136 while still meeting the CAA's progress requirements (see 62 FR 1181, January 8, 1997.) Regarding attainment of the NAAQS in 2010, the relaxed emission limits in the submitted rule add less than 0.1% to the EPA approved 2010 VOC emissions budget. For these reasons, the changes within submitted Rule 1136 are consistent with the requirements of Section 110(l) of the CAA.

EPA has evaluated the submitted Rule 1136 and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1136—Wood Product Coatings is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Although the VOC emissions increases due to Rule 1136 can be considered a de minimis amount by themselves, SCAQMD should account for the cumulative effect of such emission increases in future attainment plan revisions.

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

EPA has promulgated a regulation concerning the release of volatile hazardous air pollutants (VOHAPs) (see 40 CFR, Part 63, Subpart JJ) from existing and new sources engaged in wood furniture manufacturing. This National Emission Standard for Hazardous Air Pollutants (NESHAP) lists emission limits for wood coating operations that are also major sources of toxic air pollutants. Should a source be subject to either SIP Rules MDAQMD—1114, or SCAQMD—1136 as well as the NESHAP (40 CFR, Part 63, Subpart JJ), and if the emission limits within either SIP Rule MDAQMD 1114, or SCAQMD 1136 differ from the NESHAP, the more stringent emissions limit will apply to the source.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective October 19, 1998 without further notice unless the Agency receives relevant adverse comments by September 17, 1998.

If the EPA received such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 19, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act

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

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Date Signed: July 28, 1998.

Nora L. McGee,

Acting Regional Administrator, Region 9.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(240)(*i*)(A)(*5*) and (c)(244)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(240) * * *

(i) * * *

(A) * * *

(*5*) Rule 1136 adopted on September 16, 1983 and amended on June 14, 1996.

* * * * *

(c) * * *

(244) * * *

(i) * * *

(C) Mojave Desert Air Quality Management District.

(*1*) Rule 1114 adopted on March 2, 1992 and amended on November 25, 1996.

* * * * *

[FR Doc. 98–21896 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6145–5]

RIN 2060–AI00

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule amendments.

SUMMARY: This action revises monitoring, recordkeeping, and reporting requirements of the ''National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries'' which was issued as a final rule August 18, 1995. This rule is commonly known as the Petroleum Refineries NESHAP.

EFFECTIVE DATE: August 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5672.

SUPPLEMENTARY INFORMATION: On August 18, 1995, the EPA promulgated the ''National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries'' (the ''Petroleum Refineries NESHAP''). The NESHAP regulates hazardous air pollutants (HAP) emitted from new and existing refineries that are major sources of HAP emissions. The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Petroleum Refineries (Standard Industrial Classification Code 2911)

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.640. If you have questions regarding the applicability of this action to a particular entity, consult

the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

On August 18, 1995 (60 FR 43243), EPA promulgated in the **Federal Register** national emission standards for hazardous air pollutants (NESHAP) for petroleum refineries. These regulations were promulgated as subpart CC of 40 CFR part 63. As stated in the preamble to the promulgated rule, EPA pledged to continue working with industry to reduce the recordkeeping and reporting burden associated with the Petroleum Refineries NESHAP while maintaining enforceability. The petroleum refining industry submitted suggestions for revisions to monitoring, recordkeeping, and reporting requirements. The EPA reviewed these suggestions and determined those to be included in a proposed rule (63 FR 13587–13589) and a direct final rule (63 FR 13533–13541) published on March 20, 1998. Adverse comments were received regarding the direct final rule which was subsequently withdrawn on May 18, 1998 (63 FR 27212). This action addresses comments on the proposed rule and promulgates revisions to the Petroleum Refineries NESHAP.

II. Summary of Comments on the Proposed Rule Amendments and Changes from the Proposed Amendments

Comments on the proposed revisions to the rule (63 FR 13587) were received from four commenters (see Docket No. A–93–48). Commenters included representatives of the petroleum refining industry, the chemical manufacturing industry and environmental groups. The majority of commenters expressed support for the proposed revisions. One commenter expressed opposition to revisions that remove existing requirements for refineries to report data and other information to EPA. The commenter contended that removal of such requirements would make it impossible for citizens to gain access to this information and assist EPA in ensuring compliance. EPA agrees; this kind of assistance from citizens is an important component of enforcing the Clean Air Act against excess pollution.

The revisions included in the proposed rule are therefore not in today's action. Specifically, the revisions not in today's action include: removal of the requirement to report actions that are consistent with a startup, shutdown, and malfunction plan; removal of the requirement to report when a continuous monitoring system experiences a routine or otherwise predictable failure and is repaired immediately; removal of the requirement to include identification of Group 2 process vents and storage vessels in the initial Notification of Compliance Status report; and removal of requirements to report raw data and calculations for external floating roof storage vessels when seal gap requirements are not met. All other revisions included in the proposed rule, for which no adverse comments were received, are included in today's action.

Today's action also includes corrections to equations in the miscellaneous process vent provisions of the rule and corrections to typographical errors in references to Subpart Y National Emission Standards for Marine Tank Vessel Loading Operations.

III. Revisions to Rule

The revisions described in this section are being made to the final rule. These changes are consistent with the proposal (63 FR 13587). The EPA received no adverse comments relevant to the revisions described in this section.

A. Startup, Shutdown and Malfunction Plans (SSMP) for Wastewater

As requirements for wastewater stream management units, the Petroleum Refineries NESHAP references the Benzene Waste Operation NESHAP, which does not contain a requirement for a startup, shutdown and malfunction plan (SSMP). The Petroleum Refineries NESHAP also references the general provisions requirement for a refinery SSMP. Revisions included in today's action clarify that a SSMP is optional for wastewater operations. The EPA did not intend to add additional requirements for wastewater beyond the Benzene NESHAP. However, owners and operators may wish to prepare a SSMP because it may reduce reporting when malfunctions occur. If there is a SSMP and it is followed in periods of startup, shutdown and malfunction, the incident is not required to be reported.

Today's action includes a revision that will allow owners and operators with wastewater stream management units that are subject to both subpart CC and subpart G to comply with only subpart G. Subpart G requires a SSMP for wastewater stream management units. Today's action does not alter the requirement for a SSMP to be prepared for wastewater stream management units complying with subpart G.

B. Overlap of Subpart FF and Subpart G for Wastewater Stream Management Units

Currently, when a wastewater stream management unit receives streams subject to 40 CFR part 63, subpart CC (Petroleum Refineries NESHAP) and 40 CFR part 63, subpart G (the HON), the equipment is to be in compliance with the provisions of § 63.133 through § 63.137 of the HON, the requirements of § 63.143 and § 63.148 of the HON for monitoring, inspections, recordkeeping and reporting and all of the requirements of 40 CFR part 61, subpart FF National Emission Standards for Benzene Waste Operations except for § 61.355 and § 61.357, which include reporting and recordkeeping requirements.

The EPA recognizes that there is significant overlap between subparts FF and G. This issue was recently reviewed in revising parts of subpart G. It was determined that it is not possible to require only compliance with subpart FF as subpart FF was developed to control benzene emissions and compliance with subpart FF would not guarantee control of other HAPs. The selected alternative is to allow owners and operators the option to comply only with the requirements of subpart G. Requirements of subpart G were developed to control all HAP emissions and are as stringent as, if not more stringent than requirements of subpart FF. By today's action, the same approach is adopted for petroleum refineries. Today's action gives owners and operators of wastewater stream management units subject to the Petroleum Refineries NESHAP and subpart G the option to comply with only the requirements of subpart G.

C. Notification Requirements for Failure to Follow SSMP

Currently, refineries are required to report an action taken that is inconsistent with the startup, shutdown and malfunction plan (SSMP) to the Administrator within 2 days of commencing the action and within 7 days of completing the action. In addition to this requirement, refineries are to revise the SSMP if it is found to not address or inadequately address a startup, shutdown or malfunction. The revised SSMP is to be completed within 45 days of the event. The EPA has determined that it is not necessary for refineries to notify the Administrator of actions that are inconsistent with the SSMP within 2 days of commencing the action and within 7 days of completing the action for the Administrator to be able to evaluate the SSMP and request

revisions if needed. Today's action deletes the requirement to notify the Administrator within 2 days of commencing an action that is inconsistent with the SSMP and within 7 days of completing that action and replaces it with a requirement to report actions taken that are inconsistent with the SSMP in the next periodic report.

D. Clarification of Requirements for Installation and Calibration of Continuous Monitoring Systems (CMS)

According to the current Petroleum Refineries NESHAP, a continuous monitoring system (CMS) is to be installed and calibrated according to the manufacturer's specifications. Industry representatives have provided and EPA agrees that it is not always possible or desirable to install or calibrate equipment in exact accordance with the manufacturer's specifications. Minor adjustments must be made for most applications. Additionally, it may not be necessary to adhere to all the specifications provided by the manufacturer to ensure correct installation or calibration. By today's action, the directions for installing and calibrating CMS will be expanded to allow for procedures to be followed other than those specified by the manufacturer.

E. Requirement to Record the Signature of Owner or Operator When Equipment Leak Repairs Are Delayed

Under the promulgated petroleum refineries NESHAP, when an equipment leak is detected and it is determined that the leak cannot be repaired within 15 days, the facility is to record that the repair was delayed, the reason for the delay and the signature of the owner or operator (or designate) whose decision it was that the repair could not be affected without a process unit shutdown. By today's action, the requirement to record the signature of the owner or operator is revised to require the name of the person making the decision to be recorded. This revision will make the requirement compatible with electronic recordkeeping systems while maintaining the ability of the requirement to establish accountability.

F. Exemption of Secondary Seal From Requirements During Primary Seal Gap Measurements

The petroleum refineries NESHAP references a provision of the HON that allows secondary seals on external floating roof storage vessels to be exempt from seal gap requirements while the seal is temporarily pulled back during primary seal gap measurements. Subpart Kb of 40 CFR part 60 does not include such a provision. Today's action extends the provision exempting secondary seals from seal gap requirements during primary seal gap measurements to storage vessels subject to the Petroleum Refineries NESHAP that are to comply with subpart Kb. The EPA has determined the provision provides a necessary clarification that was not considered in development of subpart Kb. Today's action does not alter the stringency of control requirements of subpart Kb.

G. Documentation of Compliance

The Petroleum Refineries NESHAP requires that documentation of having achieved compliance be submitted in the Notification of Compliance Status (NCS) report, due within 150 days of the compliance date. A potential source of confusion is the lack of specific instructions regarding the NCS and gasoline loading racks. Refineries with co-located gasoline loading racks that are subject to the Petroleum Refineries NESHAP (subpart CC) are generally required by subpart CC to comply with the requirements of the Gasoline Distribution MACT. The Gasoline Distribution MACT references notification requirements of the General Provisions. It is not clear when the notification is required for gasoline loading racks at petroleum refineries. By today's action, it is clarified that any notifications of compliance status required by the Gasoline Distribution MACT for gasoline loading racks co-located at refineries is to be submitted within 150 days of the Petroleum Refinery NESHAP compliance date.

H. Revision of Notification of Compliance Status (NCS) Report Requirement for New Group 1 Emission Point

In the promulgated Petroleum Refineries NESHAP, facilities are required to provide a NCS report for a new Group 1 emission point within 150 days of the change or addition of that point. By today's action, the reporting requirements are amended to allow the NCS report to be provided in the periodic report for the reporting period in which the Group 1 emission point is added. Today's action will reduce the burden of reporting through consolidating reports.

Periodic reports are due semiannually, within 60 days of the end of each 6-month reporting period. Through this amendment, it will be possible for a NCS report to be submitted more than 150 days after the addition of a Group 1 emission point. At most, if a change or addition is made at the beginning of a reporting period, the NCS may not be provided for eight months, approximately three months more than if the requirement to provide the report within 150 days was retained unchanged. Alternately, this revision may require an owner or operator to submit an NCS in less than 150 days. If an addition or change is made at the end of a reporting period, the NCS must be submitted with the next periodic report no more than 60 days after the end of the reporting period. This amendment does not change the amount of time in which a Group 1 emission point must be in compliance with the standards of the Petroleum Refineries NESHAP.

I. Semiannual Reporting of Inspection Results

For storage vessels complying with the reporting requirements of the Petroleum Refineries NESHAP, if a failure is detected during an inspection, it is required to be reported in the next periodic report. For storage vessels complying with subpart Kb or subpart Ka, if a failure is detected during an inspection, a report is to be provided to the Administrator within 30 days or 60 days, respectively. By today's action, when a failure is detected during an inspection of a storage vessel subject to the Petroleum Refineries NESHAP that is to comply with subpart Kb or subpart Ka, the failure is to be reported in the next periodic report. This revision provides consistency for reporting requirements between storage vessels that are to comply with the NESHAP and storage vessels that are to comply with subpart Kb and subpart Ka, without altering the control requirements of subparts Kb or Ka.

J. Extensions for EFR Seal Gap Measurements

As discussed previously, storage vessels subject to the Petroleum Refineries NESHAP and a new source performance standard (40 CFR part 60, subpart K, Ka or Kb) are only required to comply with one of the standards. Procedures are specified for external floating roof storage vessels that must comply with the refinery MACT to allow seal gap measurements to be delayed if it is determined that it is unsafe to perform the measurement. Provisions allow the gap measurements to be delayed for 30 days while the unsafe conditions are corrected. If the unsafe conditions cannot be corrected within that time period, the vessel is to be emptied within 45 days of the determination that the roof is unsafe. The owner or operator may use up to two extensions of 30 days each to empty

the tank. There are no such provisions in subparts Ka or Kb.

Today's action extends the provision to allow seal gap measurements to be delayed due to unsafe conditions to storage vessels subject to the Petroleum Refineries NESHAP that are to comply with subparts Ka and Kb. The EPA has determined that the extension provision provides necessary guidance for owners and operators in circumstances that were not considered in the development of subparts Ka and Kb. Today's action does not alter the stringency of control requirements of subparts Ka or Kb.

K. Extensions for Storage Vessel Repairs

In the Petroleum Refineries NESHAP, when an internal floating roof is discovered to not meet the requirements of the standard, it must be repaired or the associated storage vessel taken out of service and emptied within 45 days. If a storage vessel cannot be emptied or repaired within 45 days, the owner or operator may use up to two extensions of 30 days each. If an extension is utilized, the owner or operator must, in the next periodic report, identify the vessel, provide a description of the failure, document that alternate storage capacity is unavailable, and specify a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible. Subpart Kb does not include provisions to be followed in the event that a failure is detected during an inspection of a storage vessel control device and the storage vessel cannot be repaired or emptied within 45 days.

Today's action extends the provision to allow for delays in repairing or emptying a storage vessel found to be out of compliance to storage vessels subject to the Petroleum Refineries NESHAP that are to comply with subpart Kb. The EPA has determined that the provision provides necessary guidance for owners and operators in circumstances that were not considered in the development of subpart Kb. Today's action does not alter the stringency of control requirements of subpart Kb.

L. Definition of Gasoline

In the current Petroleum Refineries NESHAP, no definition is provided for gasoline although gasoline loading racks at affected facilities are subject to subpart CC. By today's action, a definition for gasoline is added to the definitions in subpart CC. The definition is taken from 40 CFR part 60, subpart XX Standards of Performance for Bulk Gasoline Terminals.

M. Report of Determination of Applicability for Flexible Operation Units and for Distillation Columns and Storage Vessels for Which Use Varies

The Petroleum Refineries NESHAP requires a report of the determination of the applicability of subpart CC to process units designed and operated as flexible operation units, and storage vessels and distillation units for which use varies from year to year. For existing units, this report is to be submitted no later than 18 months prior to the compliance date. With the exception of reports required for emission points included in emissions averaging, no other reports are required prior to the compliance date. By today's action, the requirement is revised to allow applicability determinations for flexible operation units and distillation columns and storage vessels for which use varies to be reported in the initial Notification of Compliance Status report. This revision provides consistency between reporting requirements and reduces burden by consolidating reports. This revision does not alter the date by which existing units must be in compliance with the Petroleum Refineries NESHAP.

N. Compliance of Agitators With Equipment Leaks Provisions

Currently, owners and operators of refineries can comply with the equipment leaks provisions of the NESHAP by complying with the equipment leaks provisions of subpart H. Some of the referenced provisions of subpart H refer to agitators in heavy liquid service. As stated on page 8–3 of the background information document for the final rule (EPA–453/R–95–015b), the provisions of the Petroleum Refineries NESHAP are not intended to apply to agitators. It is possible that, due to the references to agitators in subpart H, subpart CC could be interpreted as applying to agitators. Today's action revises the Petroleum Refineries NESHAP to specifically state that owners and operators of facilities subject to subpart CC are not required to comply with subpart H for agitators in heavy liquid service.

O. Overlap of Subparts XX and R for Gasoline Loading Racks

The current Petroleum Refineries NESHAP requires gasoline loading racks located at refineries to be in compliance with the control requirements of 40 CFR part 63, subpart R National Emission Standards for Gasoline Distribution Facilities. New gasoline loading racks are also subject to 40 CFR part 60, subpart XX, the New Source Performance Standard (NSPS) for bulk gasoline terminals. It is currently possible for a gasoline loading rack at a petroleum refinery to be subject to both subparts R and XX. Today's action revises the Petroleum Refineries NESHAP to require petroleum refineries with gasoline loading racks subject to both subparts R and XX to comply with the control requirements of subpart R. This revision does not alter the stringency of the rule as the control requirements of subpart R are more stringent than the control requirements of subpart XX.

P. Corrections to Miscellaneous Process Vent Equations

Following promulgation of the Petroleum Refineries NESHAP, two errors were discovered in two equations to be used to calculate kilograms per day of volatile organic compounds (VOC) in miscellaneous process vent streams. If used as currently presented, the equations will cause facilities to underestimate kilograms per day of VOC by a factor of 24 or 1,000. Today's action corrects these equations. These corrections do not alter the monitoring, recordkeeping, or reporting requirements or control requirements of the rule as originally intended.

Q. Revision of Notification of Compliance Status Report Requirement for Existing Group 1 Storage Vessels Brought Into Compliance After August 18, 1998

The Petroleum Refineries NESHAP allows floating roof storage vessels to be brought into compliance up to 10 years after August 18, 1998, the compliance date for other emission points. A Notification of Compliance Status (NCS) report is required to be submitted when these vessels are brought into compliance. Currently, it is not clear when the NCS report is to be submitted.

Today's revision will require a NCS report to be submitted for storage vessels brought into compliance after August 18, 1998 with the periodic report for the reporting period in which the vessel was brought into compliance. The report will include a list of Group 1 storage vessels and either the actual or anticipated date of compliance for each vessel.

This revision provides needed clarification and allows for the consolidation of reports.

IV. Reduction in Burden

The revisions included in today's action are expected to reduce the annual recordkeeping and reporting burden associated with this NESHAP by 50

technical hours per refinery and 8,250 technical hours nationwide.

V. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

VI. Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated Petroleum Refineries NESHAP rule were submitted to and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* A copy of this Information Collection Request (ICR) document (OMB Control Number 2060–0340) may be obtained from the Information Policy Branch (PY–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740. The information collection request is currently in the reinstatement process.

The information collection request has been revised to reflect the revisions to monitoring, recordkeeping and reporting requirements made by today's action. The collection of information has an estimated annual reporting and recordkeeping burden averaging 3,000 hours per respondent. This estimate includes time for reviewing instructions; developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting existing ways to comply with any previously applicable instructions and requirements; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

The burden estimate reflects an annual reduction of 8,250 technical hours, as compared to the estimate at promulgation, resulting from the revisions made by today's action.

B. Executive Order 12866 Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''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 land programs or the rights and obligations of recipients thereof; of
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 today's action decreases the burden of the Petroleum Refineries NESHAP without altering the stringency, applicability, or schedule of the NESHAP or other rules, this rule was classified ''non-significant'' under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant negative economic impact on a substantial number of small entities. This final rule will not have a significant negative impact on a substantial number of small entities because it revises monitoring, recordkeeping, and reporting requirements and reduces the associated burden for all affected facilities, including small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

At the time of promulgation, EPA determined that the Petroleum Refineries NESHAP does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This determination is not altered by today's action, the purpose of which is to reduce the burden associated with monitoring, recordkeeping, and reporting requirements. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875 entitled ''Enhancing the Intergovernmental Partnership'' on October 26, 1993. Executive Order 12875 prohibits EPA, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute and that creates a mandate upon a State, local or tribal government unless: (i) the Federal Government provides the funds necessary to pay the direct costs incurred by the State, local or tribal government in complying with the mandate; or (ii) EPA provides to the Office of Management and Budget a description of the extent of EPA's prior

consultation with representatives of affected State, local and tribal governments, the nature of those entities concerns, any written communications submitted to EPA by such units of government and EPA's position supporting the need to issue the regulation. Executive Order 12875 further requires EPA to develop an effective process to permit elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' This rule does not create a mandate upon State, local or tribal governments.

F. Applicability of Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

G. Submission to Congress

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Petroleum refineries, Reporting and recordkeeping requirements, Storage vessels.

Dated: August 11, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC—National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

2. Amend § 63.640 by revising paragraphs (k)(2)(vii), (n)(1), (n)(3), and (n)(6); by adding paragraphs (n)(8) and (n)(9); and by revising paragraph (o)(2) and adding paragraph (r) to read as follows:

§ 63.640 Applicability and designation of affected source.

* * * * *

(k) * * *

(2) * * *

(vii) Reports and notifications required by §§ 63.565 and 63.567 of subpart Y of this part. These requirements are summarized in table 5 of this subpart.

* * * * *

(n) * * *

(1) After the compliance dates specified in paragraph (h) of this section, a Group 1 or Group 2 storage vessel that is part of an existing source and is also subject to the provisions of 40 CFR part 60, subpart Kb, is required to comply only with the requirements of 40 CFR part 60, subpart Kb, except as provided in paragraph (n)(8) of this section.

* * * * *

(3) After the compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is part of a new source and is subject to the control requirements in § 60.112b of 40 CFR part 60, subpart Kb is required to comply only with 40 CFR part 60, subpart Kb except as provided in paragraph (n)(8) of this section.

* * * * *

(6) After compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is subject to the control requirements of 40 CFR part 60, subparts K or Ka is required to comply only with the provisions of 40 CFR part 60, subparts K or Ka except as provided for in paragraph (n)(9) of this section.

* * * * *

(8) Storage vessels described by paragraphs (n)(1) and (n)(3) of this section are to comply with 40 CFR part 60, subpart Kb except as provided for in paragraphs (n)(8)(i) through (n)(8)(vi) of this section.

(i) Storage vessels that are to comply with § 60.112b(a)(2) of subpart Kb are exempt from the secondary seal requirements of § 60.112b(a)(2)(i)(B) during the gap measurements for the primary seal required by § 60.113b(b) of subpart Kb.

(ii) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in § 60.113b(b) of subpart Kb or to inspect the vessel to determine compliance with § 60.113b(a) of subpart Kb because the roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either § 63.120(b)(7)(i) or § 63.120(b)(7)(ii) of subpart G.

(iii) If a failure is detected during the inspections required by § 60.113b(a)(2) or during the seal gap measurements required by § 60.113b(b)(1), and the vessel cannot be repaired within 45 days and the vessel cannot be emptied within 45 days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each. The owner or operator is not required to provide a request for the extension to the Administrator.

(iv) If an extension is utilized in accordance with paragraph (n)(8)(iii) of this section, the owner or operator shall, in the next periodic report, identify the vessel, provide the information listed in § 60.113b(a)(2) or § 60.113b(b)(4)(iii), and describe the nature and date of the repair made or provide the date the storage vessel was emptied.

(v) Owners and operators of storage vessels complying with subpart Kb of part 60 may submit the inspection reports required by §§ 60.115b(a)(3), (a)(4), and (b)(4) of subpart Kb as part of the periodic reports required by this subpart, rather than within the 30-day period specified in §§ 60.115b(a)(3), (a)(4), and (b)(4) of subpart Kb.

(vi) The reports of rim seal inspections specified in § 60.115b(b)(2) are not required if none of the measured gaps or calculated gap areas exceed the limitations specified in § 60.113b(b)(4). Documentation of the inspections shall be recorded as specified in § 60.115b(b)(3).

(9) Storage vessels described by paragraph (n)(6) of this section that are

to comply with 40 CFR part 60, subpart Ka, are to comply with only subpart Ka except as provided for in paragraphs (n)(9)(i) through (n)(9)(iv) of this section.

(i) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in § 60.113a(a)(1) of subpart Ka because the floating roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either § 63.120(b)(7)(i) or § 63.120(b)(7)(ii) of subpart G.

(ii) If a failure is detected during the seal gap measurements required by § 60.113a(a)(1) of subpart Ka, and the vessel cannot be repaired within 45 days and the vessel cannot be emptied within 45 days, the owner or operator may utilize up to 2 extensions of up to 30 additional calendar days each.

(iii) If an extension is utilized in accordance with paragraph (n)(9)(ii) of this section, the owner or operator shall, in the next periodic report, identify the vessel, describe the nature and date of the repair made or provide the date the storage vessel was emptied. The owner or operator shall also provide documentation of the decision to utilize an extension including a description of the failure, documentation that alternate storage capacity is unavailable, and a schedule of actions that will ensure that the control equipment will be repaired or the vessel emptied as soon as possible.

(iv) Owners and operators of storage vessels complying with subpart Ka of part 60 may submit the inspection reports required by § 60.113a(a)(1)(i)(E) of subpart Ka as part of the periodic reports required by this subpart, rather than within the 60-day period specified in § 60.113a(a)(1)(i)(E) of subpart Ka.

(o) * * *

(2) After the compliance dates specified in paragraph (h) of this section a Group 1 or Group 2 wastewater stream that is conveyed, stored, or treated in a wastewater stream management unit that also receives streams subject to the provisions of §§ 63.133 through 63.147 of subpart G wastewater provisions of this part shall comply as specified in paragraph (o)(2)(i) or (o)(2)(ii) of this section. Compliance with the provisions of paragraph (o)(2) of this section shall constitute compliance with the requirements of this subpart for that wastewater stream.

(i) Comply with paragraphs (o)(2)(i)(A) through (o)(2)(i)(C) of this section.

(A) The provisions in §§ 63.133 through 63.140 of subpart G for all equipment used in the storage and conveyance of the Group 1 or Group 2 wastewater stream.

(B) The provisions in both 40 CFR part 61, subpart FF and in §§ 63.138 and 63.139 of subpart G for the treatment and control of the Group 1 or Group 2 wastewater stream.

(C) The provisions in §§ 63.143 through 63.148 of subpart G for monitoring and inspections of equipment and for recordkeeping and reporting requirements. The owner or operator is not required to comply with the monitoring, recordkeeping, and reporting requirements associated with the treatment and control requirements in 40 CFR part 61, subpart FF, §§ 61.355 through 61.357.

(ii) Comply with paragraphs (o)(2)(ii)(A) and (o)(2)(ii)(B) of this section.

(A) Comply with the provisions of §§ 63.133 through 63.148 and §§ 63.151 and 63.152 of subpart G.

(B) For any Group 2 wastewater stream or organic stream whose benzene emissions are subject to control through the use of one or more treatment processes or waste management units under the provisions of 40 CFR part 61, subpart FF on or after December 31, 1992, comply with the requirements of § 63.133 through § 63.147 of subpart G for Group 1 wastewater streams.

* * * * *

(r) Overlap of subpart CC with other regulations for gasoline loading racks. After the compliance dates specified in paragraph (h) of this section, a Group 1 gasoline loading rack that is part of a source subject to subpart CC and also is subject to the provisions of 40 CFR part 60, subpart XX is required to comply only with this subpart.

3. Amend § 63.641 by adding in alphabetical order a definition for ''gasoline'' to read as follows:

§ 63.641 Definitions.

* * * * *

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater that is used as a fuel for internal combustion engines.

* * * * *

4. Amend § 63.644 by revising the last sentence of paragraph (a) to read as follows:

§ 63.644 Monitoring provisions for miscellaneous process vents.

(a) * * * All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment will monitor accurately.

* * * * *

5. Amend § 63.645 by revising the definition of ''K_2'' in paragraph (f)(4) and revising paragraph (f)(5) to read as follows:

§ 63.645 Test methods and procedures for miscellaneous process vents.

* * * * *

(f) * * *

(4) * * *

K_2 = Constant, 5.986×10^{-5} (parts per million) $^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per day), where the standard temperature (standard cubic meter) is at 20 °C.

* * * * *

(5) If Method 25A is used, the emission rate of TOC (E_{TOC}) shall be calculated using the following equation:

$$E_{TOC}=K_2C_{TOC}MQ_s$$

where:

E_{TOC}=Emission rate of TOC (minus methane and ethane) in the sample, kilograms per day.

K_2=Constant, 5.986×10^{-5} (parts per million) $^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram)(minute per day), where the standard temperature (standard cubic meter) is at 20 °C.

C_{TOC}=Concentration of TOC on a dry basis in parts per million volume as measured by Method 25A of 40 CFR part 60, appendix A, as indicated in paragraph (f)(3) of this section.

M=Molecular weight of organic compound used to express units of C_{TOC}, gram per gram-mole.

Q_s=Vent stream flow rate, dry standard cubic meters per minute, at a temperature of 20 °C.

* * * * *

6. Amend § 63.648 by revising paragraph (e) to read as follows:

§ 63.648 Equipment leak standards.

* * * * *

(e) For reciprocating pumps in heavy liquid service and agitators in heavy liquid service, owners and operators are not required to comply with the requirements in § 63.169 of subpart H of this part.

* * * * *

7. Amend § 63.654 by revising the first sentence of paragraph (a); revising paragraphs (d)(1), (f) introductory text, and (f)(1)(i)(A); adding paragraph (f)(6); and revising the first two sentences of paragraph (h)(6) to read as follows:

§ 63.654 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to the wastewater provisions in § 63.647

shall comply with the recordkeeping and reporting provisions in §§ 61.356 and 61.357 of 40 CFR part 61, subpart FF unless they are complying with the wastewater provisions specified in paragraph (o)(2)(ii) of § 63.640. * * *

* * * * *

(d) * * *

(1) Sections 60.486 and 60.487 of subpart VV of part 60 except as specified in paragraph (d)(1)(i) of this section; or §§ 63.181 and 63.182 of subpart H of this part except for §§ 63.182(b), (c)(2), and (c)(4).

(i) The signature of the owner or operator (or designate) whose decision it was that a repair could not be effected without a process shutdown is not required to be recorded. Instead, the name of the person whose decision it was that a repair could not be effected without a process shutdown shall be recorded and retained for 2 years.

(ii) [Reserved]

* * * * *

(f) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status report within 150 days after the compliance dates specified in § 63.640(h) with the exception of Notification of Compliance Status reports submitted to comply with § 63.640(l)(3) and for storage vessels subject to the compliance schedule specified in § 63.640(h)(4). Notification of Compliance Status reports required by § 63.640(l)(3) and for storage vessels subject to the compliance dates specified in § 63.640(h)(4) shall be submitted according to paragraph (f)(6) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If the required information has been submitted before the date 150 days after the compliance date specified in § 63.640(h), a separate Notification of Compliance Status report is not required within 150 days after the compliance dates specified in § 63.640(h). If an owner or operator submits the information specified in paragraphs (f)(1) through (f)(5) of this section at different times, and/or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information. Each owner or operator of a gasoline loading rack classified under Standard Industrial Classification Code 2911 located within a contiguous area and under common control with a petroleum refinery subject to the standards of this subpart shall submit the Notification of Compliance Status report required by subpart R of this part within 150 days after the compliance dates specified in § 63.640(h) of this subpart.

(1) * * *

(i) * * *

(A) Identification of each storage vessel subject to this subpart, and for each Group 1 storage vessel subject to this subpart, the information specified in paragraphs (f)(1)(i)(A)(*1*) through (f)(1)(i)(A)(*3*) of this section. This information is to be revised each time a Notification of Compliance Status report is submitted for a storage vessel subject to the compliance schedule specified in § 63.640(h)(4) or to comply with § 63.640(l)(3).

(*1*) For each Group 1 storage vessel complying with § 63.646 that is not included in an emissions average, the method of compliance (i.e., internal floating roof, external floating roof, or closed vent system and control device).

(*2*) For storage vessels subject to the compliance schedule specified in § 63.640(h)(4) that are not complying with § 63.646, the anticipated compliance date.

(*3*) For storage vessels subject to the compliance schedule specified in § 63.640(h)(4) that are complying with § 63.646 and the Group 1 storage vessels described in § 63.640(l), the actual compliance date.

* * * * *

(6) Notification of Compliance Status reports required by § 63.640(l)(3) and for storage vessels subject to the compliance dates specified in § 63.640(h)(4) shall be submitted no later than 60 days after the end of the 6-month period during which the change or addition was made that resulted in the Group 1 emission point or the existing Group 1 storage vessel was brought into compliance, and may be combined with the periodic report. Six-month periods shall be the same 6-month periods specified in paragraph (g) of this section. The Notification of Compliance Status report shall include the information specified in paragraphs (f)(1) through (f)(5) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, as part of the periodic report, or in any combination of these four. If the required information has been submitted before the date 60 days after the end of the 6-month period in which the addition of the Group 1 emission point took place, a separate Notification of Compliance Status report is not required within 60 days after the end of the 6-month period. If an owner or operator submits the information specified in paragraphs (f)(1) through (f)(5) of this section at different times, and/or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information.

* * * * *

(h) * * *

(6) The owner or operator shall submit the information specified in paragraphs (h)(6)(i) through (h)(6)(iii) of this section, as applicable. For existing sources, this information shall be submitted in the initial Notification of Compliance Status report. * * *

* * * * *

8. In table 5 in the appendix of subpart CC of this part, remove the entries for ''63.566(a)'' and ''63.566(b)'' and add two entries, in numerical order, to read as follows:

TABLE 5.—MARINE VESSEL LOADING AND UNLOADING OPERATIONS RECORDKEEPING AND REPORTING REQUIREMENTS [a]

Reference (section of subpart Y of this part)	Description	Comment
63.565(a)	Performance test/site test plan.	The information required under this paragraph is to be submitted with the notification of compliance status report required under 40 CFR part 63, subpart CC.
63.565(b)	Performance test data requirements.	
*	*	* * * * *

[9] This table does not include all the requirements delineated under the referenced Sections. See referenced Sections for specific requirements.

9. In table 6 in the appendix of subpart CC of this part, revise the entries for ''63.6(e),'' ''63.8(c)(3),'' and ''63.10(d)(5)(ii)'' to read as follows:

TABLE 6.—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC[a]

Reference	Applies to subpart CC	Comment
*	*	* * * * *
§ 63.6(e)	Yes	Does not apply to Group 2 emission points.[b] The startup, shutdown, and malfunction plan specified in § 63.6(e)(3) is not required for wastewater operations that are not subject to subpart G of this part.
		Except that actions taken during a startup, shutdown, or malfunction that are not consistent with the startup, shutdown, and malfunction plan do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
*	*	* * * * *
§ 63.8(c)(3)	Yes	Except that verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would monitor accurately.
*	*	* * * * *
§ 63.10(d)(5)(ii)	Yes	Except that actions taken during a startup, shutdown, or malfunction that are not consistent with the startup, shutdown, and malfunction plan do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
*	*	* * * * *

[a] Wherever subpart A specifies ''postmark'' dates submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by specified dates, but a postmark is not required.

[b] The plan, and any records or reports of startup, shutdown, and malfunction do not apply to Group 2 emission points.

[FR Doc. 98–22093 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY 99–1–9820a; FRL–6142–7]

Designation of Areas for Air Quality Planning Purposes—Kentucky: Redesignation of the Muhlenberg County Sulfur Dioxide Secondary Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 21, 1997, the Commonwealth of Kentucky submitted, through the Natural Resources and Environmental Protection Cabinet (the Cabinet), a request for redesignation of Muhlenberg County, Kentucky, to attainment for the secondary sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The secondary nonattainment designation for SO_2 was based on the fact that the Tennessee Valley Authority (TVA) Paradise Steam Plant was out of compliance with its allowable emission limit. The Cabinet submitted air dispersion modeling which demonstrates that the secondary (NAAQS) for SO_2 are now being maintained. The EPA is approving the request for redesignation.

DATES: This direct final rule is effective on October 19, 1998 without further notice, unless EPA receives adverse comment by September 17, 1998. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303.

Mr. John E. Hornback, Director, Division of Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is 404–562–9036.

SUPPLEMENTARY INFORMATION: In a **Federal Register** document published March 3, 1978, (see 43 FR 8962) Muhlenberg County was originally designated nonattainment for the primary and secondary SO_2 NAAQS. The nonattainment designation was due to noncompliance of the TVA Paradise Plant and the Kentucky Utilities' Green River Plant. In a June 24, 1983, **Federal Register** (see 48 FR 28988) EPA approved a redesignation request for Muhlenberg County from nonattainment to attainment for the SO_2 primary NAAQS. The redesignation request for attainment of the primary standard was approved based on the fact that the Kentucky Utilities' Green River Plant had already achieved final compliance with its modeled SO_2 emission limit of 3.5 lbs/MMBTU in 1980 and that the TVA Paradise Plant had achieved compliance with its modeled SO_2 emission limit of 5.2 lbs/MMBTU. Both of these emission limitations were determined by modeling to be adequate

to attain and protect the primary SO_2 NAAQS. Additionally, in the same June 24, 1983, **Federal Register** indicated that a modeled SO_2 emission limitation of 3.1 lbs/MMBTU was required for TVA Paradise Plant in order for the area to achieve and maintain the SO_2 secondary NAAQS. The TVA Paradise Steam Plant has and continues to comply with the more stringent SO_2 emission limitation which is the basis for the request for secondary redesignation. The Commonwealth of Kentucky has met all of the Clean Air Act Amendments of 1990 (CAA) requirements for redesignation pursuant to Section 107(d)(3)(E).

Section 107(d)(3)(E)(I) The Administrator Has Determined That the Area Has Attained the NAAQS

The Cabinet submitted air quality data showing that Muhlenberg County has attained the SO_2 secondary NAAQS since 1982. During that period there were no exceedances, and hence, no violations of the SO_2 NAAQS.

Section 107(d)(3)(E)(ii) The Administrator Has Fully Approved the Applicable Implementation Plan for the Area Under Section 110(k)

The Kentucky SIP is fully approved and meets all requirements under section 110(k) which are applicable to Muhlenberg County. In a **Federal Register** published on June 24, 1983, (see 48 FR 28988) it is stated that an emission limit of 3.1 lbs/MMBTU for the TVA Paradise Plant is required in order for Muhlenberg County to attain the SO_2 secondary NAAQS. The TVA Paradise Plant was required to meet an emission limitation of 5.2 lbs/MMBTU until December 1, 1983, at which time the plant must meet the 3.1 lbs/MMBTU limit. The 3.1 lbs/MMBTU limit is presently part of Kentucky's approved SIP and is currently enforceable by EPA (see 45 FR 72153).

Section 107(d)(3)(E)(iii) The Administrator Determines That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the Applicable Implementation Plan and Applicable Federal Air Pollutant Control Regulations and Other Permanent and Enforceable Reductions

The TVA Paradise Plant and the Kentucky Utilities' Green River Plant are the only two significant sources of SO_2 in Muhlenberg County. New emission standards were established for the Green River and TVA Paradise plants. The Green River Plant achieved compliance with its new 3.5 lbs/MMBTU emission limit for SO_2 in 1980 and the TVA Paradise Plant achieved compliance with its new 3.1 lbs/MMBTU for SO_2 in 1983 (see 48 FR 28988).

Section 107(d)(3)(E)(iv) The Administrator Has Fully Approved a Maintenance Plan for the Area as Meeting the Requirements of Section 175A

Muhlenberg County is currently classified as secondary nonattainment for the SO_2 NAAQS and maintenance plans are not required for secondary nonattainment areas. Thus, Kentucky did not submit a maintenance plan.

Section 107(d)(3)(E)(v) The State Containing Such Area Has Mmet All Requirements Applicable to the Area Under Section 110 and Part D

Kentucky has complied with all requirements of section 110 of the CAA part D. Additionally, a Prevention of Significant Deterioration (PSD) program exists in Kentucky and applies to Muhlenberg County. By administering the requirements of PSD in Muhlenberg County, any new or modified source must address the potential impacts of SO_2 emissions in that area. This would include modeling to assess the potential ambient impact in the vicinity of the TVA Paradise Steam Plant. These requirements will protect the SO_2 NAAQS in the Muhlenberg County area. Therefore, Kentucky has complied with all requirements of section 110 and part D of the CAA and has satisfied all requirements of section 107(d)(3)(E).

Final Action

In this action, EPA is approving the request to redesignate Muhlenberg County, Kentucky, to attainment for the secondary SO_2 NAAQS.

The SO_2 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the SO_2 NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the SO_2 emission limitations and restrictions contained in the approved SO_2 SIP. Changes to SO_2 SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document published elsewhere in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 19, 1998 unless, by September 17, 1998, adverse or critical comments are received, or the areas fail to continue in attainment status until the final notice approving such redesignation is effective.

If the EPA receives such comments or the areas fail to continue in attainment status until the final document approving such redesignation is effective, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the companion proposed rule.

The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 19, 1998.

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law KRS 224.01–040 or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, section 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive

Order 12866, entitled Regulatory Planning and Review.

B. Executive Order 13045

The final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an ''economically significant'' action under Executive Order 12866.

C. Regulatory Flexibility Act

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

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Regional Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law KRS 224.01–040, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 3, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In section 81.318, the ''Kentucky-SO_2'' table is amended by revising the entries for ''Muhlenberg County'' to read ''Better than national standards.''

§ 81.318 Kentucky

* * * * *

KENTUCKY-SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * *	*	*		*
Muhlenberg County				X
* * * *	*	*		*

* * * * *

[FR Doc. 98–22054 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 136 to 149, revised as of July 1, 1997, page 17, § 136.3, Table 1C, entry 53, ''2,3'' is corrected to read ''2,4''.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300700; FRL 6023–8]

RIN 2070–AB78

Triasulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy)phenylsulfonyl)urea] in or on cattle, kidney; goat, kidney; grass, forage; grass, hay; horse, kidney; and sheep, kidney. Novartis Crop Protection, Inc., requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective August 18, 1998. Objections and requests for hearings must be received by EPA on or before October 19, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300700], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300700], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300700]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5697; e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 29, 1998 (63 FR 29401), (FRL 5791–2) EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 3F4225) for tolerance by Novartis Crop Protection Inc., P.O. Box 18300, Greensboro, North Carolina 27419–8300. This notice included a summary of the petition prepared by Novartis Crop Protection Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.459 be amended by establishing a permanent tolerance for residues of the herbicide triasulfuron in or on cattle, kidney at 0.5 parts per million (ppm); goat, kidney at 0.5 ppm; grass, forage at 7.0 ppm; grass, hay at 2.0 ppm; horse, kidney at 0.5 ppm, and sheep, kidney at 0.5 ppm.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than

the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100–fold MOE is based on the same rationale as the 100–fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of triasulfuron and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of triasulfuron on cattle, kidney at 0.5 ppm; goat, kidney at 0.5 ppm; grass, forage at 7.0 ppm; grass, hay at 2.0 ppm; horse, kidney at 0.5 ppm, and sheep, kidney at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by triasulfuron are discussed below.

1. *Acute Toxicity*. A battery of acute studies were conducted. The acute oral estimated lethal dose (LD_{50}) which is acutely lethal to 50% of the animals tested in rats is greater than (>) 5 grams/kilogram (g/kg) which is toxicity Category IV. The acute dermal LD_{50} in rats is > 2 g/kg which is toxicity Category III. The acute inhalation lethal concentation LC_{50} in the rat is > 5.19 mg/liter/4 hours of exposure for technical grade triasulfuron, which is Toxicity Category IV. Triasulfon is classified in toxicity Category III for eye irritation (rabbit), toxicity Category IV for skin irritation, and did not cause dermal sensitization.

2. *Subchronic Toxicity (technical)*. A 13–week subchronic feeding study in rats produced a NOEL (no observable effect level) of 10/mg/kg/day and a LOEL (lowest observable effect level) of 500 mg/kg/day based on decreased weight gain and food intake in both sexes.

A 21–day dermal toxicity study in rabbits produced no NOEL for systemic effects, a NOEL for irritation of 1,000 mg/kg/day, and a LOEL for systemic effects of 10 mg/kg/day based on dyspnea, and ruffled fur that were not considered appropriate endpoints for human risk assessment.

3. *Chronic toxicity (technical)*. A chronic feeding study in dogs produced a NOEL of 2.5 mg/kg/day and a LOEL of 25 mg/kg/day based on increased prostrate cystic hyperplasia.

An carcinogenicity study in mice produced a NOEL of 1.2 mg/kg/day and a LOEL of 129 mg/kg/day based on centrilobular hepatocytomegaly in male mice. There was no evidence of oncogenicity.

A chronic feeding/carcinogenicity study in rats produced a NOEL of 32.1 mg/kg/day and a LOEL of 220.8 mg/kg/day based on decreased mean body weight and decreased body weight gain. There was no evidence of carcinogenicity.

B. Toxicological Endpoints

1. *Acute toxicity*. A toxicological effect attributable to a single exposure (dose) was not identified in the studies available in the data base including the developmental toxicity studies in rats and rabbits. Additionally, there were no data requirements for acute or subchronic rat neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses.

2. *Short - and intermediate - term toxicity*. The short- and intermediate-term dermal and inhalation endpoints are based on oral developmental and subchronic studies, respectively and route-to-route extrapolation. The short-term dermal and inhalation No Observable Effect Level (NOEL) dose of 100 mg/kg/day is based on decreased body weight and decreased body weight gain in pregnant rats, while the intermediate-term dermal and inhalation NOEL dose of 10 mg/kg/day is based on decreased body weight and food intake in rats of both sexes.

3. *Chronic toxicity*. EPA has established the RfD for triasulfuron at 0.01 milligrams/kilogram/day (mg/kg/day). This RfD is based on the NOEL of 1.2 mg/kg/day established from the chronic feeding/carcinogenicity study in mice.

4. *Carcinogenicity*. Classified as category E: not likely to be a human carcinogen.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.459) for the residues of triasulfuron, in or on a variety of raw agricultural commodities. Permanent tolerances are already established on barley, wheat, and various livestock commodities fat, meat and meat by product of cattle, hogs, sheep, goats and horses other than kidney, and milk. Risk assessments were conducted by EPA to assess dietary exposures and risks from triasulfuron as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary risk assessment is not required because no acute toxicological endpoints were identified for triasulfuron.

ii. *Chronic exposure and risk*. The Dietary Risk Exposure System (DRES) was used for conducting a chronic dietary (food only) exposure analysis . The analysis evaluates individual food consumption, as reported by respondents in the USDA 1977–78 Nationwide Food Consumption Survey, and accumulates exposure to the chemical for each commodity.

In conducting this chronic dietary (food) risk assessment, the Agency has made very conservative assumptions: that all commodities having triasulfuron tolerances will contain residues of triasulfuron and those residues will be at the level of the tolerance. This results in an over estimate of human dietary exposure.

Using the assumptions and data parameters described above, the DRES exposure analysis results in an exposure that is equivalent to the following percentages of the RfD:

Population Subgroup	Exposure (mg/kg/day)	%RfD
U.S. Population (48 states)	0.00046	4.6%
Nursing Infants (<1 year old)	0.00040	4.0%
Non-Nursing Infants (<1 year old)	0.0015	15%
Children (1–6 years old)	0.0011	11%
Children (7–12 years old)	0.00073	7.3%
Females (13–19 years old, not preg. or nursing)	0.00040	4.0%
Hispanics	0.00056	5.6%
Non-Hispanic others	0.00050	5.0%
Males (13–19 years old)	0.00052	5.2%

2. *From drinking water*. No monitoring data are available to perform a quantitative drinking water risk assessment for triasulfuron at this time. The Agency used a Tier I drinking water assessment. This assessment utilized the SCI-GROW and GENEEC screening models to provide estimates of ground and surface water contamination respectively from triasulfuron, but did not consider the behavior of degradates.

i. *Acute exposure and risk.* An acute drinking water risk assessment is not required because no acute toxicological endpoints were identified for triasulfuron.

ii. *Chronic exposure and risk.* Based on the chronic dietary (food) exposure and using default body weights and water consumption figures, chronic drinking water levels of concern (DWLOC) for drinking water were calculated. To calculate the DWLOC, the chronic dietary food exposure was subtracted from the RfD.

Chronic water exposure (mg/kg/day) x (body weight) $DWLOC_{chronic}$ = consumption (L) x 10^{-3} mg/µg where chronic water exposure (mg/kg/day) = RfD - (chronic food + residential exposure (mg/kg/day)

The Agency's default body weights and water consumption values used to calculate DWLOCs are as follows: 70 kg/2L (adult male), 60 kg/2L (adult female), and 10 kg/1L (child).

For the most highly exposed populations subgroup, non-nursing infants (< 1 year old), chronic dietary (food only) exposure occupies 15% of the RfD. This is a conservative risk estimate for reasons described above. The chronic DWLOC for the non-nursing infants (< 1 year old) subgroup is 85 ppb. The predicted 56–day average surface water concentration by the GENEEC model is 1.68 g/L (ppb) and the estimated ground water concentration by the SCI-GROW model is 0.19 g/L (ppb). Therefore, exposure from water is below EPA's DWLOC for chronic dietary exposure for all of the populations examined.

3. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances and pesticides that produce a common toxic metabolite in which case common mechanism of activity will be assumed.

EPA does not have, at this time, available data to determine whether triasulfuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, triasulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that triasulfuron has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The Agency has concluded that the acute aggregate risk from the proposed use is acceptable. A toxicological effect attributable to a single exposure dose was not identified in any of the studies available in the data base .

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to triasulfuron from food will utilize 4.6% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to triasulfuron in drinking water and the diet, EPA does not expect the aggregate exposure to exceed 100% of the RfD. There are no registered residential uses of triasulfuron.

3. *Aggregate cancer risk for U.S. population.* In 1991, the Agency classified triasulfuron as a ''Group E - Evidence of non-carcinogenicity for humans.'' Therefore, the proposed use is not expected to pose an unacceptable carcinogenic risk.

4. *Conclusion.* Aggregate exposure to residues of triasulfuron in the diet and drinking water is not expected to exceed 100% of the reference dose. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to triasulfuron residues in food and drinking water.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of triasulfuron, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database, unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty safety factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor usually 100 for combined inter- and intra-species variability and not the additional tenfold MOE/uncertainty is not necessary because EPA has a complete data base under existing guidelines and when the severity of the

effect in infants or children or the potency or unusual toxic properties do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* Triasulfuron was evaluated in a developmental study in Tif: RAIF (SPF) rats. The following dose levels were administered by gavage on days 6–15 of gestation: 0, 100, 300 or 900 mg/kg/day. The maternal NOEL was 100 mg/kg/day and the maternal LOEL was 300 mg/kg/day based on decreased body weight and decreased body weight gain during gestation. The developmental NOEL and LOEL were 300 and 900 mg/kg/day (HDT), respectively based on reduced ossification of vertebrae, metatarsals and phalanges.

Triasulfuron was administered to pregnant female chinchilla rabbits by gavage at dose levels of 0, 40, 120, or 240 mg/kg from days 6 through 18 of gestation. Triasulfuron did not elicit evidence of developmental toxicity at doses up to and including the high dose of 240 mg/kg/day. The developmental toxicity NOEL is > 240 mg/kg/day. Maternal toxicity was observed at 240 mg/kg/day manifested as decreased body weight gain during gestation. The maternal toxicity LOEL is 240 mg/kg/day and the NOEL is 120 mg/kg/day.

iii. *Reproductive toxicity study.* Triasulfuron was evaluated in a 2–generation reproduction study in the Sprague-Dawley rat. Dosage levels employed were 0, 0.5, 50, or 250 mg/kg/day. The parental LOEL is 250 mg/kg/day based on significant decreases in premating and total body weight gain for the F0 and F1 parental animals. The parental NOEL is 50 mg/kg/day. The reproductive NOEL and LOELs are 50 and 250 mg/kg/day, respectively based on reduced F1a pup weights at birth and during lactation .

iv. *Pre- and post-natal sensitivity.* The data provided noindication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to triasulfuron. In the prenatal developmental toxicity study in rats, developmental toxicity was seen only in the presence of maternal toxicity. In the developmental toxicity study in rabbits, no evidence of developmental toxicity was seen, even in the presence of maternal toxicity at the highest dose tested. In the two–generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels that resulted in evidence of parental toxicity. In addition, there is no indication that triasulfuron is a neurotoxic herbicide. No additional safety factor is needed.

v. *Conclusion.* The database is complete and the data provided no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to triasulfuron. Therefore, EPA concluded that no additional safety factor is needed to protect the safety of infants and children.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to triasulfuron from food will utilize 15% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to triasulfuron in drinking water and the diet, EPA does not expect the aggregate exposure to exceed 100% of the RfD. There are no registered residential uses of triasulfuron. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to triasulfuron residues in food and drinking water.

III. Other Considerations

A. Metabolism In Plants and Animals

In the rat, triasulfuron is excreted primarily in the urine (70–99%) with lesser amounts excreted in the feces. The majority of excretion occurs in the first 24 hours following exposure. Residue levels in the tissues are < 0.1% of the administered dose. The major excretion product is unchanged triasulfuron in both urine and feces.

In plants, residues of triasulfuron are systemic, and the residue of regulating conern is exclusively the parent compound. In wheat, the nature of triasulfuron residues and metabolism are adequately understood, where metabolism proceeds by hydroxylation of the pheny ring and hydrolytic cleavage of the urea dridge. EPA has concluded that triasulfuron metabolism in wheat can be translated to grasses, and that only the parent compound is of regulatory concern in grasses. The nature of the residue in ruminants and poultry is adequately understood. The nature of regulatory concern is the parent compound.

B. Analytical Enforcement Methodology

1. *Plants.* Suitable analytical methodology exists to enforce the extension of the tolerances on grasses. Method AG-500B column switching HPLC with UV detection has undergone successful petition method validations on wheat grain and straw and has been accepted by the Agency as the enforcement analytical method for wheat and barley. The registrant has validated this method in grass forage and hay at the limit of quantitation (LOQ), 0.05 ppm. The Agency has previously concluded that Method AG-500B is acceptable to enforce tolerances on grass hay and forage.

2. *Animals.* Suitable analytical methodology exists to enforce the tolerances on animal commodities, including the tolerances on kidneys. Method AG-508B revised column switching HPLC with UV detection has undergone successful petition method validation on milk, beef muscle and kidney and has been accepted by the Agency as the enforcement analytical method for animal commodities. The validated LOQ is 0.01 ppm for milk; 0.05 ppm for beef muscle, fat, liver, and kidney; 0.05 ppm for eggs; and 0.05 ppm for poultry meat, fat, and liver.

3. *Multiresidue methods.* Triasulfuron and four of its metabolites were tested through the FDA multiresidue protocols. The submission was forwarded to FDA for evaluation. Triasulfuron was not determinable by any of the protocols .

C. Magnitude of Residues

The field trial data on grasses support tolerance levels of 7 ppm in grass forage and 2 ppm in grass hay for residues of triasulfuron in conjunction with the proposed use pattern. Also see Meat, Milk, Poultry, and Eggs. No additional field trial data are required for this petition.

1. *Meat, milk, poultry, and eggs.* Grasses are feedstuffs for beef and dairy cattle. An acceptable feeding study in dairy cattle conducted at 15, 75, and 150 ppm has previously been reviewed and various animal commodity tolerances were subsequently established (milk, 0.02 ppm; meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep at 0.1 ppm). The existing tolerances for triasulfuron in animal commodities are adequate to cover the use of triasulfuron on grasses with the exception of the tolerances on kidneys. Accordingly, higher triasulfuron tolerances of 0.5 ppm for the kidneys of cattle, goats, horses, and sheep are required to support the tolerances on grasses.

2. *Processed Food/Feed.* There are no processed commodities associated with grasses.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits for residues of triasulfuron.

E. Rotational Crop Restrictions

There are extensive, very specific rotational crop restrictions on the product label for the crops: barley, rye, oats, Bermudagrass, proso millet, field corn, grain sorghum, soybeans, sugar beets, sunflowers, and onions. There are no rotational or reseeding restrictions for the planting of wheat.

IV. Conclusion

Therefore, the tolerances are established for residues of triasulfuron in cattle, goat, horse, and sheep kidney at 0.5 ppm, grass forage at 7 ppm, grass hay at 2 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 19, 1998 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300700] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in **ADDRESSES** at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) inresponse to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency haspreviously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fariness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.459, is amended as follows:

i. By adding a heading to paragraph (a).

ii. In paragraph (b), by alphabetically adding the commodities to the table in paragraph (a), removing the remaining text, and by reserving and adding a heading.

iii. By adding heading and reserving paragraphs (c) and (d) to read as follows.

§180.459 Triasulfuron; tolerances for residues

(a) *General.* * * *

Commodity	Parts per million
Cattle, kidney	00.5
Goat, kidney	00.5
Grass, forage	07.0
Grass, hay	02.0
Horses, kidney	00.5
Sheep, kidney	00.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–22192 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6145–2]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Delaware has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Delaware's application and has determined that Delaware's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received on this action during the review and comment period provided in a companion document in the ''Proposed Rules'' section of today's **Federal Register**, EPA's decision to approve Delaware's hazardous waste program revision will take effect as provided below. Delaware's application for program revision is available for public review and comment.

DATES: Final authorization for the State of Delaware shall be effective October 19, 1998 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. Any comments on Delaware's program revision application must be filed as provided in the companion document on this action, appearing in the Proposed Rules section of today's **Federal Register**.

ADDRESSES: Copies of Delaware's program revision application are available from 8 a.m. to 4:30 p.m., Monday through Friday, at the following addresses for inspection and copying: Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903; and U.S. EPA Region III, Waste & Chemicals Management Division, 10th Floor, 1650 Arch Street, Philadelphia, PA 19103 phone (215) 814–3384. Written comments should be sent to Marie Owens, Mailcode 3WC21, RCRA State Programs Branch, 1650 Arch Street, Philadelphia, PA 19103, phone (215) 814–3384.

FOR FURTHER INFORMATION CONTACT: Marie Owens, Mailcode 3WC21, RCRA State Programs Branch, 1650 Arch Street, Philadelphia, PA 19103, phone (215) 814–3384.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA or ''the Act''), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, 270, 273 and 279.

B. Delaware

Delaware received final authorization effective June 22, 1984 (see 53 FR 23837, June 8, 1984) to implement its hazardous waste management program in lieu of the Federal program. On January 31, 1986 (see 51 FR 3954), the authorized Delaware program was incorporated by reference into the Code of Federal Regulations (CFR). On April 9, 1996, Delaware submitted a program revision application for additional approval in accordance with the requirements of 40 CFR 271.21(b)(3) (Procedures for Revisions of State Programs). Delaware received final authorization on this program revision application on October 7, 1996 (see 61 FR 41345). On June 15, 1998, Delaware submitted a second program revision application for additional approval in accordance with the requirements of 40 CFR 271.21(b)(3) (Procedures for Revisions of State Programs).

EPA has reviewed Delaware's application, and has made an immediate final decision, subject to review and comment, that Delaware's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization

for the additional program modifications to Delaware. As provided in the Proposed Rules section of today's **Federal Register**, the public may submit written comments on EPA's proposed final decision until September 17, 1998. Copies of Delaware's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of Delaware's program revision shall become effective in 60 days from the date this document is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a document containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Delaware's program revision application includes State regulatory changes that are at least equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260 through 266, and 270 that were published in the **Federal Register** through January 31, 1995. In addition, the State is seeking authorization for a delisting program. The State was not authorized for this optional program at the time of its Base Program authorization. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements. Unless otherwise indicated, the listed Delaware regulatory references are to the Delaware Regulations Governing Hazardous Waste 1996. The statutory references are to 7 Delaware Code Annotated 1991. In addition to the provisions listed in the table, Delaware has adopted provisions analogous to 40 CFR 268.5, 268.6, 268.42(b) and 268.44(a)–(g) and has correctly left the implementation authority with EPA for these non-delegable provisions. In addition, Delaware has an analog to 40 CFR 268.44(h)–(m), but has left the authority with EPA for granting variances from a treatment standard.

Federal citation	Delaware authority
Base Program	
Delisting Requirements (45 FR 33073, 05–19–85).	7 Delaware Code Annotated (7 Del. Code) § 6305(a); Delaware Regulations Governing Hazardous Waste (DRGHW) §§ 260.20 [as amended effective 8/21/97], 260.22 [as amended effective 8/21/97].
HSWA Cluster I	
17B, Delisting (50 FR 28702, 07–15–85)	7 Del. Code § 6305(a), DRGHW §§ 260.22(a)–(e) [as amended effective 8/21/97], 260.22(m) [as amended effective 8/21/97].
Non-HSWA Cluster VI	
CL 65, Mining Waste Exclusion I (54 FR 36592–36642, 09–01–89).	7 Del. Code § 6305(a); DRGHW §§ 261.3(a)(2)(i), 261.3(a)(2)(iii), 261.4(b)(7), 261.4(b)(7)(i), 261.4(b)(7)(ii).
CL 67, Testing and Monitoring Activities (54 FR 40260–40269, 09–29–89).	7 Del. Code §§ 6305(a) and 6306(d); DRGHW § 260.11(a) except ''Evaluating Solid Waste Physical/Chemical Methods and List of 47 Analytical Testing Methods; 260.11(a) ''Evaluating Solid Waste Physical/Chemical Methods and List of 47 Analytical Testing Methods [as amended effective through 1995]; 261 Appendix III [as amended effective through 1995].
CL 70, Changes to Part 124 Not Accounted for by Present Checklists (48 FR 14146–14295, 04–01–83), (48 FR 30113–30115, 06–30–83), (53 FR 28118–28157, 07–26–88), (53 FR 37396–37414, 09–26–88), (54 FR 246–258, 01–04–89).	7 Del. Code § 6305(a)(16); DRGHW §§ 124.3(a), 124.3(a)(1), 124.3(a)(2), 124.3(a)(3), 124.5(a), 124.5(c)(1)&(3), 124.5(d), 124.6(c)(1)–(4), 124.10(c)(1)(iii), 124.10(c)(1)(iv), 124.10(c)(1)(v), 124.12(a)(2).
CL 71, Mining Waste Exclusion II (55 FR 2322–2354, 01–23–90).	7 Del. Code §§ 6305(a) and 6306; DRGHW §§ 260.10 [as amended effective 8/21/97], 261.4(b)(7), 261.4(b)(7)(i)–(xx), 262.23(e).
CL 72, Modifications of F019 Listing (55 FR 5340–5342, 02–14–90).	7 Del. Code § 6305(a)(1); DRGHW § 261.31(a) [as amended effective 8/21/97].
Non-HSWA Cluster VI	
CL 73, Testing and Monitoring Activities; Technical Corrections (55 FR 8948–8950, 03–09–90).	7 Del. Code §§ 6305(a) and 6306(d); DRGHW § 260.11(a), 261 Appendix III/Table 2&3 [as amended effective through 1995].
CL 76, Criteria for Listing Toxic Wastes; Technical Amendment (55 FR 18726, 05–04–90).	7 Del. Code § 6305(a)(1); DRGHW § 261.11(a)(3).
HSWA Cluster II	
CL 68, Reportable Quantity Adjustment Methyl Bromide Production Wastes (54 FR 41402–41408, 10–06–89).	7 Del. Code § 6305(a)(1); DRGHW §§ 261.32, 261Appendix III [as amended effective through 1995], 261 Appendix VII.
CL 69, Reportable Quantity Adjustment (54 FR 50968–50979, 12–11–89).	7 Del. Code § 6305(a)(1); DRGHW §§ 261.31(a) [as amended effective 8/21/97], 261 Appendices VII & VIII.
CL 75, Listing of 1,1-Dimethylhydrazine Production Wastes (55 FR 18496–18506, 05–02–90).	7 Del. Code § 6305(a)(1); DRGHW §§ 261.32, 261 Appendix III [as amended effective through 1995], 261 Appendix VII.

Federal citation	Delaware authority
CL 79, Organic Air Emission Standards for Process Vents and Equipment Leaks (55 FR 25454–25519, 06–21–90).	7 Del. Code §§ 6305, 6304(b), and 6304(e); DRGHW §§ 260.11(a), 261.6(c)(1), 261.6(c)(2)(iii), 261.6(d), 264.13(b)(6), 264.15(b)(4), 264.73(b)(3), 264.73(b)(6), 264.77(c), 264.1030(a), 264.1030(b), 264.1030(b)(1), 264.1030(b)(2), 264.1030(c) [as amended effective 8/21/97], 264.1031, 264.1032, 264.1033, 264.1034, 264.1035, 264.1036, 264.1050 except 264.1050(c), 264.1050(c) [as amended effective 8/21/97], 264.1051, 264.1052, 264.1053 through 264.1065, 265.13(b)(6) [as amended effective 8/21/97], 265.15(b)(4), 265.73(b)(3), 265.73(b)(6), 265.77(d), 265.1030, 265.1031, 265.1032, 265.1033, 265.1034, 265.1035, 265.1050, 265.1051 [as amended effective 8/21/97], 265.1052, 265.1053 through 265.1064, 122.14(b)(5), 122.14(b)(8)(iv), 122.14(b)(8)(v), 122.14(b)(8)(vi), 122.24, 122.25.
RCRA Cluster I, Non-HSWA Rule	
CL 86, Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment (56 FR 7567–7568, 02–25–91).	7 Del. Code § 6305(a)(1); DRGHW §§ 261.33(e), 261 Appendix VIII.
CL 90, Mining Waste Exclusion III (56 FR 27300–27330, 06–13–91).	7 Del. Code § 6305(a); DRGHW § 261.4(b)(7).
RCRA Cluster I, HSWA	
CL 87, Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment.	7 Del. Code §§ 6304(b), 6304(e), and 6305(e); DRGHW §§ 264.1030(a)&(b), 264.1033(f)(3), 264.1035(b)(4)(ii), 264.1052(b)(1), 265.13(b)(6) [as amended effective 8/21/97], 265.73(b)(3), 265.1030(b), 265.1034(c)(1)(vi), 265.1035(b)(4)(ii), 265.1035(c)(5), 265.1052(e)(3), 265.1064(c), 122.24(d)(2), 122.25(e)(2).
CL 89, Revision to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038) (56 FR 21955–21960, 05–13–91).	7 Del. Code § 6305(a)(1); DRGHW § 261.31(a) [as amended effective 8/21/97].
RCRA Cluster II, Non-HSWA	
CL 99, Amendments to Interim Status Standards for Downgradient Ground Water Monitoring Well Locations (56 FR 66365–66369, 12–23–91).	7 Del. Code § 6305(a)(10); DRGHW §§ 260.10, 265.91(a)(3), 265.91(a)(3)(i), 265.91(a)(3)(ii), 265.91(a)(3)(iii), 265.91(a)(3)(iv).
RCRA Cluster II, HSWA	
CL 97, Exports of Hazardous Waste; Technical Correction (56 FR 43704–43705, 09–04–91).	7 Del. Code §§ 6305(a) and 6306; DRGHW §§ 262.53(b), 262.56(b).
CL 104, Used Oil Exclusion (57 FR 21524–21534, 05–20–92).	7 Del. Code § 6305(a); DRGHW §§ 261.4(b)(13), 261.4(b)(13)(i), 261.4(b)(13)(ii), 261.4(b)(13)(iii), 261.4(b)(13)(iv).
RCRA Cluster III, HSWA	
CL 107, Used Oil Filter Exclusion; Technical Corrections (57 FR 29220, 07–01–92).	7 Del. Code § 6305(a); DRGHW § 261.4(b)(13).
CL 108, Toxicity Characteristic Revisions; Technical Corrections (57 FR 30657–30658, 07–10–92).	7 Del. Code § 6305(a); DRGHW §§ 261.4(b)(6)(ii), 261.4(b)(9).
CL 115, Chlorinated Toluenes Production Waste Listing (57 FR 47376–47386, 10–15–92).	7 Del. Code § 6305(a)(1); DRGHW §§ 261.32, 261 Appendix VII.
CL 117B, Toxicity Characteristic Amendment (57 FR 23062–23063, 06–01–92).	7 Del. Code § 6305(a); DRGHW § 261.3(a)(2)(i).
CL 118, Liquids in Landfills II (57 FR 54452–54461, 11–18–92).	7 Del. Code §§ 6304(b) and 6305(a)(4); DRGHW §§ 260.10, 264.13(c)(3), 264.314(a)(2), 264.314(b), 264.314(d)(1)(ii), 264.314(e), 264.314(e)(1), 264.314(e)(1)(i), 264.314(e)(1)(ii), 264.314(e)(1)(iii), 264.314(e)(2), 264.314(e)(2)(i), 264.314(e)(2)(ii), 264.314(f), 264.314(f)(1), 264.314(f)(2), 264.316(b), 264.316(c), 265.13(c)(3), 265.314(a)(2), 264.314(b), 265.314(c)(1)(ii), 265.314(f), 265.314(f)(1), 265.314(f)(1)(i), 265.314(f)(1)(ii), 265.314(f)(1)(iii), 265.314(f)(2), 265.314(f)(2)(i), 265.314(f)(2)(ii), 265.314(g), 265.314(g)(1), 265.314(g)(2), 265.316(b), 265.316(c).
CL 119, Toxicity Characteristic Revision; TCLP Correction (57 FR 55114–55117, 11–24–92), (58 FR 6854, 02–02–93).	7 Del. Code §§ 6305(a) and 6306; DRGHW §§ 261 Appendix II, 8.2, 8.2.2, 8.2.5, 8.4, 8.4.1, 8.4.2, 8.4.3, 8.4.4, and 8.5 [as amended effective through 1995].

Federal citation	Delaware authority
RCRA Cluster III, Non-HSWA	
CL 113, Consolidated Liability Requirements (53 FR 33938–33960, 09–01–88), (56 FR 30200, 07–01–91), (57 FR 42832–42844, 09–16–92).	7 Del. Code §§ 6305(a)(11) and 6307(h); DRGHW §§ 264.141(h), 264.143(f)(10), 264.145(f)(11), 264.147(a), 264.147(a)(2), 264.147(a)(3), 264.147(a)(4), 264.147(a)(5), 264.147(a)(6), 264.147(a)(7), 264.147(a)(7)(i), 264.147(a)(7)(ii), 264.147(a)(7)(iii), 264.147(b), 264.147(b)(2), 264.147(b)(3), 264.147(b)(4), 264.147(b)(5), 264.147(b)(6), 264.147(b)(7), 264.147(b)(7)(i), 264.147(b)(7)(ii), 264.147(b)(7)(iii), 264.147(f)(6), 264.147(g), 264.147(g)(1), 264.147(g)(1)(ii), 264.147(g)(2)(i), 264.147(g)(2)(ii), 264.147(h), 264.147(h)(1), 264.147(h)(2), 264.147(h)(3), 264.147(h)(4), 264.147(h)(5), 264.147(i), 264.147(i)(1), 264.147(i)(2), 264.147(i)(3), 264.147(i)(4), 264.147(i)(4)(i), 264.147(i)(4)(ii), 264.147(j), 264.147(j)(1), 264.147(j)(2), 264.147(j)(3), 264.147(j)(4), 264.147(k), 264.151(b), 264.151(f) [as amended effective 8/21/97], 264.151(g) [as amended effective 8/21/97], 264.151(h)(1) [as amended effective 8/21/97], 264.151(h)(2) [as amended effective 8/21/97], 264.151(i)(2)(d), 264.151(j)(2)(d), 264.151(k), 264.151(l), 264.151(m)(1) [as amended effective 8/21/97], 264.151(m)(2), 264.151(n)(1) [as amended effective 8/21/97], 264.151(n)(2), 265.141(h), 265.143(e)(10), 265.145(e)(11), 265.147(a), 265.147(a)(2), 265.147(a)(3), 265.147(a)(4), 265.147(a)(5), 265.147(a)(6), 265.147(a)(7), 265.147(a)(7)(i), 265.147(a)(7)(ii), 265.147(a)(7)(iii), 265.147(b), 265.147(b)(2), 265.147(b)(3), 265.147(b)(4), 265.147(b)(5), 265.147(b)(6), 265.147(b)(7), 265.147(b)(7)(i), 265.147(b)(7)(ii), 265.147(b)(7)(iii), 265.147(f)(6), 265.147(g), 265.147(g)(1), 265.147(g)(1)(ii), 265.147(g)(2)(i), 265.147(g)(2)(ii), 265.147(h), 265.147(h)(1), 265.147(h)(2), 265.147(h)(3), 265.147(h)(4), 265.147(h)(5), 265.147(i), 265.147(i)(1), 265.147(i)(2), 265.147(i)(3), 265.147(i)(4), 265.147(i)(4)(i), 265.147(i)(4)(iii), 265.147(j), 265.147(j)(1), 265.147(j)(2), 265.147(j)(3), 265.147(j)(4), 265.147(k).
RCRA Cluster IV, Non-HSWA	
CL 129, Revision of Conditional Exemption for Small Scale Treatability Studies (59 FR 8362–8366, 02–18–94).	7 Del. Code § 6305(a), DRGHW §§ 261.4(e)(2)(i), 261.4(e)(2)(ii), 261.4(e)(3), 261.4(e)(3)(i), 261.4(e)(3)(ii), 261.4(e)(3)(iii), 261.4(e)(3)(iii)(A), 261.4(e)(3)(iii)(B), 261.4(e)(3)(iii)(C), 261.4(e)(3)(iii)(D), 261.4(e)(3)(iii)(E), 261.4(f)(3), 261.4(f)(4), 261.4(f)(5).
RCRA Cluster V, HSWA and Non-HSWA	
CL 137, Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes (59 FR 47982–48110, 09–19–94), (60 FR 242–302, 01–03–95).	7 Del. Code §§ 6304(a), 6304(b), 6305, 6307, and 6314, DRGHW §§ 260.30 intro, 260.30(b), 260.31(a), 260.31(b), 260.32 intro, 260.33 intro, 260.33(a), 260.33(b), 261.2(e)(1)(iii), 264.1(g)(6), 265.1(c)(10), 266.23(a), 266.100(c)(1), 266.100(c)(3), 266.100(e)(i) through (e)(ii)(C), 266 Appendix XIII, 268.1(c)(3)(ii), 268.1(c)(3)(iii), 268.1(e)(4), 268.1(e)(5), 268.2(g), 268.2(i), 268.7(a), 268.7(a)(1) intro [as amended effective 8/21/97], 268.7(a)(1)(i), 268.7(a)(1)(ii), 268.7(a)(1)(iii), 268.7(a)(1)(iv), 268.7(a)(1)(v), 268.7(a)(1)(vi), 268.7(a)(2), 268.7(a)(2)(i), 268.7(a)(2)(i)(A), 268.7(a)(2)(i)(B) [as amended effective 8/21/97], 268.7(a)(2)(i)(C), 268.7(a)(2)(i)(D), 268.7(a)(2)(ii) [as amended effective 8/21/97], 268.7(a)(3), 268.7(a)(3)(i), 268.7(a)(3)(ii), 268.7(a)(3)(iii),268.7(a)(3)(iv), 268.7(a)(3)(v), 268.7(a)(3)(v)(A), 268.7(a)(3)(v)(B), 268.7(a)(3)(vi), 268.7(a)(3)(vii), 268.7(a)(4), 268.7(a)(4)(i), 268.7(a)(4)(ii) [as amended effective 8/21/97], 268.7(a)(4)(iii), 268.7(a)(5), 268.7(a)(6), 268.7(a)(7), 268.7(a)(8), 268.7(a)(9), 268.7(a)(10) [as amended effective 8/21/97], 268.7(b)(4)(ii), 268.7(b)(5)(iv), 268.7(d), 268.7(d)(1), 268.9(a), 268.9(d) intro [as amended effective 8/21/97], 268.9(d)(1)(i) [as amended effective 8/21/97], 268.9(d)(1)(ii), 268.9(d)(2)(i), 268.9(d)(2)(ii), 268.38(a), 268.38(b), 268.38(c), 268.38(d), 268.38(d)(1), 268.38(d)(2), 268.38(d)(3), 268.38(d)(4), 268.38(e), 268.40(a), 268.40(a)(1), 268.40(a)(2), 268.40(a)(3), 268.40(b) [as amended effective 8/21/97], 268.40(c), 268.40(d), 268.40(d)(1), 268.40(d)(2), 268.40(d)(3), 268.40(e), 268.40(f), 268.40/Table, 268.41 and Table CCWE, 268.42 note, 268.42(a), 268.42(a)/Table 1, 268.42(a)/Table 2, 268.42(a)/Table 3, 268.42(c)(2), 268.42(d), 268.43, 268.43/Table CCW, 268.45(b)(2), 268.46, 268.48(a), 268.48/Table UTS, 268 Appendix IV, 268 Appendix V, 268 Appendix X.

Federal citation	Delaware authority
Consolidated	
BIF—Consolidated Checklist for the Burning of Hazardous Waste in Boilers and Industrial Furnaces CLs 85, 94, 96, 98, 105, 110, 111, 114, 125, 127, (56 FR 7134, 02–21–91), (56 FR 32688, 07–17–91), (56 FR 42504, 08–27–91), (56 FR 43874, 09–05–91), (57 FR 27880, 06–22–92), (57 FR 37284, 08–18–92), (57 FR 38558, 08–25–92), (57 FR 44999, 09–30–92), (58 FR 38816, 07–20–93), (58 FR 59598, 11–09–93).	7 Del. Code §§ 6305(a) and 6307, DRGHW §§ 260.10, 260.11(a), 260.20(a) [as amended effective 8/21/97], 261.2(d)(2), 261.2(d)(2)(i)–(iii), 261.2(d)(3) introductory paragraph [as amended effective 8/21/97], 261.2(d)(3)(i)&(ii), 261.2(e)(2)(iv), 261.3(c)(2)(ii)(B), 261.4(a)(10), 261.4(b)(4), 261.4(b)(7), 261.4(b)(8), 261.6(a)(2), 261.6(a)(2)(ii), 261.6(a)(3)(vii), 261.32, 261 Appendix VII, 264.1(g)(2) [as amended effective 8/21/97], 264.112(d)(1), 264.340(a), 265.1(c)(6), 265.112(a), 265.112(d)(1), 265.112(d)(2), 265.112(d)(2)(i)&(ii), 265.113(a)&(b), 265.340(a), 265.370, 266 Subpart D, 266.100 (a) through (e) intro, 266.100(e)(i) through (e)(ii)(C) [as amended effective through 1996], 266.100(f), 266.101, 266.102, 266.103(a) except 266.103(a)(4)(vii), 266.103(a)(4)(vii) [as amended effective 8/21/97], 266.103(b) except 266.103(b)(6)(viii)(B), 266.103(b)(6)(viii)(B) [as amended effective 8/21/97], 266.103(c) introductory paragraph, 266.103(c)(1), 266.103(c)(2) except 266.103(c)(2)(ii)(D)(3), 266.103(c)(2)(ii)(D)(3) [as amended effective 8/21/97], 266.103(c)(3) except 266.103(c)(3)(i), 266.103(c)(3)(i) [as amended effective 8/21/97], 266.103(c)(4)–(8), 266.104 through 266.111, 266.112 except 266.112(b)(2)(i), 266.112(b)(2)(i) [as amended effective 8/21/97], 266 Appendix I/Table I–A through I–E, Appendix II–VIII, Appendix IX [as amended effective 8/21/97], Appendix X & XI, Appendix XII [as amended effective 8/21/97], 122.22, 122.42(c)(1)(iv), 122.42(g), 122.42(g)(1), 122.42(g)(1)(i)–(v), 122.42 Appendix I, 122.66 (a)&(b), 122.66(c) intro, 122.66(c)(1)&(2) intro, 122.66(c)(2)(i)&(ii) [as amended effective through 1995], 122.66(c)(3) through (c)(9), 122.66(d)–(g), 122.72(a)(6), 122.72(b)(7), 122.73(f)&(g).
Wood Preserving—Consolidated Checklist for the Wood Preserving Listings, CLs 82, 91, 92, 101, 120 (55 FR 50450, 12–06–90), (56 FR 27332, 06–13–91), (56 FR 30192, 07–01–91), (57 FR 5859, 02–18–92), (57 FR 61492, 12–24–92).	7 Del. Code § 6305(a), DRGHW §§ 260.10, 261.4(a)(9)(i)&(ii), 261.31(a) [as amended effective 8/21/97], 261.35(a)–(c), 261 Appendix III Table 1 [as amended effective through 1995], 261 Appendices VII & VIII, 262.34(a)(1), 262.34(a)(1)(i)–(iii), 262.34(a)(1)(iii)(A)&(B), 262.34(a)(2), 264.190, 264.190(c), 264.570, 264.571, 264.572, 264.573(a) except 264.573(a)(4)(i), 264.573(a)(4)(i) [as amended effective 8/21/97], 264.573(b) intro [as amended effective 8/21/97], 264.573(b)(1) intro [as amended effective 8/21/97], 264.573(b)(1)(i)–(iii), 264.573(b)(2)&(3), 264.573(c)–(l), 264.573(m) except 264.573(m)(1)(iv), 264.573(m)(1)(iv) [as amended effective 8/21/97], 264.574, 264.575, 265.190, 265.190(c), 265.440, 265.441, 265.442, 265.443(a) except 265.443(a)(4)(i), 265.443(a)(4)(i) [as amended effective 8/21/97], 265.443(b) [as amended effective 8/21/97], 265.443(c)–(n), 265.444, 265.445, 122.26.

Federal citation	Delaware authority
LDR—Consolidated Checklist for the Land Disposal Restrictions, CLs 34, 39, 50, 62, 63, 66, 78, 83, 95, 102, 103, 106, 109, 116, 123, 124 (51 FR 40572, 11–07–86), (52 FR 21010, 06–04–87), (52 FR 25760, 07–08–87), (52 FR 41295, 10–27–87), (53 FR 31138, 08–17–88), (54 FR 8264, 02–27–89), (54 FR 18836, 05–02–89), (54 FR 26594, 06–23–89), (54 FR 36967, 09–06–89), (55 FR 23935, 06–13–90), (55 FR 22520, 06–01–90), (56 FR 3864, 01–31–91), (56 FR 41164, 08–19–91), (57 FR 8086, 03–06–92), (57 FR 20766, 05–15–92), (57 FR 28628, 06–26–92), (57 FR 37194, 08–18–92), (57 FR 47772, 10–20–92), (58 FR 28506, 05–14–93), (58 FR 29860, 05–24–93) CLs 34, 39, 50, 62, 63, 66, 78, 83, 95, 102, 103, 106, 109, 116, 123, 124.	7 Del. Code §§ 6304, 6305, and 6314, DRGHW §§ 260.1 through 260.3, 260.10, 260.11(a), 260.20(a) [as amended effective 8/21/97], 261.1(a), 261.1(a)(1), 261.3(a)(2)(iii), 261.3(c)(2)(ii)(C)(1), 261.3(c)(2)(ii)(C)(2) [as amended effective 8/21/97], 261.3(d)(1), 261.3(f), 261.3(f)(1)&(2), 261.4(a)(11), 261.4(c), 261.4(d)(1), 261.5(b), 261.5(c) intro [as amended effective through 1995], 261.5(c)(1)–(6), 261.5(e), 261.5(f)(2), 261.5(g)(2), 261.6(a)(3), 261.6(c)(1), 261.7(a)(1), 261.7(a)(2), 261.20(b), 261.21(b), 261.22(b), 261.23(b), 261.24(b), 261.30(c), 261.31(a) [as amended effective 8/21/97], 261.33(c) [as amended effective 8/21/97], 261 Appendix VII, 262.11(c)&(d), 262.34(a)(1)(iii), 262.34(a)(1)(iii)(B), 262.34(a)(1)(iv), 262.34(a)(1)(iv)(A)&(B), 262.34(a)(2), 262.34(a)(4), 262.34(d)(4), 262.70, 263.12, 264.1(g)(6), 264.1(h), 264.13(a)(1)&(2), 264.13(b)(6)&(7), 264.13(b)(7)(i)–(iii), 264.13(b)(7)(iii)(A)&(B), 264.13(b)(7)(iii)(B)(1)&(2), 264.73(b)(3), 264.73(b)(10)–(12), 264.73(b)(13) [as amended effective 8/21/97], 264.73(b)(14)–(16), 264.110(b)(1)–(4), 264.111(c), 264.112(a)(2), 264.140(b)(1) [as amended effective 8/21/97], 264.140(b)(2)–(4), 264.142(a), 264.229, 264.256, 264.281, 264.312(a)&(b), 264.316(f), 264.1100, 264.1101, 264.1102, 265.1(c)(10), 265.1(e), 265.13(a)(1)&(2), 265.13(b)(6) [as amended effective 8/21/97], 265.13(b)(7), 265.13(b)(7)(i)–(iii), 265.13(b)(7)(iii)(A)&(B), 265.13(b)(7)(iii)(B)(1)&(2), 265.73(b)(3), 265.73(b)(8)–(14), 265.110(b)(1)–(4), 265.111(c), 265.112(d)(4), 265.140(b), 265.140(b)(1)–(3), 265.142(a), 265.221(h), 265.229, 265.256, 265.281, 265.312(a)&(b), 265.316(f), 265.1100, 265.1101, 265.1102, 266.20(b), 268.1&(b), 268.1(c) except 268.1(c)(2) and 268.1(c)(3)(i), 268.1(c)(2) [as amended effective 8/21/97], 268.1(c)(3)(i) [as amended effective 8/21/97], 268.1(d), 268.1(e) except 268.1(e)(3), 268.1(e)(3) [as amended effective 8/21/97], 268.2, 268.3, 268.4 except 268.4(a)(2)(i), 268.4(a)(2)(i) [as amended effective 8/21/97], 268.7(a) introductory paragraph, 268.7(a)(1) introductory paragraph [as amended effective 8/21/97], 268.7(a)(1)(i)–(v), 268.7(a)(2) except 268.7(a)(2)(i)(B) and 268.7(a)(2)(ii), 268.7(a)(2)(i)(B) [as amended effective 8/21/97], 268.7(a)(2)(ii) [as amended effective 8/21/97], 268.7(a)(3), 268.7(a)(4) except 268.7(a)(4)(ii), 268.7(a)(4)(ii) [as amended effective 8/21/97], 268.7(a)(5)–(8), 268.7(a)(10) [as amended effective 8/21/97], 268.7(b), 268.8(a) intro, 268.8(a)(1), 268.8(a)(2) intro, 268.8(a)(2)(i)&(ii) [as amended effective 8/21/97], 268.8(a)(3) except 268.8(a)(3)(ii), 268.8(a)(3)(ii) [as amended effective 8/21/97], 268.8(a)(4) [as amended effective 8/21/97], 268.8(b) except 268.8(b)(1)&(2), 268.8(b)(1)&(2) [as amended effective 8/21/97], 268.8(c)–(e), 268.9 except 268.9(d) intro and 268.9(d)(1)(i), 268.9(d) intro [as amended effective 8/21/97], 268.9(d)(1)(i) [as amended effective 8/21/97], 268.13 [as amended effective 8/21/97], 268.14, 268.30 except 268.30(d)(3), 268.30(d)(3) [as amended effective 8/21/97], 268.31, 268.32(a)–(f), 268.32(g) except 268.32(g)(3), 268.32(g)(3) [as amended effective 8/21/97], 268.32(h), 268.32(i) [as amended effective 8/21/97], 268.32(j) [as amended effective 8/21/97], 268.33 except 268.33(f), 268.33(f) [as amended effective 8/21/97], 268.34(a), 268.34(b) [as amended effective 8/21/97], 268.34(c) except 268.34(c)(1) intro, 268.34(c)(1) intro [as amended effective 8/21/97], 268.34(d)–(g), 268.34(h) [as amended effective 8/21/97], 268.35(a)–(c), 268.35(d) [as amended effective 8/21/97], 268.35(e) intro, 268.35(e)(1)&(2) [as amended effective 8/21/97], 268.35(e)(3), 268.35(e)(4) [as amended effective 8/21/97], 268.35(e)(5) except 268.35(e)(5)(ii)(G), 268.35(e)(5)(ii)(G) [as amended effective 8/21/97], 268.35(f)–(i), 268.35(j) [as amended effective 8/21/97], 268.35(k) [as amended effective 8/21/97], 268.36, 268.37, 268.40(a)intro, 268.40(b) [as amended effective 8/21/97], 268.40(c), 268.40(d), 268.41(see CL 137), 268.42(a), 268.42(a)(1)–(4), 268.42(a)/Table 1, 268.42(a)/Table 2, 268.42(a)/Table 3, 268.45(a), 268.45(a)(1), 268.45(a)(2), 268.45(a)(3), 268.45(a)(4), 268.45(a)(5), 268.45(b), 268.45(b)(1), 268.45(b)(2), 268.45(b)(3), 268.45(c), 268.45(d)(1), 268.45(d)(1)(i), 268.45(d)(1)(ii), 268.45(d)(2), 268.45(d)(3), 268.45(d)(4), 268.45(d)(5), 268.45/Table 1, 268.46, 268.46/Table 1, 268.50, 268 Appendices I–VI, Appendix VII [as amended effective 8/21/97], Appendix VIII, Appendix IX [as amended effective 8/21/97], 122.13(n), 122.14(b)(2), 122.14(b)(21), 122.32(b)(1) [as amended effective 8/21/97], 122.42(e)(3)(ii)(B), 122.42 Appendix I B(1)(b), 122.42 Appendix I B(1)(c), 122.42 Appendix I B(1)(d), 122.42 Appendix I I(6), 122.42 Appendix I M, 122.72(b)(6).

Federal citation	Delaware authority
Recycled Used Oil—Consolidated Checklist for Recycled Used Oil Management Standards, Cls 112, 122, 130, (57 FR 41566, 09–10–92), (58 FR 26420, 05–03–93), (58 FR 33341, 06–17–93), (59 FR 10550, 03–04–94).	7 Del. Code §§ 6304(a), 6304(b), 6304(e) and 6305, DRGHW §§ 260.10, 261.3(a)(2)(v), 261.3(a)(2)(v)(A)&(B), 261.4(b)(13), 261.4(b)(14), 261.5(j) [as amended effective 8/21/97], 261.6(a)(2)(iii), 261.6(a)(2)(iv) [as amended effective 8/21/97], 261.6(a)(3)(ii)–(vii) [as amended effective through 1995], 261.6(a)(4), 264.1(g)(2) [as amended effective 8/21/97], 265.1(c)(6), 266 Subpart E, 266.100(b)(1), 279.1, 279.10 except 279.10(b)(1)(ii)(A) and 279.10(b)(2)&(3), 279.10(b)(1)(ii)(A) [as amended effective 8/21/97], 279.10(b)(2)&(3) [as amended effective 8/21/97], 279.11, 279.12, 279.20, 279.21(a) [as amended effective 8/21/97], 279.21(b), 279.22 except 279.22(d) intro, 279.22(d) intro [as amended effective 8/21/97], 279.23, 279.24 except 279.24(c), 279.24(c) [as amended effective 8/21/97], 279.30, 279.31 except 279.31(b)(2), 279.31(b)(2) [as amended effective 8/21/97], 279.32, 279.40 except 279.40(d)(5), 279.40(d)(5) [as amended effective 8/21/97], 279.41, 279.42, 279.43, 279.44, 279.45 except 279.45(h) intro, 279.45(h) intro [as amended effective 8/21/97], 279.46, 279.47, 279.50, 279.51, 279.52 except 279.52(b)(6)(iv)(B), 279.52(b)(6)(iv)(B) [as amended effective 8/21/97], 279.53 except 279.53(c)(1), 279.53(c)(1) [as amended effective 8/21/97], 279.54 except 279.54(g) intro, 279.54(g) intro [as amended effective 8/21/97], 279.55 through 279.59, 279.60 except 279.60(b)(5), 279.60(b)(5) [as amended effective 8/21/97], 279.61, 279.62, 279.63 except 279.63(c)(1), 279.63(c)(1) [as amended effective 8/21/97], 279.64 except 279.64(g) intro, 279.64(g) intro [as amended effective 8/21/97], 279.65 through 279.67, 279.70 through 279.72, 279.73(a) [as amended effective 8/21/97], 279.73(b), 279.74, 279.75, 279.80 through 279.82.

Some portions of Delaware's program are broader in scope than the federal program, and thus are not federally enforceable. The broader in scope provisions address transporter requirements at DRGHW sections 263.100–263.106. In addition, sections 261.6(a)(2) and 261.6(a)(3) are broader in scope to the extent that they relate to transporter permits. Also broader in scope are the Delaware provisions at DRGHW section 6.00 which relate to fees.

In addition, Delaware will be authorized to carry out, in lieu of the Federal program, the following State-initiated changes to provisions of the State's program, which are equivalent and analogous to the indicated Resource Conservation and Recovery Act (RCRA) provisions found at Title 40 of the Code of Federal Regulations.

State requirement	Federal requirement
DRGHW 260.10 ''EPA identification number'', as amended effective August 21, 1997.	40 CFR 260.10 ''EPA identification number.''
DRGHW 260.10 ''Existing tank system'' or ''existing component'', as amended effective August 21, 1997.	40 CFR 260.10 ''existing tank system'' or ''existing component.''
DRGHW 260.10 ''New tank system'' or ''new tank component'', as amended effective August 21, 1997.	40 CFR 260.10 ''new tank system'' or ''new tank component.''
DRGHW 260.10 ''Regional Administrator'', as amended effective August 21, 1997.	40 CFR 260.10 ''Regional Administrator.''
DRGHW 260.32 (a)–(e), as published 1996	40 CFR 260.32 (a)–(e).
DRGHW 261.5(f)(3) introductory paragraph, as published 1996	40 CFR 261.5(f)(3) introductory paragraph.
DRGHW 261.5(g)(3) introductory paragraph, as published 1996	40 CFR 261.5(g)(3) introductory paragraph.
DRGHW 261.6(a)(3)(i) (A)&(B), as amended effective August 21, 1997	40 CFR 261.6(a)(3)(i) (A)&(B).
DRGHW Part 261, Appendix IX, as amended effective August 21, 1997	40 CFR part 261, Appendix IX.
DRGHW 262.10(d), as published 1996	40 CFR 262.10(d).
DRGHW 262.34(d)(5), as published 1996	40 CFR 262.34(d)(5).
DRGHW 262.41(a) (1)&(2), as published 1992	40 CFR 262.41(a) (1)&(2).
DRGHW 262.42(b), as published 1996	40 CFR 262.42(b).
DRGHW 262.53(b), as published 1996	40 CFR 262.53(b).
DRGHW 262.55 introductory paragraph, as published 1996	40 CFR 262.55 introductory paragraph.
DRGHW 262.56(a) introductory paragraph, as published 1996	40 CFR 262.56(a) introductory paragraph.
DRGHW 262.56(a)(4), as published 1996	40 CFR 262.56(a)(4).
DRGHW 262.57(b), as published 1996	40 CFR 262.57(b).
DRGHW Part 262, Appendix II, as amended effective August 21, 1997	40 CFR part 262, Appendix II.
DRGHW 263.30(c)(1), as published 1996	40 CFR 263.30(c)(1).
DRGHW 264.1(c)&(d), as published 1996	40 CFR 264.1 (c)&(d).
DRGHW 264.1(g)(7), as published 1996	40 CFR 264.1(g)(7).
DRGHW 264.12(a), as published 1996	40 CFR 264.12(a).
DRGHW 264.56(d)(2), as published 1996	40 CFR 264.56(d)(2).
DRGHW 264.91(a) (1)&(2), as published 1996	40 CFR 264.91(a) (1)&(2).
DRGHW 264.95(a), as published 1996	40 CFR 264.95(a).
DRGHW 264.98(g)(5)(ii)(A), as published 1996	40 CFR 264.98(g)(5)(ii)(A).
DRGHW 264.143(f)(1)(i)(A), as published 1996	40 CFR 264.143(f)(1)(i)(A).
DRGHW 264.145(c)(7), as published 1996	40 CFR 264.145(c)(7).
DRGHW 264.151(a), as published 1996	40 CFR 264.151(a).
DRGHW 264.151(i), except 264.151(i)(2)(d), as published 1996	40 CFR 264.151(i), except 264.151(i)(2)(d).
DRGHW 264.151(j), except 264.151(j)(2)(d), as published 1996	40 CFR 264.151(j), except 264.151(j)(2)(d).
DRGHW 264.340(b) introductory paragraph, as published 1996	40 CFR 264.340(b) introductory paragraph.
DRGHW 264.340(d), as published 1996	40 CFR 264.340(d).
DRGHW Part 264, Appendix I, as published 1992	40 CFR part 264, Appendix I.
DRGHW Part 264, Appendix VI, as amended effective August 21, 1997	40 CFR part 264, Appendix VI.
DRGHW Part 264, Appendix IX, as published 1996	40 CFR part 264, Appendix IX.
DRGHW 265.11(a), as published 1996	40 CFR 265.11.

State requirement	Federal requirement
DRGHW 265.12(a), as amended effective August 21, 1997	40 CFR 265.12(a).
DRGHW 265.52(f), as amended effective August 21, 1997	40 CFR 265.52(f).
DRGHW 265.53(b), as published 1996	40 CFR 265.53(b).
DRGHW 265.56, as published 1996	40 CFR 265.56.
DRGHW 265.71(b)(4), as published 1996	40 CFR 265.71(b)(4).
DRGHW 265.141(f), as published 1996	40 CFR 265.141(f).
DRGHW 265.201(c), as published 1996	40 CFR 265.201(c).
DRGHW 122.10(e) (2)–(6), as amended effective August 21, 1997	40 CFR 270.10(e) (2)–(6).
DRGHW 122.14(b)(20), as published 1996	40 CFR 270.14(b)(20).
DRGHW 122.14(c)(8) introductory paragraph, as published 1996	40 CFR 270.14(c)(8) introductory paragraph.
DRGHW 122.15, as published 1996	40 CFR 270.15.
DRGHW 122.18(b), as published 1996	40 CFR 270.18(b).
DRGHW 122.18(d), as published 1992	40 CFR 270.18(d).
DRGHW 122.19(c)(1)(iii), as published 1995	40 CFR 270.19(c)(1)(iii).
DRGHW 122.32(c), as amended effective August 21, 1997	40 CFR 270.32(c).
DRGHW 122.33(a)(3), as published 1996	40 CFR 270.33(a)(3).
DRGHW 122.60(a), as published 1996	40 CFR 270.60(a).
DRGHW 122.61(a), as published 1996	40 CFR 270.61(a).
DRGHW 122.72(a)(5), as amended effective August 21, 1997	40 CFR 270.72(a)(5).
DRGHW 122.72(b)(5), as amended effective August 21, 1997	40 CFR 270.72(b)(5).
DRGHW 124.1(a), as amended effective August 21, 1997	40 CFR 124.1(a).
DRGHW 124.10(a)(2)&(3), as amended effective August 21, 1997	40 CFR 124.10(a) (2)&(3).
DRGHW 124.10(b)(1), as published 1996	40 CFR 124.10(b)(1).
DRGHW 124.10(c)(1)(ii), as amended effective August 21, 1997	40 CFR 124.10(c)(1)(ii).
DRGHW 124.10(d)(1)(iii), as amended effective August 21, 1997	40 CFR 124.10(d)(1)(iii).
DRGHW 124.15, as amended effective August 21, 1997	40 CFR 124.15.

In addition to the above listed State-initiated changes, EPA is authorizing changes to the following State provisions. These provisions do not have a direct analog in the Federal RCRA regulations. However, none of these provisions is considered broader in scope than the Federal program. This is so because these provisions were either previously authorized as part of Delaware's base authorization or have been added to make the State's regulations internally consistent with changes made for the other authorizations listed in the first paragraph of this section. EPA has reviewed these provisions and has determined that they are consistent with and no less stringent than the Federal requirements. Additionally, this authorization does not affect the status of State permits and those permits issued by EPA because no new substantive requirements are a part of these revisions.

State requirement
DRGHW 260.10 ''Commingling'', as published 1996.
DRGHW 260.10 ''Consolidation'', as published 1996.
DRGHW 260.10 ''Division'', as amended published 1996.
DRGHW 260.10 ''HSWA tank'', as amended effective August 21, 1997.
DRGHW 260.10 ''Non-HSWA tank'', as amended effective August 21, 1997.
DRGHW 262.12(d), as published 1996.
DRGHW 263.11(c), as published 1996.
DRGHW 264.11(b), as published 1996.
DRGHW 265.11(b), as published 1996.

State requirement
DRGHW 122.3(a)(3), as amended effective August 21, 1997.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon Federal program provisions for which the State is applying for authorization and which are issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Delaware is not seeking authority over Indian Lands since there are no Federally recognized Indian Lands in the State at this time.

C. Decision

I conclude that the State of Delaware's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Delaware is granted final authorization to operate its hazardous waste program as revised, assuming no adverse written comments are received as discussed above.

Upon effective final approval, Delaware will be responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Delaware also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize Delaware's program and for incorporation by reference of those provisions of Delaware's statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart I until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Compliance With Executive Order 13045

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 12866, and that EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency.

The Agency has determined that the final rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and does not address environmental health and safety risks. As such, the final rule is not subject to the requirements of Executive Order 13045.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, 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. The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal mandate'' and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the Delaware program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program. Delaware's participation in an authorized hazardous waste program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Delaware program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under existing state law which are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under existing State law which are being authorized by EPA. EPA's authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 7, 1998.

W. Michael McCabe,

Regional Administrator, Region 3.

[FR Doc. 98–22057 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 72

Construction and Arrangement

CFR Correction

In Title 46 of the Code of Federal Regulations, parts 70 to 89, revised as of October 1, 1997, page 52, § 72.25–15 is corrected in Table 72.25–15(A) under ''Washbasins'' by correcting the entry ''61'' to read ''1''.

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[GC Docket No. 96–55; FCC 98–184]

Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its rules to set out more clearly what should be contained in a request that information not be routinely available for public disclosure, provide that audit information and programming contracts will be presumed to be exempt from routine public disclosure, codify its practice of sometimes deferring action on a request for confidentiality until a request for inspection is made, and otherwise clarify its rules, delete obsolete references, and renumber the rules. The Commission also adopts a Model Protective Order (MPO) for general use.

DATES: These rules are effective November 20, 1998. Public comments on the information collection requirements are due on or before October 20, 1998.

ADDRESSES: Send comments on information collections contained herein to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Laurence H. Schecker, Office of General Counsel, (202) 418–1720. For additional information concerning information collections contained herein, contact Judy Boley at (202) 418–0214.

SUPPLEMENTARY INFORMATION:

1. The handling of confidential information requires the Commission to balance the concerns of the parties submitting information and the interest of the public in accessing that information. The manner in which the Commission performs this task affects both the competitive nature of the telecommunications industry and the performance of the Commission's public responsibilities. As the telecommunications industry becomes increasingly competitive, participants increasingly assert that the information they provide to the Commission is competitively sensitive. Likewise, there are an increasing number of disputes among competitors concerning requests for confidential treatment.

A. Substantiating Confidentiality Claims

2. When a person submitting information to the Commission requests that it not be made available routinely to the public, 47 CFR 0.459(b) requires that each such request contain a statement of the reasons for withholding the materials from inspection and the factual basis for the request. We believe that specifically identifying types of information we need to evaluate requests for confidentiality will reduce the number of unsubstantiated requests that we receive and conserve the resources of the submitters by providing them with guidance as to what kind of information we require to decide a confidentiality request.

3. Accordingly, we will amend 47 CFR 0.459(b) to list the types of information that should be included in a request. Where relevant, the following should be submitted:

(i) identification of the specific information for which confidential treatment is sought;

(ii) identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;

(iii) explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged;

(iv) explanation of the degree to which the information concerns a service that is subject to competition;

(v) explanation of how disclosure of the information could result in substantial competitive harm;

(vi) identification of any measures taken by the submitting party to prevent unauthorized disclosure;

(vii) identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties;

(viii) justification of the period during which the submitting party asserts that material should not be available for public disclosure; and

(ix) any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

4. We do not agree that substantiation of a confidentiality request at the time the request is made is arbitrary and unduly burdensome. To the extent there are changes in, for example, the measures taken by the submitter to prevent disclosure, the extent to which the information has already been disclosed, and the degree of competition facing the service in question, between the time the request for confidential treatment is made and the time a request for disclosure is received, we note that submitters are permitted to update their confidentiality request before any records are released.

B. ''Persuasive Showing'' That Confidential Materials Should Be Released

5. To obtain access to records listed in 47 CFR 0.457(d) or records withheld from inspection under 47 CFR 0.459(a), our current rules provide that the requesting party must make ''[a] persuasive showing as to the reasons for inspection'' in a filing which must ''contain a statement of the reasons for inspection and the facts in support thereof.'' We believe that the determinations of whether the showing standard has been met should continue to be made on a case-by-case basis. A case-by-case determination is appropriate because it requires a balancing of, *inter alia*, the type of proceeding, the relevance of the information, and the nature of the information. The Commission's current rules contemplate that the Commission will engage in a balancing of the public and private interests when determining whether the ''persuasive showing'' standard has been met. That balancing may well take into account the type of proceeding involved, whether the requestor is a party to the proceeding, and may also be affected by other factors, such as whether it is feasible to use a protective order. Because we believe that a case-by-case determination is most appropriate, we decline to adopt a blanket rule requiring the requester to demonstrate that access is ''vital'' to the conduct of a proceeding, necessary to the ''fundamental integrity'' of the Commission process at issue, or that the

information have a direct impact on the requestor. We also decline to impose a requirement that the requester prove that the information or a substitute cannot be obtained by other means.

6. Commenters also point out that, where materials are voluntarily submitted, our rules allow a party to request that the information be returned if confidentiality is not granted. These commenters express a concern that the distinction between voluntarily submitted and required information may put more heavily regulated entities at a competitive disadvantage vis-a-vis new entrants. We recognize that a more heavily regulated entity may in some instances be subject to mandatory submissions that do not apply to a new entrant. As part of the biennial review process pursuant to section 11 of the Communications Act and otherwise, the Commission is striving to minimize any such burdens. We also note that whether or not materials are submitted voluntarily, the Commission may not return them to the submitter once it has received a FOIA request for the documents. Therefore, as a practical matter, once a request for documents is received, no submitter, whether regulated or not, may have its documents returned.

C. Burden of Proof

7. Our rules provide that the party initially claiming confidentiality pursuant to 47 CFR 0.459(a) bears the burden of proving by a preponderance of the evidence that such treatment is appropriate. We reject the suggestion that where a party initially claims confidentiality, the Commission staff should bear the burden of showing that the information should not be accorded confidential treatment. Consistent with FOIA's presumption in favor of disclosure, the Commission's rules appropriately place the burden of showing that a record should not be routinely available for public inspection on the proponent of that claim. If a party's request has been granted, it has, by definition, met that burden of proof, sufficient to demonstrate that the information falls within FOIA Exemption 4. The types of materials listed in 47 CFR 0.457(d) are accepted by the Commission as confidential because, on a generic basis, they have been found to contain confidential information and are exempt from disclosure under FOIA Exemption 4. Similarly, the Commission may find, on its own motion, that specific materials should not be routinely made available because they contain trade secrets or confidential information. Thereafter, when a request is made for disclosure of materials deemed confidential under any of these circumstances, we agree with the parties commenting that the requester of such information should continue to bear the burden of making a persuasive showing as to the reasons for inspection when access to confidential information is sought.

8. This burden of making a persuasive showing as to the reasons for inspection is consistent with FOIA's presumption in favor of disclosure because the burden only applies to information already determined to fall within Exemption 4. As discussed below, the Commission sometimes defers action on requests for confidentiality if a request for inspection has not been made. In those circumstances, if a request for inspection is made, we first consider whether the party submitting the information has met its burden of proving by a preponderance of the evidence that confidential treatment is appropriate, and then apply the persuasive showing test.

D. Model Protective Order

9. In recent years, the Commission has tried to balance the interests in disclosure and the interests in preserving the confidentiality of competitively sensitive materials by making more use of special remedies such as protective orders. Protective orders can provide the benefit of protecting competitively valuable information while permitting limited disclosure for a specific public purpose. Nonetheless, the Commission is mindful that extensive reliance on protective orders may also impose burdens on the public and the Commission.

10. On the whole, however, we conclude that the benefits of adopting an MPO for general use in Commission proceedings will be substantial. It will reduce the need for lengthy negotiations or litigation over the terms of such orders and help prevent delays in proceedings. It is not our intention, however, to suggest that protective agreements can be used for information falling outside of the nine categories of material exempt from disclosure under the FOIA.

11. While we believe the MPO will prove appropriate in most instances where protective orders are appropriate, the Bureaus will retain the authority to use a different or modified protective order where they determine it is warranted. The MPO may also be used to provide limited access to information on a timely basis where the submitter has made a good faith request for confidential treatment of information pursuant to 47 CFR 0.459(a) and the Commission has not yet ruled on that request. The latter use is consistent with existing Commission practice. We note, however, that where a request for confidential treatment is pending, release of information, even under a protective order, will be delayed pursuant to 47 CFR 0.459(g) to permit the submitting party to file an application for review with the Commission and then a judicial stay.

12. *Off-Site Inspection.* In some circumstances, where the quantity of material subject to inspection is very large, a submitting party may also file a request with the Commission that the entirety of the material not be filed with the Commission. If the Commission grants this request, Commission staff or any party examining the material under the terms of a protective order at an off-site location may designate portions of the material for inclusion in the record. The submitting party shall promptly file such designated material under seal in the record. This procedure will minimize the need for the Commission to store in a secure fashion large quantities of potentially irrelevant material while ensuring that relevant material is placed in the record.

13. *Restrictions on persons with authorized access to materials under the MPO.* We decline to adopt the suggestion that parties examining information under a protective order should be limited to allowing review by a set number of persons with various sublimits. We believe such limitations may unreasonably preclude a party from utilizing individuals, consistent with its needs and resources, who can provide the requisite expertise to examine the documents. The serious consequences of violating a Commission protective order make this limitation unnecessary. We will, however, in rare instances such as when specific future business plans are involved, consider limiting access to documents to outside counsel and experts so as to minimize the potential for inadvertent misuse of such information. A party seeking this additional degree of protection must justify its request when filing a request for confidential treatment. In making such a request, a party should specify the modifications to the model protective order that it believes to be necessary. The Commission, as necessary, may seek comment from the other parties to a proceeding on whether such modified protective procedures are appropriate in the particular case at hand.

14. *Copying of confidential information under the MPO.* We agree that a ban on copying materials subject to a protective order imposes an unnecessary burden on the review of

such information. Moreover, we believe a prohibition on copying might lead to a less thorough review of the confidential documents and accordingly to less useful public comment. We will modify the MPO to require a reviewing party to keep a written record of all copies made and to provide this record to the Submitting Party on reasonable request.

15. *Copying charges.* We reject the proposal to delete the 25 cents maximum per page copying charge in the MPO and replace it with a reasonable cost-based maximum because we believe it is prudent to avoid disputes over what copying charges are reasonable by setting a maximum charge for copying. At the time individual protective orders are issued, however, the issuing Bureau may modify the maximum charge per page for copies as circumstances warrant.

16. *Sanctions for violations of the MPO.* Current laws and regulations already provide the Commission and the courts with a broad range of sanctions for violations of Commission orders. Nonetheless, we modify the MPO to include more examples of the available sanctions for addressing violations of our protective orders to (i) specify that possible sanctions for violation of a protective order include disbarment from Commission proceedings, forfeitures, cease and desist orders, and a denial of access to confidential information in that and other Commission proceedings; (ii) clarify that the MPO is also an agreement between the reviewing parties and the submitting party; (iii) clarify that the submitting party retains all rights and remedies available at law or equity against any party using confidential information in a manner not authorized by the protective order; and (iv) require violating parties to notify immediately the Commission and the submitting party of the identity of anyone who improperly obtains or uses the confidential information.

17. *Duration of confidentiality protection.* While we recognize that many types of confidential information become less sensitive as time passes, we do not believe that there is a sufficient basis in the record to limit treatment under a protective order to any set period. Accordingly, we will address claims of staleness on a case-by-case basis. The prohibition on the unauthorized disclosure or use of the confidential information remains binding indefinitely unless the submitting party otherwise agrees or the Commission or a court determines that particular information should be released from restrictions contained in the protective order. We also modify the MPO to allow a reviewing party to retain attorney work product containing confidential information, so long as that information remains subject to the MPO.

18. *Use of confidential materials subject to the MPO in other proceedings.* We believe that routinely allowing confidential information from one proceeding to be used in other proceedings will increase the burdens, risks, and disputes associated with protective orders. Therefore, as a general matter, we will allow information subject to a protective order to be used only in the proceeding in which it was obtained. However, we reserve the right to permit the use of protected material in more than one Commission proceeding in the exceptional case where the Commission finds that such use would be in the public interest. A party seeking to use protected information obtained in one proceeding in another proceeding may file a petition with the Commission explaining why such use of the protected information is appropriate. Any such petition shall ensure that any protected information contained in or accompanying the petition is protected from public disclosure.

19. *Other MPO issues.* The MPO, as originally proposed, already contains the requirement that all authorized representatives be required to execute non-disclosure agreements agreeing to be bound by the terms of the protective order. We will not adopt for general usage the suggestion that confidential information be made available only to an independent auditor. While appropriate in very unusual cases, this procedure would be impractical for conventional Commission proceedings. Finally, we reject the suggestion that we adopt a protective order that divides confidential information into two classes to be treated differently. A standard protective order that further subdivides the categories of confidential information, treats them differently, and denies parties the ability to copy any information from certain categories, would impose undue burdens on parties reviewing information and the Commission.

E. Issues That Arise With Respect to Specific Types of FCC Proceedings.

20. *Title III Licensing Proceedings.* Although our rules specify that broadcast and other Title III license applications are routinely available for public inspection, applicants sometimes request confidential treatment pursuant to 47 CFR 0.459. We agree that a party should not be required to forego trade secrets as a condition of obtaining a Commission license, but note that, with the exception of experimental licenses, most information submitted in Title III licensing proceedings should be made publicly available. We will continue the practice of making broadcast and other Title III license applications routinely available for public inspection. We expect that requests for confidentiality or protective orders in licensing proceedings will and should remain relatively rare. Nevertheless, the Commission will consider requests pursuant to 47 CFR 0.459 of our rules to limit disclosure of confidential information to individuals and entities who file a petition to deny and who execute a protective order. Where appropriate, the Commission will issue protective orders consistent with the MPO discussed previously. We agree that if the Commission decides to permit disclosure of certain information only pursuant to a protective order, the petitioner should be given an opportunity to file or supplement its petition to deny the license after it has had an opportunity to review the protected material. If the Commission decides to issue a protective order, interested parties generally will be given at least 30 days from the date the protected material becomes available to file or supplement a petition to deny.

21. *Tariff Proceedings.* Recently we have adopted new procedures to handle confidentiality requests in tariff review cases. First, in *In the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996,* Report and Order, 62 FR 5757 (February 7, 1997) (*Tariff Streamlining*), *petitions for reconsideration pending,* we concluded that pre-effectiveness tariff review was required to implement Section 204(a)(3) of the Communications Act. *Tariff Streamlining* concluded that requests for confidentiality could not be resolved in the 7 or 15-day pre-effective review period. We therefore adopted a procedure for handling confidentiality requests in this context. A protective order will be issued where the submitting party includes with the tariff filing a showing by a preponderance of the evidence that the data should be accorded confidential treatment consistent with the provisions of the FOIA or makes a sufficient showing that the information should be subject to a protective order. To do this, a submitting party must comply with 47 CFR 0.459(b) and (c) of our rules to demonstrate that its supporting data should be afforded confidential treatment. If it does so, a standard

protective order will be issued. No written determination by the Bureau will be made because of the short time frames involved. If an investigation occurs, the Bureau can make a further determination concerning the carrier's entitlement to confidentiality. Subsequent to *Tariff Streamlining,* the Common Carrier Bureau decided to apply the protective order adopted for streamlined tariffs in non-streamlined tariff filings where the submitting party demonstrates that cost support data should be afforded confidential treatment. *Southwestern Bell Telephone Co.,* 12 FCC Rcd 10271 (Common Carrier Bureau 1997), *application for review denied,* 13 FCC Rcd 3602 (1997).

22. The procedures adopted in *Tariff Streamlining,* with the following modifications, will continue to govern confidentiality requests in both streamlined and non-streamlined tariff review proceedings. First, if a carrier seeks confidential treatment for tariff support information, it must either state that it will make its cost support information available to those signing a nondisclosure agreement, or file a request that the cost support information be kept entirely confidential. The request that information be released only pursuant to a protective order or that it be kept entirely confidential must include the supporting information required by 47 CFR 0.459(b) of our rules. We note that in the latter case, streamlined filings are likely to be suspended if the Commission is unable to determine the lawfulness of the tariff within the appropriate time frame without public participation. This would allow us to rule on the request for complete confidentiality, which we believe would be granted only in the rarest of instances. In addition, the protective order to be used in tariff review proceedings will be the one adopted in this proceeding, in place of the one adopted in *Tariff Streamlining.* We note that the MPO we adopt here does not differ substantially from that previously adopted, and that we specifically noted in *Tariff Streamlining* that this proceeding might modify the protective order adopted there.

23. We have decided not to establish different procedures for the tariff review and the tariff investigation stage because, although the decisions to allow tariffs to go into effect are non-final, non-judicially reviewable orders, we believe public comment is important in determining the lawfulness of rates at this stage, especially given the short time frames in streamlined proceedings. We have also decided not to require filing of confidential information in advance of a tariff filing because that would cause delays in the tariff filing process Congress may not have intended.

24. *Rulemaking Proceedings.* The Commission generally has not afforded confidential treatment to material submitted in rulemakings, although on rare occasions protective agreements have been used in the context of rulemakings. Material submitted in rulemakings will continue to be routinely available for public inspection because, as the commenters who addressed rulemakings acknowledge, rulemakings have a broad impact on the public, and wide public participation, with a full opportunity to comment, is contemplated by the Administrative Procedure Act.

25. To the extent that submissions made in rulemakings involve sensitive commercial information, one option is to utilize protective orders, as has been our policy in other procedural settings. Protective orders generally are not practical solutions in rulemakings, however, because rulemakings frequently involve numerous parties. Use of protective orders could also inhibit full public participation in proceedings that are of broad public interest. Nonetheless, a blanket refusal to apply protective orders in the context of rulemakings, or refusal to consider information accompanied by a request for confidentiality, could ultimately result in the Commission not having access to information that is highly relevant to our ultimate decisions. Accordingly, although we expect to act favorably upon them only in extremely rare instances, we will consider requests for confidential treatment that propose to limit the availability of confidential information in rulemaking proceedings to those who have executed a protective order. Parties seeking confidential treatment should request the Commission to return the materials without considering them, pursuant to 47 CFR 0.459(e) of our rules, if the request for confidentiality is denied, as we expect it would be in most cases. We note, however, that the Commission cannot return information if a FOIA request has been filed. Parties should also consider the option of presenting information in a manner that reduces or eliminates its commercial sensitivity, since, if such options are available, or if public disclosure of the information does not present a serious potential for competitive harm, we would not be inclined to authorize protective orders.

26. *Requests for Special Relief and Waivers.* The comments reveal no need to modify our existing confidentiality rules for use in Commission proceedings dealing with requests for relief or special waivers. Thus, we will continue to consider requests for confidentiality on a case-by-case basis. Where appropriate, we may make information available only subject to a protective order.

27. *Formal Complaints.* The parties generally suggested little change to our current treatment of confidential information submitted to the Commission during formal complaints, and we agree that our current procedures are generally workable. We note, however, that the MPO adopted herein may be used by the parties to formal complaints and may be imposed by the Commission where parties cannot resolve discovery disputes between themselves. The suggestion that we eliminate discovery in formal complaint proceedings is beyond the scope of this proceeding.

28. *Audits.* The Commission has a longstanding policy of treating information obtained from carriers during audits as confidential. Since we are able to make a finding that audit materials received from carriers generally fall within FOIA Exemption 4, and as an indication of the importance we place on upholding the confidentiality of these materials, we will amend 47 CFR 0.457 of our rules to indicate that information submitted in connection with audits, investigations and examination of records will not routinely be made available for public inspection. In the context of an FOIA request, the Commission would still need to make a particularized determination that the information is exempt from disclosure.

29. As previously discussed, we have only rarely departed from the general policy of withholding audit information from public disclosure. Parties should note, however, that, we may publicly disclose audit information in rare cases where the underlying concerns that normally lead us to withhold audit information from public disclosure are diminished by the minimal risk posed by the release of aggregate data or, where the data is otherwise not highly commercially sensitive and disclosure is justified by significant public interest factors. We do not believe that carriers need be given an opportunity to object to the proposed disclosure of audit data in aggregate form, where the data does not reveal the confidences of any individual company.

30. Some parties expressed concern about the indication in footnote 109 of the *Notice* that the Bureaus and Offices have the authority to disclose audit records where the information is required to be disclosed under the

provision of the FOIA. We note that the Commission has previously delegated authority to the Common Carrier Bureau to (1) approve the release to state public utility commissions of information that the Bureau may obtain during the course of audit activities and that falls within the common interest and jurisdiction of the Commission and the states, and (2) act on requests for audit information that are filed pursuant to the FOIA, including the authority to furnish copies of documents and other records. We continue to believe this delegation is fully consistent with section 220(f) of the Communications Act.

31. *Surveys and Studies.* We believe the best way to protect the confidentiality of these items is to allow survey and study respondents to request confidential treatment pursuant to 47 CFR 0.459 to the extent they can show by a preponderance of the evidence a case for non-disclosure consistent with the FOIA. Assessments of the confidentiality of this information will be made on a case-by-case basis, as the nature of the information obtained in surveys and studies vary greatly.

32. *Other Proceedings.* While we have discussed in some detail how confidential information will be treated in seven specific types of proceedings, we expect that the principles set forth in this Report and Order will also apply in other types of proceedings not specifically discussed above. Thus, for example, United States international carriers classified as dominant due to a foreign affiliation could seek confidential treatment of some quarterly reports regarding provisioning and maintenance and circuit status. We would expect to use the model protective order or a modified version thereof to protect confidential information if a sufficient case were made for confidential treatment of such reports. We also would expect to use the standard protective order where contributors to universal service support mechanisms justify non-disclosure of company-specific data pursuant to 47 CFR 54.711(b) of the rules as well as in proceedings under section 271 of the Communications Act regarding Bell Operating Company entry into interLATA services. We expect that the off-site inspection procedures described above may prove useful in certain merger proceedings involving voluminous materials that are subject to claims of confidentiality.

F. Scope of Materials Not Routinely Available for Public Inspection

33. We believe that the suggestion that 47 CFR 0.457(d) be replaced with provisions that automatically accord confidential treatment to any non-public information that can offer a competitor an advantage over the submitting party is overly broad. We also reject the suggestion that we categorically include ''information provided voluntarily to the Commission subject to a certification by the provider that such information is not customarily disclosed.'' Since judicial standards on the issue of ''voluntary'' submission are highly fact-specific and continue to evolve, we believe it is better to look at such requests on a case-by-case basis under our current rules. Nevertheless, we do not agree that we should reject all proposals classifying specific categories of information as confidential. It is certainly possible to identify categories of information that are likely to fall within FOIA Exemption 4. Identifying such categories reduces administrative burdens on submitters and the Commission. We conclude that certain programming contracts fall squarely within Exemption 4. The Commission has consistently recognized that disclosure of programming contracts between multichannel video program distributors and programmers can result in substantial competitive harm to the information provider and has afforded confidential treatment to such contracts in a variety of contexts. We believe that protecting such confidential information is compatible with the public interest, and the requirements of FOIA Exemption 4.

34. Therefore, we amend 47 CFR 0.457 of our rules to state that programming contracts between programmers and multichannel video programming distributors will not be routinely available for public inspection. We note, however, that, consistent with our current rules, such contracts may be made available subject to the MPO in situations where they are relevant to the dispute at hand, *e.g.*, program access complaints.

35. Parties urge expanding the list of information not routinely available for public disclosure to include ''[i]nformation submitted in connection with audits, investigations and examination of records.'' We addressed the recommendation in the previous discussion on audit material, where we expanded the list of information not routinely available for public inspection to include that type of data.

36. The submission of confidential materials to the Commission can pose problems in the drafting of agency decisions. In most instances, we expect it will be possible to write an order without publicly revealing the confidential information. In some instances, this may involve stating a conclusion that does not reveal confidential information, backed up by a citation to confidential information in the record that generally will have been available to parties signing a protective order. In other instances, orders may refer to industry-wide data that is aggregated in a manner that does not reveal confidential information. Some commenters suggest that submitters should be notified and given the opportunity to object, even when the data is aggregated, prior to the release of the data. As discussed above, we disagree. Aggregation of data ensures that confidential materials are released in a form that removes confidentiality issues. Similarly, releasing an order that cites to but does not reveal confidential information remedies confidentiality concerns. We therefore decline to adopt the commenters' suggestion as a matter of routine policy.

37. One court has suggested that an order relying on confidential materials might be released all or in part under seal. We have only rarely engaged in this practice, and are not aware of its widespread use by other administrative agencies, although we note that the courts do utilize this approach. We consider this option to be a last resort when reference to confidential materials is necessary to support our decisions. In such cases, we note, the sealed decision and the confidential part of the record can be transmitted to the court under seal if judicial review is sought.

G. Clarifications to Commission Rules

38. *Deferral of rulings on confidentiality requests.* We will amend 47 CFR 0.459 to indicate that, based on considerations of administrative efficiencies, rulings on requests for confidentiality may in some instances be deferred until a request for inspection has been made. As long as the request for confidential treatment remains pending before the Commission, the information will be treated confidentially. In other instances, including, for example, where the information is gathered specifically so that it may be published in Commission reports, rulings on requests for confidentiality would likely be made even in the absence of requests for inspection. We will provide in our rules that the submitter will be notified of a request for inspection. At the time a request for inspection is made, the submitter may supplement its request for confidentiality, or revise it.

39. *Changing the title of Section 0.457(d) and deleting the introductory paragraph.* The Commission also proposed to amend the title of 47 CFR

0.457(d) of its rules to describe better the Section's contents as follows: ''Certain trade secrets and commercial or financial information obtained from any person and privileged or confidential—categories of materials not routinely available for public inspection.'' One party suggests leaving out the word ''certain,'' as it may lead to confusion. We will adopt this proposal along with the suggested amendment. We will also delete as unnecessary the introductory paragraph of 47 CFR 0.457(d), which is derived from the June 1967 Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, and does not necessarily reflect the current state of the law concerning Exemption 4.

40. *Defining ''Required''* versus *''Voluntary''*. Some parties seek clarification of the required submission vs. voluntary submission distinction as applied to our confidentiality rules. As a more general matter, we decline to make these clarifications, preferring that the distinction between ''required'' and ''voluntary'' for Exemption 4 purposes be examined on a case-by-case basis, in light of the evolving case law. The provision in 47 CFR 0.459(e) of the rules governing the return of materials that are submitted voluntarily was adopted prior to *Critical Mass Energy Project* versus *Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993). For purposes of this rule, our use of the term ''voluntary'' was not intended to be co-extensive with the legal distinctions articulated in the *Critical Mass* decision. We shall also modify 47 CFR 0.459(e) to clarify that, if the information is subject to a request for inspection, it will not be returned. When requesting that information be afforded confidential treatment, a submitter will be required to indicate whether information provided is customarily disclosed to the public and the extent of any prior disclosure. We will assess this submission in making our confidentiality determination.

41. *Opportunity to comment.* We agree that if the information belongs to third parties, they should be afforded the opportunity to participate in the Commission proceeding resolving the confidentiality issue. 47 CFR 0.459 will be amended accordingly.

42. *Clarification of review procedures.* We find no need to clarify the procedures for review of denials of confidentiality requests as these matters are already addressed by the Commission's current rules. Specifically 47 CFR 0.459(g) provides that, if a request for confidentiality is denied, the requester may, within five working days, file an application for review by the Commission. If the application for review is denied, the requesting party will be afforded 5 working days in which to seek a judicial stay of the ruling. In such circumstances, the material is not released until the court denies a stay request. Similar provisions govern situations in which the records are the subject of a FOIA request. We believe that these procedures provide parties with sufficient opportunity to obtain timely and independent review of Bureau and Commission decisions denying confidentiality.

43. *Deletion of obsolete references and renumbering of rules.* We will take this opportunity to update 47 CFR 0.457(d)(1) of our Rules. Under 47 CFR 0.457(d)(1)(i), financial reports filed under former 47 CFR 1.611 are not routinely made available for public inspection. 47 CFR 1.611 of our Rules was deleted when we eliminated the regular filing of financial reports by broadcast stations. We also no longer require radio or television networks to file financial reports. However, these reports are permanent records and therefore still exist. We will therefore amend 47 CFR 0.457(d)(1)(i) to indicate that financial reports submitted pursuant to former 47 CFR 1.611 remain not routinely available for public inspection. The parenthetical to 47 CFR 0.457(d)(1)(i) states that ''fees paid on consummation of the assignment or transfer of a broadcast station licenses, pursuant to § 1.1111 of this chapter, are computed from information contained in financial reports submitted pursuant to § 1.611. Information and correspondence concerning such computations are not routinely available for public inspection.'' Fees for the assignment or transfer of broadcast stations are now set by statute as reflected in 47 CFR 1.1104 of our rules. Therefore, we will eliminate the parenthetical portion of 47 CFR 0.457(d)(1).

44. Section 0.457(d)(1)(iii) of our rules provides that ''Schedules 2, 3, and 4 of financial reports submitted for cable television systems pursuant to § 76.403 of this chapter'' are not routinely available for public inspection. Section 76.403 was deleted in 1983 and cable television financial reports were eliminated at that time. While the Commission indicated that reports previously filed under 47 CFR 76.403 would continue to be afforded confidentiality under 47 CFR 0.457(d), these reports have been destroyed pursuant to our records retention schedules. In addition, 47 CFR 0.457(d)(1)(iv) of our rules indicate that the ''annual fee computation forms submitted for cable television systems pursuant to 76.406 of this chapter'' are not routinely available for public inspection. These forms are no longer used. Section 76.406 was deleted from our rules in 1982. Under our record retention schedules, any such forms previously filed should have been long since been destroyed. We will therefore eliminate 47 CFR 0.467(d)(1)(iii) and 0.467(d)(1)(iv) from our rules as unnecessary. If the reports have inadvertently not been destroyed, however, we intend that they remain not routinely available.

45. Section 0.457(d)(2) lists various materials submitted confidentially to the Commission prior to March 25, 1974. We will renumber this subsection as part of 47 CFR 0.457(d)(1). We will also renumber current 47 CFR 0.457(d)(2)(i) as a new 47 CFR 0.457(d)(2).

H. Final Regulatory Flexibility Act Certification

46. Our document incorporated an initial regulatory flexibility analysis of the proposed rules. No comments were received. Section 604 of the Regulatory Flexibility Act, as amended, requires a final regulatory flexibility analysis in a notice and comment rulemaking proceeding unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a significant number of small entities.'' The rule modifications adopted herein largely codify the Commission's existing practices regarding confidential information, and therefore will not have a substantial economic effect on small entities. We therefore certify, pursuant to Section 605(b) of the Regulatory Flexibility Act, that the rules will not have a significant economic impact on a substantial number of small entities. The Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration.

I. Paperwork Reduction Act

47. This Report and Order contains new and modified information collections. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due October 20, 1998. Comments may address the following: (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. Written comments on the proposed information collections must be submitted on or before October 20, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to <jboley@fcc.gov>. For additional information concerning the information collections contained in the Report and Order contact Judy Boley at 202–418–0214.

J. Ordering Clauses

48. It is ordered that, pursuant to Sections 4(i), 4(j), 303(r) and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 303(r) and 403, this Report and Order is hereby adopted and Part 0 of the Commission's rules are amended.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.457 is amended by revising paragraph (d) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) *Trade secrets and commercial or financial information obtained from any person and privileged or confidential—categories of materials not routinely available for public inspection, 5 U.S.C. 552(b)(4) and 18 U.S.C. 1905.*

(1) The materials listed in this subparagraph have been accepted, or are being accepted, by the Commission on a confidential basis pursuant to 5 U.S.C. 552(b)(4). To the extent indicated in each case, the materials are not routinely available for public inspection. If the protection afforded is sufficient, it is unnecessary for persons submitting such materials to submit therewith a request for non-disclosure pursuant to § 0.459. A persuasive showing as to the reasons for inspection will be required in requests for inspection of such materials submitted under § 0.461.

(i) Financial reports submitted by licensees of broadcast stations pursuant to former § 1.611 or by radio or television networks are not routinely available for inspection.

(ii) Applications for equipment authorizations (type acceptance, type approval, certification, or advance approval of subscription television systems), and materials relating to such applications, are not routinely available for public inspection prior to the effective date of the authorization. The effective date of the authorization will, upon request, be deferred to a date no earlier than that specified by the applicant. Following the effective date of the authorization, the application and related materials (including technical specifications and test measurements) will be made available for inspection upon request (see § 0.460).

(iii) Information submitted in connection with audits, investigations and examination of records pursuant to 47 U.S.C. 220.

(iv) Programming contracts between programmers and multichannel video programming distributors.

(v) Prior to July 4, 1967, the rules and regulations provided that certain materials submitted to the Commission would not be made available for public inspection or provided assurance, in varying degrees, that requests for nondisclosure of certain materials would be honored. See, e.g., 47 CFR chapter I revised as of October 1, 1966, §§ 0.417, 2.557, 5.204, 5.255, 15.70, 21.406, 80.33, 87.153, 89.215, 91.208, 91.605 and 93.208. Materials submitted under these provisions are not routinely available for public inspection. To the extent that such materials were accepted on a confidential basis under the then existing rules, they are not routinely available for public inspection. The rules cited in this paragraph (d)(1)(v) were superseded by the provisions of this paragraph (d), effective July 4, 1967. Equipment authorization information accepted on a confidential basis between July 4, 1967 and March 25, 1974, will not be routinely available for inspection and a persuasive showing as to the reasons for inspection of such information will be required in requests for inspection of such materials submitted under § 0.461.

(2) Unless the materials to be submitted are listed in paragraph (d)(1) of this section and the protection thereby afforded is adequate, it is important for any person who submits materials which he wishes withheld from public inspection under 5 U.S.C. 552(b)(4) to submit therewith a request for non-disclosure pursuant to § 0.459. If it is shown in the request that the materials contain trade secrets or commercial, financial or technical data which would customarily be guarded from competitors, the materials will not be made routinely available for inspection; and a persuasive showing as to the reasons for inspection will be required in requests for inspection submitted under § 0.461. In the absence of a request for non-disclosure, the Commission may, in the unusual instance, determine on its own motion that the materials should not be routinely available for public inspection. Ordinarily, however, in the absence of such a request, materials which are submitted will be made available for inspection upon request pursuant to § 0.461, even though some question may be present as to whether they contain trade secrets or like matter.

* * * * *

3. Section 0.459 is amended by revising paragraphs (b), (d), and (e) to read as follows:

§ 0.459 Requests that materials or information submitted to the Commission be withheld from public inspection.

* * * * *

(b) Each such request shall contain a statement of the reasons for withholding the materials from inspection (see § 0.457) and of the facts upon which those records are based, including:

(1) Identification of the specific information for which confidential treatment is sought;

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged;

(4) Explanation of the degree to which the information concerns a service that is subject to competition;

(5) Explanation of how disclosure of the information could result in substantial competitive harm;

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure;

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties;

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure; and

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

* * * * *

(d)(1) The Commission may defer acting on requests that materials or information submitted to the Commission be withheld from public inspection until a request for inspection has been made pursuant to § 0.460 or § 0.461. The information will be accorded confidential treatment, as provided for in § 0.459(g) and § 0.461, until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted.

(2) Requests which comply with the requirements of paragraphs (a) and (b) of this section will be acted upon by the appropriate Bureau or Office Chief, who is directed to grant the request if it presents by a preponderance of the evidence a case for non-disclosure consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552. If the request is granted, the ruling will be placed in the public file in lieu of the materials withheld from public inspection. A copy of the ruling shall be forwarded to the General Counsel.

(e) If the materials are submitted voluntarily (i.e., absent any direction by the Commission), the person submitting them may request the Commission to return the materials without consideration if the request for confidentiality should be denied. In that event, the materials will ordinarily be returned (e.g., an application will be returned if it cannot be considered on a confidential basis). Only in the unusual instance where the public interest so requires will the materials be made available for public inspection. However, no materials submitted with a request for confidentiality will be returned if a request for inspection is filed under § 0.461. If submission of the materials is required by the Commission and the request for confidentiality is denied, the materials will be made available for public inspection.

* * * * *

4. Section 0.461 is amended by revising paragraph (d)(3) to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(d) * * *

(3) An original and two copies of the request shall be submitted. If the request is for materials not open to routine public inspection under § 0.457(d) or § 0.459, or if a request for confidentiality is pending pursuant to § 0.459, one copy of the request will be mailed by the custodian of the records to the person who originally submitted the materials to the Commission.

* * * * *

Appendix—Standard Protective Order and Declaration

Note: This appendix will not appear in the Code of Federal Regulations.

Before the Federal Communications Commission

Washington, D.C. 20554

In the Matter of [Name of Proceeding]
Docket No. _____.

Protective Order

This Protective Order is intended to facilitate and expedite the review of documents containing trade secrets and commercial or financial information obtained from a person and which is privileged or confidential. It reflects the manner in which ''Confidential Information,'' as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 CFR 0.442.

1. Definitions.

a. *Authorized Representative.* ''Authorized Representative'' shall have the meaning set forth in Paragraph seven.

b. *Commission.* ''Commission'' means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. *Confidential Information.* ''Confidential Information'' means (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4); (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information; and (iii) information that the Commission has allowed to be examined off-site and that otherwise complies with the requirements of this paragraph. Confidential Information includes additional copies of and information derived from Confidential Information.

d. *Declaration.* ''Declaration'' means Attachment A to this Protective Order.

e. *Reviewing Party.* ''Reviewing Party'' means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.

f. *Submitting Party.* ''Submitting Party'' means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

2. *Claim of Confidentiality.* The Submitting Party, may designate information as ''Confidential Information'' consistent with the definition of that term in Paragraph 1 of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 CFR 0.459 and 0.461, determine that all or part of the information claimed as ''Confidential Information'' is not entitled to such treatment.

3. *Procedures for Claiming Information is Confidential.* Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, ''CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION—DO NOT RELEASE.'' Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

4. *Storage of Confidential Information at the Commission.* The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

5. *Access to Confidential Information.* Confidential Information shall only be made available to Commission staff, Commission consultants and to counsel to the Reviewing Parties, or if a Reviewing Party has no counsel, to a person designated by the Reviewing Party. Before counsel to a Reviewing Party or such other designated person designated by the Reviewing Party may obtain access to Confidential Information, counsel or such other designated person must execute the attached

Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the attached Declaration.

6. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

7. Authorized Representatives shall be limited to:

a. Counsel for the Reviewing Parties to this proceeding, including in-house counsel actively engaged in the conduct of this proceeding, and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;

b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; or

c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

8. *Inspection of Confidential Information.* Confidential Information shall be maintained by a Submitting Party for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice (generally not to exceed one business day) during normal business hours.

9. *Copies of Confidential Information.* The Submitting Party shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this proceeding, Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

10. *Filing of Declaration.* Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission with a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

11. *Use of Confidential Information.* Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review) unless otherwise ordered by the Commission or a court of competent jurisdiction, shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

12. *Pleadings Using Confidential Information.* Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: ''Confidential Information included pursuant to Protective Order, [cite proceeding];'' and

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal. They shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.

13. *Violations of Protective Order.* Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

14. *Termination of Proceeding.* Unless otherwise ordered by the Commission or a court of competent jurisdiction, within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made. Authorized representatives shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party and other attorney work product. Any confidential information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 9 and 11 of this Protective Order unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

15. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

16. *Additional Rights Preserved.* The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

17. *Effect of Protective Order.* This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

18. *Authority.* This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. 154(i), (j) and 47 CFR 0.457(d).

Attachment A to Standard Protective Order

Declaration

In the Matter of [Name of Proceeding]
Docket No. _____

I, _____, hereby declare under penalty of perjury that I have read the Protective Order in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) _____
(printed name) _____
(representing) _____
(title) _____
(employer) _____
(address) _____
_____
(phone) _____
(date) _____

[FR Doc. 98–22001 Filed 8–17–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–58; RM–7419, RM–7797, RM–7798]

Radio Broadcasting Services; Caldwell, College Station and Gause, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; Application for review.

SUMMARY: This document denies an Application for Review filed by Roy E. Henderson directed to a *Memorandum Opinion and Order* denying a Petition for Reconsideration. 61 FR 24244 (May 14, 1996). In the *Memorandum Opinion and Order,* the Commission determined that the Henderson proposal for a Channel 236C2 upgrade at Caldwell, Texas, did not comply with the principal city coverage requirement contained in Section 73.315(a) of the Rules, and, as such, the competing proposal for a Channel 236C2 upgrade at College Station, Texas, should be preferred in this comparative proceeding. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 18, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No.91–58, adopted July 15, 1998, and released July 22, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

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

Authority: 47 U.S.C. 154, 303, 334, 336.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–22161 Filed 8–17–98; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1836 and 1852

Partnering for Construction Contracts

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends NASA's Federal Acquisition Regulation Supplement (NFS) to set forth a clause to be used to promote partnering under construction contracts when it is determined that the benefits to be derived exceed the costs.

EFFECTIVE DATE: August 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, Telephone: (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 1998, a proposed rule to amend the NFS to establish a clause to promote the use of partnering under construction contracts was published in the **Federal Register** (63 FR 23414–23415) for comment. The clause is to be included in construction contracts when a determination is made that the benefits to be derived exceed the costs. Comments were submitted by only one commenter. The commenter believes the proposed rule is not strong enough since it neither makes partnering mandatory for construction contracts, nor does it make mandatory participation by all subcontractors and the architect and design contractor under a construction contract. The comments were reviewed and considered; however, no changes were made to the proposed rule.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because it establishes a voluntary communication program applicable only to construction contracts. This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1836 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR 1836 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1836 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1836.70 [Added]

2. Subpart 1836.70 is added to read as follows:

Subpart 1836.70 Partnering

1836.7001 Definition.
1836.7002 General.
1836.7003 Policy.
1836.7004 NASA solicitation provision and contract clause.

1836.70 Partnering.

1836.7001 Definition.

Partnering means a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

1836.7002 General.

(a) The establishment of a partnering environment usually leads to higher quality products completed more

quickly at lower overall costs and with fewer accidents and litigation.

(b) The use of partnering is encouraged as it has been shown to reduce the average contract cost and schedule growth and to reduce contract claims and litigation.

(c) Partnering is a voluntary contract relationship within the management process that is not to be used to unofficially alter terms of the contract.

1836.7003 Policy.

(a) Partnering should be used on a contract when the contracting officer, in coordination with the project manager, determines that the benefits to be achieved from its use are expected to be greater than the costs.

(b) In determining whether the benefits of partnering are greater than the costs, the following factors should be considered:

(1) The estimated dollar value of the contract;

(2) The complexity of the work to be performed;

(3) The contemplated length of the contract; and

(4) The estimated costs to be incurred in conducting the partnership development and team building initial and follow-up workshops.

1836.7004 NASA solicitation provision and contract clause.

The contracting officer may insert a clause substantially the same as stated at 1852.236–75, Partnering for Construction Contracts, in solicitations and contracts for construction, when it has been determined in accordance with 1836.7003 that the benefits to be derived from partnering exceed the costs.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.236–75 [Added]

3. Section 1852.236–75 is added to read as follows:

1852.236–75 Partnering for construction contracts.

As prescribed in 1836.7004, insert the following clause:

Partnering for Construction Contracts—August 1998

(a) The terms ''partnering'' and ''partnership'' used herein shall mean a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

(b) Partnering will be a voluntary commitment mutually agreed upon by at least NASA and the prime contractor, and preferably the subcontractors and the A&E design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) NASA intends to facilitate contract management by encouraging the foundation of a cohesive partnership with the Contractor, its subcontractors, the A&E design contractor, and NASA's contract management staff. This partnership will be structured to draw on the strengths of each organization to identify and achieve mutual objectives. The objectives are intended to complete the contract requirements within budget, on schedule, and in accordance with the plans and specifications.

(d) To implement the partnership, it is anticipated that within 30 days of the Notice to Proceed the prime Contractor's key personnel, its subcontractors, the A&E design contractor, and NASA personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically throughout the duration of the contract as agreed to by the Government and the Contractor.

(e) Any cost with effectuating the partnership will be agreed to in advance by both parties and will be shared with no change in the contract price. The contractor's share of the costs are not recoverable under any other Government award.

(End of clause)

[FR Doc. 98–22023 Filed 8–17–98; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 555

[Docket No. 98–NHTSA–4285]

RIN 2127–AH44

Temporary Exemption From Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendments; final rule.

SUMMARY: This document amends Part 555 to clarify procedures for submitting confidential business information to accompany applications for temporary exemption from one or more of the Federal motor vehicle safety standards. The intent of the rule is to simplify the process for manufacturers who may wish to claim confidentiality for information in their applications.

The agency is also amending the temporary exemption procedures to give examples of factors that may be relevant in preparing hardship applications, and in demonstrating that good faith efforts have been made to comply with standards for which an exemption may be sought.

Finally, the agency is updating statutory references and the location of the docket room where public comments are available for inspection.

DATES: The final rule is effective August 18, 1998.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: The primary purpose of this document is to clarify the agency's confidential business information procedures so that applicants for temporary exemption from the Federal motor vehicle safety standards may comply with NHTSA's procedural requirements without unnecessary delay.

Manufacturers who apply for temporary exemptions from Federal motor vehicle safety standards are afforded an opportunity to ''specify any part of the information and data submitted which petitioner requests be withheld from public disclosure in accordance with part 512'' of Chapter V, Title 49, Code of Federal Regulations. Part 512, *Confidential Business Information,* is the agency's regulation setting forth the procedures under which NHTSA will consider claims that information submitted to the agency is confidential business information as described in 5 U.S.C. 552(b)(4).

The agency has found that, when some manufacturers file their exemption applications, they assert a claim for confidentiality without submitting the documentation required by part 512, or otherwise substantiating their request. The absence of substantiation causes unnecessary delay while the Office of Chief Counsel contacts the applicant and explains the necessity of either submitting substantiation or withdrawing its request.

NHTSA has also found that when some small manufacturers apply for the first time for a temporary exemption based on a claim that compliance would cause them substantial economic hardship, they do not request confidential information for the financial information they submit in support of their claim of hardship. They do not realize they must make a specific request for confidentiality to prevent the information from becoming a matter of public record. This omission by applicants had limited consequences when their applications were available only through inspection in NHTSA's docket room. However, the applications and their supporting information are now placed ''on line'' and may be

accessed through the internet, making possible a much wider exposure. This problem is readily avoidable through making the necessary request for withholding information from public disclosure. It has been NHTSA's practice to grant confidentiality, when requested, to such information, and to deny it only with respect to the information absolutely required to explain or justify a hardship decision, which must be shared with the public as the basis for NHTSA's decision. For example, the agency must make public the company's net losses in the three years immediately preceding the filing of its application.

NHTSA is therefore amending § 555.5(b)(6) to add subparagraphs (i) and (ii). Under Sec. 555.5(b)(6)(i), a manufacturer's specification of withholding must be submitted in accordance with 49 CFR 512.4, *Asserting a claim for confidential information*. Under § 555.5(b)(6)(ii), the manufacturer's request for withholding must be accompanied by a certification in support as set forth in Appendix A to 49 CFR Part 512. NHTSA believes that these reminders will ensure timely compliance with the confidential business information, to the advantage of both the applicant and NHTSA.

In a related issue, in 1996, the agency received a petition for rulemaking from the Coalition of Small Vehicle Manufacturers (COSVAM) to amend Parts 555 and Part 571. Although no formal action has been taken on this petition, the agency is amenable to two of the requests relating to § 555.6(a), the provisions under which the Administrator may temporarily relieve a manufacturer from compliance upon finding that ''compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.'' 49 U.S.C. 30113(b)(3)(B)(I).

Under § 555.6(a)(1)(vi), an applicant is invited to discuss ''any other hardships (e.g., loss of market) that the petitioner desires the agency to consider.'' COSVAM asked that the agency consider ''factors such as the difficulty in obtaining suppliers * * *.'' It is a common refrain of small volume manufacturers that it is difficult for them to interest outside suppliers in engineering air bags or antilock brake systems for limited production vehicles. NHTSA has taken this claim into account when the issue has been raised, and considered it in formulating a decision. Accordingly, NHTSA is codifying this practice by adding ''difficulty in obtaining suppliers'' to loss of market as an example of a hardship whose existence may be argued when it is relevant to do so.

COSVAM also argued that the agency should be specific about factors it takes into consideration in determining whether an applicant has tried in good faith to comply. Two of these factors cited as relevant by COSVAM are the resources available to the applicant, and its inability to procure goods and services necessary for compliance following a timely request. The agency has also considered these factors in its deliberations without necessarily discussing them in each relevant case. NHTSA is also amenable to codifying this practice by expressly citing these factors in part 555 as relevant to the hardship argument. Accordingly, it is adding a new § 555.6(a)(2)(iii) to implement COSVAM's request.

Finally, NHTSA is adopting several technical amendments. The National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) was repealed on July 5, 1994, and reenacted without substantive change as 49 U.S.C. Chapter 301-Motor Vehicle Safety. References to the former statute have been changed to reflect the new references in Sec. 555.1 and Sec. 555.10(b). Since the location of the NHTSA Docket Room was changed in 1997, § 555.10(a) has been revised to substitute the new location.

Effective Date

Since the amendment relates to internal procedures, prior notice and comment on it are not required under the Administrative Procedure Act. Since the rule imposes no additional burden upon any party, the agency hereby finds that an effective date earlier than 180 days after issuance is in the public interest, and the final rule is effective upon its publication in the **Federal Register**.

Rulemaking Analyses

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, NHTSA has determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The final rule makes no substantive changes. The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. For the reasons discussed above, I certify that this action would not have a significant economic impact upon ''a substantial number of small entities.'' The amendment is intended to assist potential applicants for temporary exemptions, including small businesses, to understand agency procedures so that, if a request for confidentiality is made, the documentation will be complete at the time the request is made. It is also designed to provide guidance as to arguments the agency considers relevant in making decisions upon exemption applications. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming imported motor vehicles.

C. Executive Order 12612 (Federalism)

The agency has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 ''Federalism'' and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act and concludes that the action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles produced or imported will not vary from that existing before promulgation of the rule.

E. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. A procedure is set forth in 49 U.S.C. 30161 for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the

private sector, of more than $100 million annually. Since this final rule will not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Part 555

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 555 is amended as follows:

PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 555 continues to read as follows:

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

§ 555.1 [Amended]

2. Section 555.1 is amended by removing ''section 123 of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1410'' and adding in its place ''49 U.S.C. 30113.''

3. New § 555.5(b)(6)(i) and (ii) are added to read as follows:

§ 555.5 Petition for exemption.

* * * * *

(b) * * *

(6) * * *

(i) The information and data which petitioner requests be withheld from public disclosure must be submitted in accordance with § 512.4 *Asserting a claim for confidential information* of this chapter.

(ii) The petitioner's request for withholding from public disclosure must be accompanied by a certification in support as set forth in appendix A to part 512 of this chapter.

* * * * *

4. a. Section 555.6(a)(1)(vi) is revised to read as follows;

b. Section 555.6(a)(2)(iii) and (iv) are redesignated as (a)(2)(iv) and (v) respectively; and

c. New § 555.6(a)(2)(iii) is added to read as follows:

§ 555.6 Basis for petition.

(a) * * *

(1) * * *

(vi) A discussion of any other hardships (e.g., loss of market, difficulty of obtaining goods and services for compliance) that the petitioner desires the agency to consider.

(2) * * *

(iii) A discussion of any other factors (e.g., the resources available to the petitioner, inability to procure goods and services necessary for compliance following a timely request) that the petitioner desires the NHTSA to consider in deciding whether the petitioner tried in good faith to comply with the standard;

* * * * *

§ 555.10 [Amended]

5. The first sentence of § 555.10(a) is amended by removing ''Docket Section, Room 5109, National Highway Traffic Safety Administration,'' and by adding in its place ''Docket Management, Room PL–401.''

6. Section 555.10(b) is amended by removing ''sections 112, 113, and 158 of the Act (15 U.S.C. 1401, 1402, and 1418)'' and adding in its place ''49 U.S.C. 30166 and 30167.''

Issued on: August 11, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–21956 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 980320071–8128–02; I.D. 080698A]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna Fishery; Inseason Adjustment; Closure

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

ACTION: Adjustment of 1998 Atlantic bluefin tuna (BFT) Angling category quotas; closure.

SUMMARY: NMFS announces that the domestic western Atlantic bluefin tuna (BFT) category quotas for the Angling category are being adjusted due to revised estimates of landings in 1997 and due to a transfer from the Reserve to the Angling category. This adjustment results in a revised 1998 Angling category quota breakdown as follows: School size BFT—92 metric tons (mt) and large school/small medium size BFT-–151 mt. The quota for the trophy size class remains at 8 mt. Furthermore, NMFS closes the southern area fishery (Delaware and states south) for school size BFT only. Closure of this fishery is necessary because the revised southern area subquota has been attained. The intent of these actions is to prevent exceeding the quota established for the Angling category fishery.

DATES: Effective 11:30 p.m. local time on August 13, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301–713–2347, or Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

If a quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, the Assistant Administrator for Fisheries, NOAA (AA), is required under § 285.22(h) to subtract the excess from, or add the remainder to, that quota category for the following year, provided that the total of the adjusted quotas and the Reserve is consistent with a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The AA is further required to publish in the **Federal Register** any amounts to be subtracted or added and the basis for the quota reductions or increases.

On May 21, 1998 (63 FR 27862), the final quota specifications were published, effective May 15, 1998, notifying the public that 4 mt remained unharvested in the Angling category at the end of 1997. New information indicates the actual Angling category harvest to be different than those reported. The difference is enough to warrant a readjustment of the Angling category quota.

In the final specifications, the adjusted 1998 Angling category quota of 269 mt was subdivided as follows: 108 mt of school BFT (consistent with the ICCAT limitation on annual catch of school BFT to 8 percent by weight of the total annual domestic quota, i.e., 1,344 mt), with 57 mt to the northern area and 51 mt to the southern area; 153 mt of large school/small medium BFT, with 81 mt to the northern area and 72 mt to the southern area; and 8 mt of large medium/giant BFT, with 3 mt to the northern area and 5 mt to the southern area. Revised 1997 Large Pelagic Survey landings estimates indicate that the 151 mt quota for large school and small medium size BFT was exceeded by 19 mt and that the 108 mt quota of school size BFT was exceeded by 16 mt.

Given these revised landings in 1997, equivalent reductions for school and large school/small medium size BFT are necessary for the final Angling category quotas in 1998. In addition, NMFS is transferring 19 mt from the Reserve category to the large school/small

medium size class, in accordance with 50 CFR 285.22(f). The 1997 excess landings in the large school/small medium BFT size class are thus compensated for by allocating 19 mt from the Reserve. The school size BFT quota is limited to eight percent of the overall BFT quota for the season, which was allocated at the beginning of the season. Therefore, the 1997 excess landings will be compensated for by deducting 16 mt from the 1998 subquota for school size BFT. The revised 1998 quota for school size BFT is 92 mt and the revised 1998 quota for large school/small medium size BFT is 151 mt.

The AA is authorized under § 285.20(b)(1) to monitor the catch and landing statistics, including catch and landings statistics from previous years and projections based on those statistics. On the basis of these statistics, the AA will project a date when the catch of BFT will equal any quota under § 285.22. The AA is further authorized under § 285.20(b)(1) to prohibit fishing for, or retention of, BFT by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22.

On July 16, 1998 (63 FR 38340), NMFS adjusted the catch limit for school size BFT to zero coastwide, pending evaluation of 1998 catch data. Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limits in order to provide for maximum utilization of the quota spread over the longest possible period of time. Due to adjustment of the quota and evaluation of current catch data, NMFS has determined that the revised southern area subquota for school size BFT has been attained. Therefore, NMFS closes the southern area fishery (Delaware and states south) for school size BFT only (measuring 27 inches to less than 47 inches) effective 11:30 p.m. local time on August 13, 1998, through December 31, 1998. Some school size BFT quota remains for the northern area (New Jersey and states north), and NMFS may announce a catch limit adjustment for school size BFT in the northern area in the future.

The catch limit for the large school/small medium size class remains at one BFT per vessel per day for all areas and the catch limit for the trophy size class remains at one BFT per vessel per year for all areas.

Subsequent inseason adjustments, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at 888–USA-TUNA (888–872–8862), 301–713–1279, or 978–281–9305 for updates on quota monitoring and catch limit adjustments. Anglers aboard Charter/Headboat vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Catch Reporting System by phoning 888–USA-TUNA (888–872–8862), or in North Carolina, to a reporting station. For information about the North Carolina Harvest Tagging Program, including reporting station locations, call 800–338–7804.

Anglers may continue to tag and release BFT of all sizes under the NMFS tag-and-release program (50 CFR 285.27).

Classification

This action is taken under 50 CFR 285.20(b), 50 CFR 285.22, and 50 CFR 285.24(d) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: August 12, 1998.

Gary Matlock,

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

[FR Doc. 98–22169 Filed 8–13–98; 1:09 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 159
Tuesday, August 18, 1998

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

Rural Telephone Bank

7 CFR Part 1610

Rural Utilities Service

7 CFR Part 1744

Review and Revision of Rural Utilities Service Telecommunications Program and the Rural Telephone Bank Loan Documents

AGENCY: Rural Utilities Service and Rural Telephone Bank, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Utilities Service (RUS) and Rural Telephone Bank (RTB) are working on a project to update the form and content of the mortgages and loan documents relating to telecommunications borrowers. This project is part of the continuing effort to streamline and simplify regulations and to reduce burdens on borrowers. Suggestions are invited on these documents.

DATES: Comments must be received by RUS or carry a postmark or equivalent by September 17, 1998.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Director, Program Development And Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue, SW., Washington, DC 20250–1522. RUS requires a signed original and 3 copies of all comments (7 CFR 1700.4).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Room 4034 South Bldg., 1400 Independence Avenue, SW., Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: fheppe@rus.usda.gov

SUPPLEMENTARY INFORMATION: As part of their continuing effort to streamline and simplify regulations and to reduce burdens on borrowers, the Rural Utilities Service (RUS) and Rural Telephone Bank (RTB) intend to revise and reform their loan contract and mortgage documents. The reform initiative will have the following objectives:

1. Preserve and enhance RUS loan security;
2. Provide borrower flexibility into the 21st Century;
3. Improve RUS response to a rapidly changing competitive and regulatory environment;
4. Streamline RUS controls and approvals;
5. Minimize the differences between RUS loan documents for cooperatives and commercial entities;
6. Improve the ability of borrowers to respond to a changing marketplace;
7. Reduce RUS processing delays and speed the release of funds;
8. Improve the use of the Automated Legal Practice System (ALPS) which prepares most loan documents;
9. Where feasible and prudent, conform lending criteria with that of private financial institutions;
10. Avoid the traditional principle of ''one size fits all.''

Comments are invited on this project, especially on the above objectives. Target for completion and publication is early November. Consequently, we have selected a relatively short period for receipt of comments.

Dated: August 11, 1998.

Wally Beyer,

Administrator, Rural Utilities Service and Governor, Rural Telephone Bank.

[FR Doc. 98–22022 Filed 8–17–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93 and 98

[Docket No. 97–014–2]

Canadian Border Ports; Champlain, NY, and Derby Line, VT

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have amended the animal and animal product importation regulations by removing Champlain, NY, and Derby Line, VT, as land border ports of entry for animals and animal germ plasm imported from Canada into the United States. We had proposed this action in an effort to increase efficiency in our animal and animal germ plasm inspection program along the U.S.-Canada border. We are withdrawing the proposed rule because of ongoing communications with the Canadian Food Inspection Agency regarding possible sharing of animal inspection resources along the U.S.-Canada border.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1997, we published in the **Federal Register** (62 FR 34677–34679, Docket No. 97–014–1) a proposed rule to amend the regulations at 9 CFR parts 93 [1] and 98, which govern the importation of animals and animal products, to remove Champlain, NY, and Derby Line, VT, from the lists of border ports along the U.S.-Canada border having inspection facilities for the importation of animals and animal germ plasm. The ports of Champlain, NY, and Derby Line, VT, are listed in parts 93 and 98 as ports of entry for the importation of many animals, including poultry, horses, swine, cattle, and other ruminants, and certain animal germ plasm. The animal importation facilities at these two ports are open on a part-time basis only. Following a review of the amount of animal and animal germ plasm inspections performed annually at all of the Canadian border ports in the Northeast, we were considering closing the animal importation facilities at Champlain and Derby Line to increase efficiency in our inspection program.

We solicited comments on the proposed rule for 60 days ending

[1] The proposed rule actually discussed amending parts 92 and 98 instead of parts 93 and 98. The provisions of part 92, ''Importation of Certain Animals, Birds, and Poultry, and Certain Animal, Bird, and Poultry Products; Requirements for Means of Conveyance and Shipping Containers,'' were moved to part 93 in a final rule published October 28, 1997 (62 FR 56000–56026, Docket No. 94–106–9), and effective November 28, 1997.

August 26, 1997. We received six comments by that date. The comments were from a Canadian livestock producer, an organization representing the U.S. equine industry, a State Government official, a Canadian Government official, a U.S. senator, and a commenter who did not identify a particular affiliation. Five of the comments opposed closing the animal importation facilities at Derby Line, and two opposed closing the facilities at Champlain. The most common concern expressed in the comments was that, by closing either or both of these ports for animal inspection purposes, exporters and importers would have to transport their animals greater distances than is currently required, and additional travel time translates into higher transportation costs.

Since publication of the proposed rule of June 27, 1997, referenced above, our agency has become engaged in discussions with officials of the Animal Health Division of the Canadian Food Inspection Agency regarding the possibility of sharing animal inspection resources along the U.S.-Canada border. Because these discussions are ongoing, we believe that it would be premature to make the proposed changes to our animal and animal germ plasm inspection program along the U.S.-Canada border at this time. Accordingly, we have decided to withdraw the proposed rule. If, following the conclusion of our communications with Canadian animal health officials, we believe that it would be prudent to close the animal inspection facilities at any of the ports along the U.S.-Canada border, we will propose such changes in the **Federal Register** for public comment.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 10th day of August, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22181 Filed 8–17–98; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

Statement on Regulatory Burden

AGENCY: Farm Credit Administration.

ACTION: Notice of intent; request for comment.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board, is requesting commenters to identify regulations and policies that duplicate other requirements, are ineffective, or impose burdens that are greater than the benefits received. This action is being taken to improve the regulatory framework within which the Farm Credit System (FCS or System) operates.

DATES: Written comments should be received on or before November 20, 1998.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or sent by facsimile transmission to (703) 734–5784. Comments may also be submitted via electronic mail to ''reg-comm@fca.gov'' or through the Pending Regulations section of the FCA's interactive website at ''www.fca.gov.'' Copies of all communications received will be available for review by interested parties in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Richard A. Katz, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The FCA is the independent Federal agency in the executive branch of the government responsible for regulating FCS institutions. As a Government-sponsored enterprise, the FCS primarily provides loans to farmers, ranchers, aquatic producers and harvesters, agricultural cooperatives, and rural utilities.

The FCA is committed to continually updating its regulations and policies so they remain useful to the FCS and the public without sacrificing safety and soundness. Our efforts to reduce regulatory burdens on FCS institutions are consistent with the National Performance Review (NPR), which seeks to eliminate regulations that unnecessarily impede the ability of businesses to compete efficiently in the marketplace. Although independent Federal agencies are not required to comply with the NPR, the FCA voluntarily participates in this program because FCA subscribes to its primary objectives.

This initiative is designed to meet the needs of the System for effective regulation as agricultural credit markets continually change. Our efforts to remove unnecessary regulatory requirements on the System began in 1993 when we initiated a project seeking comments on regulatory burden. *See* 58 FR 34003 (June 23, 1993). Many regulatory requirements have been eliminated or streamlined during the past 5 years in response to the above-referenced 1993 publication. More specifically, a rulemaking project in 1995 repealed several regulations that prescribed unnecessarily detailed managerial or operational practices at FCS institutions, or required System institutions to obtain FCA approval before they engaged in certain activities. *See* 60 FR 2552 (January 10, 1995); 60 FR 20008 (April 24, 1995). On November 24, 1995, the FCA published a notice in the **Federal Register** that informed the public of those regulations that the FCA decided to retain without amendment because they were determined necessary to implement the Farm Credit Act of 1971, as amended (Act), or to protect the safety and soundness of the System. *See* 60 FR 57913. Another rulemaking made technical corrections by: (1) Repealing other FCA prior-approval requirements; (2) conforming several regulations to recent statutory amendments; and (3) abolishing other burdensome regulatory requirements. *See* 61 FR 67181 (December 20, 1996). Additionally, the FCA responded to comments about regulatory burden by amending many regulations and policies, including:

- Related Services. *See* 60 FR 34090 (June 30, 1995);
- Ten-Day Notification Requirements for Changes in Interest Rates. *See* 61 FR 11303 (March 20, 1996);
- Capital Adequacy and Customer Eligibility. *See* 62 FR 4429 (January 30, 1997);
- Quarterly Reports to Shareholders. *See* 62 FR 15089 (March 31, 1997);
- Loan Underwriting Standards. *See* 62 FR 51007 (September 30, 1997); and,
- General Financing Agreements. *See* 63 FR 5721 (February 4, 1998).

In its continuing effort to update its regulations and policies, the FCA is soliciting comments from the public as to any of its regulations and policies that may duplicate other governmental requirements, are not effective in achieving stated objectives, or create a burden that is perceived to be greater than the benefits received. Although the Agency will strive to minimize

regulatory burden on the System, the FCA will ensure that safety and soundness is maintained and that its regulations and policies implement the Act.

Dated: August 11, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–22100 Filed 8–17–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 868, 884, and 890

[Docket No. 98N–0564]

Medical Devices; Effective Date of Requirement for Premarket Approval for Three Class III Preamendments Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the following three class III preamendments devices: Lung water monitor, powered vaginal muscle stimulator for therapeutic use, and stair-climbing wheelchair. The agency also is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. In addition, FDA is announcing the opportunity for interested persons to request that the agency change the classification of any of the devices based on new information. This action implements certain statutory requirements.

DATES: Written comments by November 16, 1998; request for a change in classification by September 2, 1998. FDA intends that, if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

ADDRESSES: Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295) and the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807.

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) established the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (see 21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

Section 515(b)(2)(A) of the act provides a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The regulation; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change in reclassification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. Section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval, or publish a notice terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is finalized, section 501(f)(2)(B) of the act (21 U.S.C.

351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after the final classification of the device under section 513 of the act, whichever is later. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of devices in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the class III devices that are the subjects of this regulation.

The act does not permit an extension of the 90-day period after issuance of a final rule within which an application or a notice is required to be filed. The House Report on the 1976 amendments states that:

> [t]he thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval

(H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976)).

The SMDA added section 515(i) to the act requiring FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and to determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. The SMDA does not, however, prevent FDA from proceeding immediately to rulemaking under section 515(b) of the act on specific devices, in the interest of public health, independent of the procedures of section 515(i). Indeed, proceeding directly to rulemaking under section 515(b) of the act is consistent with Congress' objective in enacting section 515(i), i.e., that preamendments class III devices for which PMA's have not been required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of any of the devices.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy set forth FDA's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into three groups.

Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness but are no longer used or are in very limited use. FDA's strategy is to call for PMA's for all Group 1 devices in an omnibus section 515(b) of the act rulemaking action. In the **Federal Register** of September 7, 1995 (60 FR 46718), FDA implemented this strategy by proposing requiring the filing of a PMA or a notice of completion of a PDP for 43 class III preamendments devices. Subsequently, in the **Federal Register** of September 27, 1996 (61 FR 50704), FDA called for the filing of a PMA or a notice of completion of a PDP for 41 preamendments class III devices. (Due to public comment, the agency is reconsidering its position on the two remaining devices subject to the September 7, 1995 proposal).

Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. In the **Federal Register** of August 14, 1995 (60 FR 41986), and of June 13, 1997 (62 FR 32355), FDA issued an order under section 515(i) of the act requiring manufacturers to submit safety and effectiveness information on these Group 2 devices so that FDA can make a determination as to whether the devices should be reclassified.

Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA intends to issue proposed rules to require the submission of PMA's for the 15 high priority devices in this group in accordance with the schedule set forth in the strategy document. In the **Federal Register** of August 14, 1995 (60 FR 41984), and of June 13, 1997 (62 FR 32352), FDA issued an order under section 515(i) of the act for the 27 remaining Group 3 devices requiring manufacturers to submit safety and effectiveness information so that FDA can make a determination as to whether the devices should be reclassified or retained in class III.

In the **Federal Register** of June 18, 1997 (62 FR 33044), FDA published a proposed rule to retain the following three devices in class III: Lung water monitor; powered vaginal muscle stimulator for therapeutic use; and stair-climbing wheelchair. Interested persons were given until September 16, 1997, to comment on the proposed rule. During the comment period, the agency received no comments on the proposed rule. FDA has, therefore, concluded that insufficient information exists to establish special controls to provide reasonable assurance of the safety and effectiveness of these devices and/or that these devices present a potential unreasonable risk of illness or injury. Accordingly, in the **Federal Register** of June 30, 1998 (63 FR 35516), FDA published a final rule to retain these devices in class III.

II. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for class III devices within 90 days after issuance of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, the agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which the filing of a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA

or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or notice of completion of a PDP for a class III device is not filed with FDA within 90 days, after the date of issuance of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule to avoid interrupting investigations.

III. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the devices.

These findings are based on the reports and recommendations of the advisory committees (panels) for the classification of these devices along with any additional information that FDA has discovered. Additional information can be found in the following proposed and final rules published in the **Federal Register** on the dates given below, classifying these devices: Anesthesiology Devices, 21 CFR part 868 (44 FR 63292, November 2, 1979, and 47 FR 31130, July 16, 1982); Obstetrical and Gynecology Devices, 21 CFR part 884 (44 FR 19894, April 3, 1979, and 45 FR 12682, February 26, 1980); and Physical Medicine Devices, 21 CFR part 890 (44 FR 50458, August 28, 1979, and 48 FR 53032, November 23, 1983).

IV. Devices Subject to This Proposal

A. Lung Water Monitor (21 CFR 868.2450)

1. Identification

A lung water monitor is a device used to monitor the trend of fluid volume changes in a patient's lung by measuring changes in thoracic electrical impedance (resistance to alternating current) by means of electrodes placed on a patient's chest.

2. Summary of Data

The Anesthesiology Device Classification Panel recommended that the lung water monitor intended to monitor the trend of fluid volume changes in a patient's lung be classified into class III based on the panel members personal knowledge of, and experience with, the device and the lack of available clinical data. The panel noted that there is no acceptable quantitative procedure for measuring changes in lung fluid volume. FDA agreed and continues to agree with the panel's recommendation that the device be classified into class III.

3. Risks to Health

a. *Incorrect diagnosis*: If the device is not calibrated or does not accurately measure changes in lung fluid volume, misdiagnosis of the patient's condition may result in inappropriate therapy.

b. *Electrical shock*: If the device malfunctions or is not properly grounded, the patient may receive an electrical shock.

c. *Allergic reaction:* The adhesive backing on the electrodes applied to the chest may cause skin irritation or an allergic reaction.

d. *Typical risks of catheter placement*: Thrombosis and hematoma formation may occur.

B. Powered Vaginal Muscle Stimulator for Therapeutic Use (21 CFR 884.5940)

1. Identification

A powered vaginal muscle stimulator for therapeutic use is an electrically powered device designed to stimulate directly the muscles of the vagina with pulsating electrical current. This device is intended and labeled for therapeutic use in increasing muscular tone and strength in the treatment of sexual dysfunction. This generic type of device does not include devices used to treat urinary incontinence.

2. Summary of Data

The Obstetrical and Gynecological Device Classification Panel recommended that the powered vaginal muscle stimulator for therapeutic use intended for treatment of sexual dysfunction be classified into class III based on their familiarity with the device and the lack of information on the effectiveness of the device. FDA agreed and continues to agree with the panel's recommendation. The agency noted that the device had fallen into disuse and that the published data are not adequate to demonstrate the safety and effectiveness of the device.

3. Risks to Health

a. *Burns*: Improper voltage control of the device could result in electrical burns when the device comes in contact with vaginal tissue.

b. *Electrical shock*: Malfunction of the device could result in electrical shock to the patient.

c. *Irritation, tissue trauma, hemorrhage, and perforation*: Improper shape, or other design shortcomings, of the device could cause injury to vaginal tissue.

d. *Adverse tissue reaction*: Material or substances in the device could cause a local tissue or systematic reaction when the device contacts the patient.

C. Stair-Climbing Wheelchair (21 CFR 890.3890)

1. Identification

A stair-climbing wheelchair is a device with wheels that is intended for medical purposes to provide mobility to persons restricted to a sitting position. The device is intended to climb stairs by means of two endless belt tracks that are lowered from under the chair and adjusted to the angle of the stairs.

2. Summary of Data

The Physical Medicine Device Classification Panel recommended that the device intended for medical purposes to provide mobility to persons restricted to a sitting position be classified into class III based on the potential hazards associated with the device, the panel members familiarity with the device, the lack of sufficient data to support the safety and effectiveness of the device, and the literature. FDA agreed and continues to agree with the panel's recommendation that the device be classified into class III.

3. Risks to Health

The primary risk to health is that of bodily injury. If the device fails, the disabled patient could fall and be seriously injured.

V. PMA Requirements

A PMA for these devices must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the

application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence ''obtained from well-controlled clinical studies, with detailed data,'' in order to provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 CFR 860.7(c)(2)).

Applicants should submit any PMA in accordance with FDA's ''Premarket Approval (PMA) Manual.'' This manual is available upon request from FDA, Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850. This manual is also available on the world wide web at http://www.fda.gov/cdrh.

VI. PDP Requirements

A PDP for any of these devices may be submitted in lieu of a PMA, and must follow the procedures outlined in section 515(f) of the act. A PDP should provide: (1) A description of the device; (2) preclinical trial information (if any); (3) clinical trial information (if any); (4) a description of the manufacturing and processing of the devices; (5) the labeling of the device; and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought. Applicants should submit any PDP in accordance with FDA's ''PDP Comprehensive Outline with Attachments.'' This outline is available upon request from FDA, Center for Devices and Radiological Health, Office of Device Evaluation (HFZ–400), 9200 Corporate Blvd., Rockville, MD 20850. The outline and other PDP information is also available on the world wide web at http://www.fda.gov/cdrh/pdp.

VII. Request for Comments with Data

Interested persons may, on or before November 16, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of these devices is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by September 2, 1998.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of these devices is submitted, the agency will, by October 19, 1998, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

IX. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, the agency certifies that the proposed rule, if issued as a final rule, will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

XI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects

21 CFR Parts 868, 884, and 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 868, 884, and 890 be amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 868.2450 is amended by revising paragraph (c) to read as follows:

§ 868.2450 Lung water monitor.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule in the **Federal Register**), for any lung water monitor that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule in the **Federal Register**), been found to be substantially equivalent to

a lung water monitor that was in commercial distribution before May 28, 1976. Any other lung water monitor shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

3. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

4. Section 884.5940 is amended by revising paragraph (c) to read as follows:

§ 884.5940 Powered vaginal muscle stimulator for therapeutic use.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule in the **Federal Register**), for any powered vaginal muscle stimulator for therapeutic use that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule in the **Federal Register**), been found to be substantially equivalent to any powered vaginal muscle stimulator for therapeutic use that was in commercial distribution before May 28, 1976. Any other powered vaginal muscle stimulator for therapeutic use shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 890—PHYSICAL MEDICINE DEVICES

5. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

6. Section 890.3890 is amended by revising paragraph (c) to read as follows:

§ 890.3890 Stair-climbing wheelchair.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule in the **Federal Register**), for any stair-climbing wheelchair that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule in the **Federal Register**), been found to be substantially equivalent to any stair-climbing wheelchair that was in commercial distribution before May 28, 1976. Any other stair-climbing wheelchair shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: August 5, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–21999 Filed 8–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209446–82]

RIN 1545–AT52

Pass Through of Items of an S Corporation to its Shareholders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the pass through of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation. Changes to the applicable law were made by the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Small Business Job Protection Act of 1996. These proposed regulations provide the public with guidance needed to comply with the applicable law and will affect S corporations and their shareholders. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by November 16, 1998. Outlines of topics to be discussed at the public hearing scheduled for Tuesday, December 15, 1998, at 10 a.m. must be received by Tuesday, November 24, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209446–82), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209446–82), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under section 1366, Deane M. Burke or Terri A. Belanger, (202) 622–3070; concerning the regulations under sections 1367 and 1368, Brenda Stewart, (202) 622–3120; concerning submissions and the hearing, Michael Slaughter, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by October 19, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up cost and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.1366–1. This information is required in order for a shareholder in an S corporation to properly compute its tax liability. This information will be used to determine whether the amount of tax has been computed correctly. Responses to this collection of information are mandatory for shareholders in S corporations. The likely respondents are individuals and businesses or other for-profit institutions.

The reporting burden contained in § 1.1366–1 is reflected in the burden of Form 1040, U.S. Individual Income Tax Return, and Form 1120S, U.S. Income Tax Return for an S Corporation.

Newly designated § 1.1367–1(g) does not impose a new collection of information. The election in newly designated § 1.1367–1(g), previously contained in § 1.1367–1(f), was approved by OMB under OMB Control Number 1545–1139.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 1366, 1367, and 1368 of the Internal Revenue Code of 1986 (Code). Sections 1366, 1367, and 1368 were added by the Subchapter S Revision Act of 1982 (1982 Act) (Public Law 97–354, 96 Stat. 1669, 1697). Section 1366 was amended by the Tax Reform Act of 1984 (Public Law 98–369, 98 Stat. 844, 985), the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 2085, 2277, 2343), the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647, 102 Stat. 3406), and the Small Business Job Protection Act of 1996 (1996 Act) (Public Law 104–188, 110 Stat. 1755).

Sections 1367 and 1368 were amended by the Technical Corrections Act of 1982 (Public Law 97–448, 96 Stat. 2365, 2399–2400), the Tax Reform Act of 1984 (Public Law 98–369), and the Tax Reform Act of 1986 (Public Law 99–514). Final regulations conforming the regulations to these amendments were published in the **Federal Register** on January 3, 1994. The proposed amendments would conform the regulations to amendments made to sections 1367 and 1368 by the 1996 Act.

Explanation of Provisions

Determination of Shareholder's Tax Liability

Under section 1363, an S corporation generally computes its taxable income in the same manner as an individual, subject to certain modifications. Thus, for example, an S corporation is not entitled to a dividends received deduction under section 243.

Section 1366(a)(1) and the proposed regulations provide rules under which a shareholder of an S corporation takes into account the shareholder's pro rata share, as defined under section 1377, of the corporation's items of income, loss, deduction, or credit. A shareholder's share of these items is determined for the shareholder's taxable year in which the taxable year of the S corporation ends. If a shareholder dies before the end of the corporation's taxable year, the shareholder's pro rata share of these items is taken into account in the shareholder's final tax return. If a shareholder is an estate or trust, and the estate or trust terminates before the end of the corporation's taxable year, the shareholder's pro rata share of these items is taken into account in the shareholder's final tax return.

In the case of most items that must be separately stated by an S corporation, the provisions by which an S corporation accounts to its shareholders for tax purposes under section 1366 closely parallel the provisions for a partnership accounting to its partners under section 702. The proposed regulations provide rules outlining this general pass-through scheme for S corporations to their shareholders.

Under section 1366(a)(1)(A), an S corporation's items of income, loss, deduction, and credit must be separately stated if their separate treatment on any shareholder's income tax return could affect the shareholder's tax liability. These separately stated items include, but are not limited to, short-term and long-term capital gain or loss, other items that may be relevant to the shareholder in the computation of the shareholder's tax liability resulting from the sale or exchange of capital assets or assets described in section 1231(b), tax-exempt income, section 170(c) charitable contributions, certain foreign taxes, items used in determining certain credits, certain itemized deductions, items of portfolio income or loss and related expenses under section 469, and the corporation's adjustments in computing alternative minimum tax under sections 56 and 58 and any items of tax preference under section 57. All items of income, loss, and deduction that are not separately stated must be combined to compute the nonseparately computed income or loss of the S corporation under section 1366(a)(1)(B).

Identification of Tax-exempt Income

The proposed regulations define tax-exempt income as income that is permanently excludable from the gross income of an S corporation and its shareholders in all circumstances in which the relevant Code section applies. For example, tax-exempt income includes proceeds of life insurance contracts that are payable by reason of an individual's death and that are excludable from gross income under section 101, and interest on state and local bonds that is excludable from gross income under section 103.

However, income that is excludible from gross income pursuant to a provision of the Code that might have the effect of deferring income to the S corporation or its shareholders is not tax-exempt income. For example, income from improvements by a lessee on a lessor's property that is excludible from gross income under section 109 is not tax-exempt income because, for example, the lessor would recognize the value of the improvements as income when the property is sold by the lessor. Similarly, income from the discharge of indebtedness that is excludible from gross income under section 108 does not constitute tax-exempt income because the attribute reduction provisions of section 108(b) have the effect of deferring the recognition of such income in some circumstances while permanently excluding it, in whole or in part, in other circumstances.

Treasury and the IRS believe that Congress intended that section 108 would allow taxpayers to avoid the immediate adverse tax consequences that could otherwise result from the inclusion of income from discharge of indebtedness. The deferral of income excluded under section 108(a)(1) by reducing the basis of property or other tax attributes is one method of achieving this purpose. For example, the legislative history of section 108(a)(1)(D) provides that the exclusion from gross income for discharge of qualified real property business indebtedness income simply defers income to the shareholders of an S corporation and does not result in an adjustment to the basis of the stock of the corporation. See H.R. Rep. No. 111, 103d Cong., 1st Sess. 625 (1993); H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 555 (1993).

Other specific rules apply to the discharge of indebtedness of an S

corporation. See section 108(d)(7). The legislative history of section 108(d)(7)(A) provides that in order to treat all shareholders in the same manner, the exclusion of income arising from discharge of indebtedness and the corresponding reductions in tax attributes (including losses that are not allowed by reason of any shareholder's basis limitation) are made at the corporate level. See H.R. Rep. No. 432, 98th Cong., 2d Sess., pt. 2, 1640–41 (1984). Furthermore, the legislative history of section 108 indicates that any cancellation of indebtedness income remaining after the reduction of the S corporation's tax attributes does not result in income or have other tax consequences. See S. Rep. No. 1035, 96th Cong., 2d Sess. 2 (1980). Thus, the absence of a stock basis increase for income of an S corporation excluded under section 108(a) is consistent with the legislative history of section 108 (and its purpose to avoid the immediate adverse tax consequences that could otherwise result from the inclusion of income from discharge of indebtedness) and the specific rules that apply to the discharge of indebtedness income of S corporations.

Finally, even though a partner is entitled to an increase in the basis of the partner's interest for income from discharge of indebtedness of a partnership that is excluded under section 108(a), a shareholder of an S corporation is not entitled to an increase in stock basis under similar circumstances. This difference is appropriate because the principal provisions of section 108 are applied at the corporate level in the case of an S corporation but at the partner level in the case of a partnership. See section 108(d)(6). A basis increase in the partner's interest in the partnership is necessary in order to apply these provisions at the partner level because, for example, the income may properly be excluded by some partners and included by others, and in order to offset the basis reduction that will occur under section 752(b) as the result of the deemed distribution arising out of the decrease in the partner's share of partnership liabilities. These considerations are not present in the case of an S corporation.

Accordingly, Treasury and the IRS believe that income excluded by an S corporation pursuant to section 108 is not tax-exempt income for purposes of section 1366 whether or not the application of section 108 in a particular circumstance results in the permanent exclusion, in whole or in part, of income. See also *Nelson* v. *Commissioner*, 110 T.C. 114 (1998).

Pass Through of Character and Gross Income

Consistent with the adoption of parallel operational rules between sections 702 and 1366, the items of an S corporation are generally characterized in the same manner that partnership items are characterized. The partnership rules provide that the character of a partnership item reported by a partner is generally determined at the entity level under a conduit rule. The proposed regulations provide a similar conduit rule under which the character of a corporate item that is passed through to and reported by a shareholder is generally determined at the corporate level. However, exceptions to the general rule apply for contributions of either noncapital gain property or capital loss property if an S corporation is formed or availed of by any shareholder or shareholders for a principal purpose of selling or exchanging the property to alter the character of the gain or loss. The character of the gain or loss will be the same as it would have been if the property were in the hands of the shareholder or shareholders at the time of the sale or exchange.

Section 1366(c), like section 702(c), provides for the pass through of gross income to a shareholder for federal income tax purposes. Thus, where it is necessary to determine the amount or character of the gross income of a shareholder, the shareholder's gross income includes the shareholder's pro rata share of the gross income of the S corporation. This amount is the amount of gross income of the corporation used to derive the shareholder's pro rata share of S corporation taxable income or loss. See Rev. Rul. 87–121 (1987–2 C.B. 217).

Limitation on Losses and Deductions

In general, section 1366(d)(1) and the proposed regulations provide that the amount of losses and deductions taken into account by a shareholder for any taxable year may not exceed the sum of the shareholder's adjusted bases in the stock of the S corporation and in any indebtedness of the S corporation to the shareholder. Moreover, any loss or deduction for the taxable year not taken into account by a shareholder by reason of the basis limitation rule is treated under section 1366(d)(2) and the proposed regulations as incurred by the corporation with respect to that shareholder in the corporation's first succeeding taxable year, and subsequent taxable years. For purposes of the basis limitation rule in section 1366(d), the basis of stock acquired by gift is the basis of the stock for determining loss under section 1015. The basis rules under section 1015 operate to minimize the loss recognized by a donee upon the sale or exchange of the loss stock acquired by gift. Therefore, the basis limitation rule limits a donee shareholder's pass-through items of loss or deduction to the basis used for determining loss upon the sale or exchange of the stock acquired by gift.

The proposed regulations provide that if a shareholder's aggregate pro rata share of the items of loss and deduction exceeds the sum of the shareholder's adjusted bases in stock and debt, the limitation on losses and deductions must be allocated among the shareholder's pro rata share of each loss or deduction. This allocation is determined by taking the proportion that each loss or deduction bears to the total of all losses and deductions, including those previously disallowed.

Also under the proposed regulations, a shareholder's disallowed losses and deductions are personal to that shareholder and cannot be transferred. Moreover, if a shareholder transfers all of the shareholder's stock in an S corporation, any disallowed loss or deduction is permanently disallowed.

The proposed regulations provide special rules for a shareholder to carry over disallowed losses and deductions to any post-termination transition period. Those special rules generally follow the limitation rules provided in the proposed regulations for years in which the S corporation election is in effect, except that the amount of losses and deductions that may be taken into account is limited to the adjusted basis of the shareholder's stock (rather than stock and debt) in the corporation determined at the close of the post-termination transition period. See section 1366(d)(3)(B).

Finally, the proposed regulations provide rules regarding the carryover of disallowed losses and deductions in the event of certain corporate reorganizations. If a corporation acquires, in a transaction to which section 381(a) applies, the assets of another S corporation for which disallowed losses and deductions would carry over with respect to a shareholder under section 1366(d)(2), except for the reorganization, the losses and deductions will be available to that shareholder. Where the acquiring corporation is an S corporation, the losses and deductions will be treated as incurred by the acquiring S corporation with respect to that shareholder. Where the acquiring corporation is a C corporation, the proposed regulations provide special rules for a shareholder

to carry over disallowed losses and deductions to any post-termination transition period under section 1377 if the shareholder is a shareholder of the C corporation after the transaction.

In the case of an S corporation that transfers a part of its assets constituting an active trade or business to another corporation in a transaction to which section 368(a)(1)(D) applies, and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, any disallowed loss or deduction with respect to a shareholder of the distributing corporation immediately before the transaction is allocated between the distributing corporation and the controlled corporation with respect to the shareholder. This allocation is made in proportion to the fair market value of the shareholder's stock of the distributing corporation and the shareholder's stock of the controlled corporation, determined immediately after the transaction.

Treatment of Family Group

In general, the proposed regulations provide for the reallocation of items of the corporation among family members under certain conditions. Section 1366(e) requires a determination of whether an individual family member who renders services for or provides capital to the S corporation has received reasonable compensation. The proposed regulations provide that in determining a reasonable allowance for services rendered for, or capital furnished to, the S corporation, all the facts and circumstances are considered, including the amount that ordinarily would be paid in order to obtain comparable services or capital from a person who is neither a member of that family nor a shareholder in the corporation.

For purposes of section 1366(e), similar rules apply to services rendered, or capital furnished, to an S corporation by a pass-through entity in which a member of a shareholder's family holds an interest. The proposed regulations provide that if the pass-through entity does not receive reasonable compensation for the services rendered or capital furnished, the Commissioner may prescribe adjustments to the pass-through entity and the corporation as necessary to reflect the value of the services rendered or capital furnished.

Special Rules

Section 1366(f) and the proposed regulations provide special rules limiting the pass through of certain items of an S corporation to its shareholders. Section 1366(f)(1) and the proposed regulations provide that the pass-through rules under section 1366(a) are inapplicable with respect to any credit allowable under section 34 (relating to certain uses of gasoline and special fuels). In addition, section 1366(f) (2) and (3) and the proposed regulations provide for a reduction in the pass through of items for tax imposed on an S corporation under section 1374 or section 1375.

Adjustments to Basis of Stock

Section 1367(a) and § 1.1367–1 prescribe adjustments required by subchapter S to the basis of a shareholder's stock in an S corporation and the manner in which those adjustments are made. Section 1.1367–1 requires a shareholder in an S corporation to adjust the basis of the shareholder's stock for items of income and loss for any taxable year before adjusting the basis for distributions.

Section 1309 of the 1996 Act amended section 1368 to require that in the case of any distribution made during any taxable year, the adjusted basis of the stock is determined with regard to the adjustments provided in section 1367(a)(1) for the taxable year. Thus, the adjustments for distributions made by the S corporation during the taxable year are taken into account before applying the loss limitation for the year.

The proposed regulations amend § 1.1367–1 to provide that for taxable years of the corporation beginning on or after August 18, 1998, adjustments to the basis of a share of stock are made in the following order: (1) Increases for income items and the excess of deductions for depletion over the basis of the property subject to depletion; (2) decreases for distributions; (3) decreases for noncapital, nondeductible expenses, and certain oil and gas depletion deductions; and (4) decreases for items of loss or deduction.

Adjustments Required Before Determining Tax Effect of Distribution

Section 1368 provides rules for determining the source of a distribution made by an S corporation with respect to its stock and the tax effect of the distribution on the shareholders. Under § 1.1368–1, the determination whether a distribution is made out of the accumulated adjustments account (AAA) or earnings and profits is made only after the AAA has been adjusted to reflect: (1) Increases for income items (other than income that is exempt from tax) and the excess of the deductions for depletion over the basis of the property subject to depletion; (2) decreases for noncapital, nondeductible expenses (other than federal taxes attributable to any taxable year in which the corporation was a C corporation and expenses related to income that is exempt from tax); (3) decreases for certain oil and gas depletion deductions; (4) decreases for items of loss or deduction; and (5) the effect of certain redemptions.

Consistent with the proposed amendments to § 1.1367–1, the proposed regulations amend § 1.1368–2 to provide that for taxable years of the corporation beginning on or after August 18, 1998, the adjustments to the AAA are made in the same order as the adjustments to the basis of a share of stock under § 1.1367–1 of the proposed regulations. For purposes of determining the amount of any distribution made from the AAA, decreases to the AAA to reflect distributions are made without taking into account any net negative adjustments as defined in section 1368(e)(1)(C)(ii).

Section 1311(a) of the 1996 Act generally eliminated the S corporation earnings and profits of a corporation accumulated in those taxable years beginning before January 1, 1983, for which the corporation was an electing small business corporation under the provisions of subchapter S of the Code as then in effect, if the corporation was also an S corporation for its first taxable year beginning after December 31, 1996. Several provisions of the existing final regulations under subchapter S, which were adopted before the 1996 Act amendments, refer separately to S corporation earnings and profits and C corporation earnings and profits. See, e.g., § 1.1368–1(f)(2)(iii). Treasury and the IRS specifically request comments on the extent, if any, to which these regulations should be amended in view of the general elimination of S corporation earnings and profits. Treasury and the IRS also request comments on whether section 1311(a) of the 1996 Act applies to qualified casualty insurance electing small business corporations and qualified oil corporations, within the meaning of section 6(c) of the 1982 Act.

Proposed Effective Date

The regulations under section 1366 and the amendments to the regulations under sections 1367 and 1368 are proposed to be effective for taxable years of the corporation beginning on or after August 18, 1998.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a

significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not impose a collection of information that is not already required by the underlying statute or the current regulations and reflected in the appropriate forms. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for Tuesday, December 15, 1998, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments (a signed original and eight (8) copies) by November 16, 1998. The outline of topics to be discussed at the hearing must be received by Tuesday, November 24, 1998.

A period of 10 minutes will be allotted for each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information. The principal authors of these proposed regulations are Deane M. Burke, Terri A. Belanger, and Brenda Stewart of the Office of Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

§§ 1.1366–1 and 1.1366–2 [Removed]

Par. 2. Sections 1.1366–1 and 1.1366–2 are removed.

Par. 3. Sections 1.1366–0 through 1.1366–5 are added to read as follows:

§ 1.1366–0 Table of contents.

The following table of contents is provided to facilitate the use of §§ 1.1366–1 through 1.1366–5:

§ 1.1366–1 Shareholder's share of items of an S corporation.

(a) Determination of shareholder's tax liability.
(1) In general.
(2) Separately stated items of income, loss, deduction, or credit.
(3) Nonseparately computed income or loss.
(4) Separate activities requirement.
(5) Aggregation of deductions or exclusions for purposes of limitations.
(b) Character of items constituting pro rata share.
(1) In general.
(2) Exception for contribution of noncapital gain property.
(3) Exception for contribution of capital loss property.
(c) Gross income of a shareholder.
(1) In general.
(2) Gross income for substantial omission of items.
(d) Shareholders holding stock subject to community property laws.
(e) Net operating loss deduction of shareholder of S corporation.
(f) Cross-reference.

§ 1.1366–2 Limitations on deduction of pass-through items of an S corporation to its shareholders.

(a) In general.
(1) Limitation on losses and deductions.
(2) Carryover of disallowance.
(3) Basis limitation amount.
(i) Stock portion.
(ii) Indebtedness portion.
(4) Limitation on losses and deductions allocated to each item.
(5) Nontransferability of losses and deductions.
(6) Basis of stock acquired by gift.
(b) Special rules for carryover of disallowed losses and deductions to post-termination transition period described in section 1377(b).
(1) In general.
(2) Limitation on losses and deductions.
(3) Limitation on losses and deductions allocated to each item.
(4) Adjustment to the basis of stock.
(c) Carryover of disallowed losses and deductions in the case of liquidations, reorganizations, and divisions.
(1) Liquidations and reorganizations.
(2) Corporate separations to which section 368(a)(1)(D) applies.

§ 1.1366–3 Treatment of family groups.

(a) In general.
(b) Examples.

§ 1.1366–4 Special rules limiting the pass through of certain items of an S corporation to its shareholders.

(a) Pass through inapplicable to section 34 credit.
(b) Reduction in pass through for tax imposed on built-in gains.
(c) Reduction in pass through for tax imposed on excess net passive income.

§ 1.1366–5 Effective date.

§ 1.1366–1 Shareholder's share of items of an S corporation.

(a) *Determination of shareholder's tax liability*—(1) *In general.* An S corporation must report, and a shareholder is required to take into account in the shareholder's return, the shareholder's pro rata share, whether or not distributed, of the S corporation's items of income, loss, deduction, or credit described in paragraphs (a)(2), (3), and (4) of this section. A shareholder's pro rata share is determined in accordance with the provisions of section 1377(a) and the regulations thereunder. The shareholder takes these items into account in determining the shareholder's taxable income and tax liability for the shareholder's taxable year with or within which the taxable year of the corporation ends. If the shareholder dies (or if the shareholder is an estate or trust and the estate or trust terminates) before the end of the taxable year of the corporation, the shareholder's pro rata share of these items is taken into account on the shareholder's final return. For the limitation on allowance of a shareholder's pro rata share of S corporation losses or deductions, see section 1366(d) and § 1.1366–2.

(2) *Separately stated items of income, loss, deduction, or credit.* Each shareholder must take into account separately the shareholder's pro rata share of any item of income (including tax-exempt income), loss, deduction, or credit of the S corporation that if separately taken into account by any

shareholder could affect the shareholder's tax liability for that taxable year differently than if the shareholder did not take the item into account separately. The separately stated items of the S corporation include, but are not limited to, the following items—

(i) The corporation's combined net amount of gains and losses from sales or exchanges of capital assets grouped by applicable holding periods, by applicable rate of tax under section 1(h), and by any other classification that may be relevant in determining the shareholder's tax liability;

(ii) The corporation's combined net amount of gains and losses from sales or exchanges of property described in section 1231 (relating to property used in the trade or business and involuntary conversions), grouped by applicable holding periods, by applicable rate of tax under section 1(h), and by any other classification that may be relevant in determining the shareholder's tax liability;

(iii) Charitable contributions, grouped by the percentage limitations of section 170(b), paid by the corporation within the taxable year of the corporation;

(iv) The taxes described in section 901 that have been paid (or accrued) by the corporation to foreign countries or to possessions of the United States;

(v) Each of the corporation's separate items involved in the determination of credits against tax allowable under part IV of subchapter A (section 21 and following) of the Internal Revenue Code, except for any credit allowed under section 34 (relating to certain uses of gasoline and special fuels);

(vi) Each of the corporation's separate items of gains and losses from wagering transactions (section 165(d)); soil and water conservation expenditures (section 175); deduction under an election to expense certain depreciable business expenses (section 179); medical, dental, etc., expenses (section 213); the additional itemized deductions for individuals provided in part VII of subchapter B (section 212 and following) of the Internal Revenue Code; and any other itemized deductions for which the limitations on itemized deductions under sections 67 or 68 applies;

(vii) Any of the corporation's items of portfolio income or loss, and expenses related thereto, as defined under section 469;

(viii) The corporation's tax-exempt income. For purposes of subchapter S, tax-exempt income is income that is permanently excludible from gross income in all circumstances in which the applicable provision of the Internal Revenue Code applies. For example, income that is excludible from gross income under section 101 (certain death benefits) or section 103 (interest on state and local bonds) is tax-exempt income, while income that is excludible from gross income under section 108 (income from discharge of indebtedness) or section 109 (improvements by lessee on lessor's property) is not tax-exempt income;

(ix) The corporation's adjustments described in sections 56 and 58, and items of tax preference described in section 57; and

(x) Any item identified in guidance (including forms and instructions) issued by the Commissioner as an item required to be separately stated under this paragraph (a)(2).

(3) *Nonseparately computed income or loss.* Each shareholder must take into account separately the shareholder's pro rata share of the nonseparately computed income or loss of the S corporation. For this purpose, *nonseparately computed income or loss* means the corporation's gross income less the deductions allowed to the corporation under chapter 1 of the Internal Revenue Code, determined by excluding any item requiring separate computation under paragraph (a)(2) of this section.

(4) *Separate activities requirement.* An S corporation must report, and each shareholder must take into account in the shareholder's return, the shareholder's pro rata share of an S corporation's items of income, loss, deduction, or credit described in paragraphs (a)(2) and (3) of this section for each of the corporation's activities as defined in section 469 and the regulations thereunder.

(5) *Aggregation of deductions or exclusions for purposes of limitations*—(i) *In general.* A shareholder aggregates the shareholder's separate deductions or exclusions with the shareholder's pro rata share of the S corporation's separately stated deductions or exclusions in determining the amount of any deduction or exclusion allowable to the shareholder under subtitle A of the Internal Revenue Code as to which a limitation is imposed.

(ii) *Example.* The provisions of paragraph (a)(5)(i) of this section are illustrated by the following example:

Example. In 1999, Corporation M, an S corporation, purchases and places in service section 179 property costing $10,000. Corporation M elects to expense the entire cost of the property. Shareholder A owns 50 percent of the stock of Corporation M. Shareholder A's pro rata share of this item after Corporation M applies the section 179(b) limitations is $5,000. Because the aggregate amount of Shareholder A's pro rata share and separately acquired section 179 expense may not exceed $19,000 (the aggregate maximum cost that may be taken into account under section 179(a) for the applicable taxable year), Shareholder A may elect to expense up to $14,000 of separately acquired section 179 property that is purchased and placed in service in 1999, subject to the limitations of section 179(b).

(b) *Character of items constituting pro rata share*—(1) *In general.* Except as provided in paragraph (b)(2) or (3) of this section, the character of any item of income, loss, deduction, or credit described in section 1366(a)(1)(A) or (B) and paragraph (a) of this section is determined for the S corporation and retains that character in the hands of the shareholder. For example, if an S corporation has capital gain on the sale or exchange of a capital asset, a shareholder's pro rata share of that gain will also be characterized as a capital gain regardless of whether the shareholder is otherwise a dealer in that type of property. Similarly, if an S corporation engages in an activity that is not for profit (section 183), a shareholder's pro rata share of the S corporation's deductions will be characterized as not for profit. Also, if an S corporation makes a charitable contribution to an organization qualifying under section 170(b)(1)(A), a shareholder's pro rata share of the S corporation's charitable contribution will be characterized as made to an organization qualifying under section 170(b)(1)(A).

(2) *Exception for contribution of noncapital gain property.* If an S corporation is formed or availed of by any shareholder or group of shareholders for a principal purpose of selling or exchanging contributed property that in the hands of the shareholder or shareholders would not have produced capital gain if sold or exchanged by the shareholder or shareholders, then the gain on the sale or exchange of the property recognized by the corporation is not treated as a capital gain.

(3) *Exception for contribution of capital loss property.* If an S corporation is formed or availed of by any shareholder or group of shareholders for a principal purpose of selling or exchanging contributed property that in the hands of the shareholder or shareholders would have produced capital loss if sold or exchanged by the shareholder or shareholders, then the loss on the sale or exchange of the property recognized by the corporation is treated as a capital loss to the extent that, immediately before the contribution, the adjusted basis of the property in the hands of the shareholder

or shareholders exceeded the fair market value of the property.

(c) *Gross income of a shareholder*—(1) *In general.* Where it is necessary to determine the amount or character of the gross income of a shareholder, the shareholder's gross income includes the shareholder's pro rata share of the gross income of the S corporation. The shareholder's pro rata share of the gross income of the S corporation is the amount of gross income of the corporation used in deriving the shareholder's pro rata share of S corporation taxable income or loss (including items described in section 1366(a)(1) (A) or (B) and paragraph (a) of this section). For example, a shareholder is required to include the shareholder's pro rata share of S corporation gross income in computing the shareholder's gross income for the purposes of determining the necessity of filing a return (section 6012(a)) and the shareholder's gross income derived from farming (sections 175 and 6654(i)).

(2) *Gross income for substantial omission of items*—(i) *In general.* For purposes of determining the applicability of the 6-year period of limitation on assessment and collection provided in section 6501(e) (relating to omission of more than 25 percent of gross income), a shareholder's gross income includes the shareholder's pro rata share of S corporation gross income (as described in section 6501(e)(1)(A)(i)). In this respect, the amount of S corporation gross income used in deriving the shareholder's pro rata share of any item of S corporation income, loss, deduction, or credit (as included or disclosed in the shareholder's return) is considered as an amount of gross income stated in the shareholder's return for purposes of section 6501(e).

(ii) *Example.* The following example illustrates the provisions of paragraph (c)(2)(i) of this section:

Example. Shareholder A, an individual, owns 25 percent of the stock of Corporation N, an S corporation that has $10,000 gross income and $2,000 taxable income. A reports only $300 as A's pro rata share of N's taxable income. A should have reported $500 as A's pro rata share of taxable income, derived from $2,500 of N's gross income. Because A's return included only $300 without a disclosure meeting the requirements of section 6501(e)(1)(A)(ii) describing the difference of $200, A is regarded as having reported on the return only $1,500 ($300/$500 of $2,500) as gross income from N.

(d) *Shareholders holding stock subject to community property laws.* If a shareholder holds S corporation stock that is community property, then the shareholder's pro rata share of any item or items listed in paragraphs (a)(2), (3), and (4) of this section with respect to that stock is reported by the husband and wife in accordance with community property rules.

(e) *Net operating loss deduction of shareholder of S corporation.* For purposes of determining a net operating loss deduction under section 172, a shareholder of an S corporation must take into account the shareholder's pro rata share of items of income, loss, deduction, or credit of the corporation. See section 1366(b) and paragraph (b) of this section for rules on determining the character of the items. In determining under section 172(d)(4) the nonbusiness deductions allowable to a shareholder of an S corporation (arising from both corporation sources and any other sources), the shareholder separately takes into account the shareholder's pro rata share of the deductions of the corporation that are not attributable to a trade or business and combines this amount with the shareholder's nonbusiness deductions from any other sources. The shareholder also separately takes into account the shareholder's pro rata share of the gross income of the corporation not derived from a trade or business and combines this amount with the shareholder's nonbusiness income from all other sources. See section 172 and the regulations thereunder.

(f) *Cross-reference.* For rules relating to the consistent tax treatment of subchapter S items, see section 6037(c).

§ 1.1366–2 Limitations on deduction of pass-through items of an S corporation to its shareholders.

(a) *In general*—(1) *Limitation on losses and deductions.* The aggregate amount of losses and deductions taken into account by a shareholder under § 1.1366–1(a)(2), (3), and (4) for any taxable year of an S corporation cannot exceed the sum of—

(i) The adjusted basis of the shareholder's stock in the corporation (as determined under paragraph (a)(3)(i) of this section); and

(ii) The adjusted basis of any indebtedness of the corporation to the shareholder (as determined under paragraph (a)(3)(ii) of this section).

(2) *Carryover of disallowance.* A shareholder's aggregate amount of losses and deductions for a taxable year in excess of the sum of the adjusted basis of the shareholder's stock in an S corporation and of any indebtedness of the S corporation to the shareholder is not allowed for the taxable year. However, any disallowed loss or deduction is treated as incurred by the corporation in the corporation's first succeeding taxable year, and subsequent taxable years, with respect to the shareholder to the extent that the shareholder's adjusted basis of stock or indebtedness exceeds zero. For rules on determining the adjusted bases of stock of an S corporation and indebtedness of the corporation to the shareholder, see paragraphs (a)(3) (i) and (ii) of this section.

(3) *Basis limitation amount*—(i) *Stock portion.* A shareholder generally determines the adjusted basis of stock for purposes of paragraphs (a)(1)(i) and (2) of this section (limiting losses and deductions) by taking into account only increases in basis under section 1367(a)(1) for the taxable year and decreases in basis under section 1367(a)(2)(A), (D) and (E) (relating to distributions, noncapital, nondeductible expenses, and certain oil and gas depletion deductions) for the taxable year. In so determining this loss limitation amount, the shareholder disregards decreases in basis under section 1367(a)(2)(B) and (C) (for losses and deductions, including losses and deductions previously disallowed) for the taxable year. However, if the shareholder has in effect for the taxable year an election under § 1.1367–1(f) (proposed to be redesignated as § 1.1367–1(g)) to decrease basis by items of loss and deduction prior to decreasing basis by noncapital, nondeductible expenses and certain oil and gas depletion deductions, the shareholder also disregards decreases in basis under section 1367(a)(2)(D) and (E). This basis limitation amount for stock is determined at the time prescribed under § 1.1367–1(d)(1) for adjustments to the basis of stock.

(ii) *Indebtedness portion.* A shareholder determines the shareholder's adjusted basis in indebtedness of the corporation for purposes of paragraphs (a)(1)(ii) and (2) of this section (limiting losses and deductions) without regard to any adjustment under section 1367(b)(2)(A) for the taxable year. This basis limitation amount for indebtedness is determined at the time prescribed under § 1.1367–2(d)(1) for adjustments to the basis of indebtedness.

(4) *Limitation on losses and deductions allocated to each item.* If a shareholder's pro rata share of the aggregate amount of losses and deductions specified in § 1.1366–1(a)(2), (3), and (4) exceeds the sum of the adjusted basis of the shareholder's stock in the corporation (determined in accordance with paragraph (a)(3)(i) of this section) and the adjusted basis of any indebtedness of the corporation to the shareholder (determined in

accordance with paragraph (a)(3)(ii) of this section), then the limitation on losses and deductions under section 1366(d)(1) must be allocated among the shareholder's pro rata share of each loss or deduction. The amount of the limitation allocated to any loss or deduction is an amount that bears the same ratio to the amount of the limitation as the loss or deduction bears to the total of the losses and deductions. For this purpose, the total of losses and deductions for the taxable year is the sum of the shareholder's pro rata share of losses and deductions for the taxable year, and the losses and deductions disallowed and carried forward from prior years pursuant to section 1366(d)(2).

(5) *Nontransferability of losses and deductions.* Any loss or deduction disallowed under paragraph (a)(1) of this section is personal to the shareholder and cannot in any manner be transferred to another person. If a shareholder transfers some but not all of the shareholder's stock in the corporation, the amount of any disallowed loss or deduction under this section is not reduced and the transferee does not acquire any portion of the disallowed loss or deduction. If a shareholder transfers all of the shareholder's stock in the corporation, any disallowed loss or deduction is permanently disallowed.

(6) *Basis of stock acquired by gift.* For purposes of section 1366(d)(1)(A) and paragraphs (a)(1)(i) and (2) of this section, the basis of stock in a corporation acquired by gift is the basis of the stock that is used for purposes of determining loss.

(b) *Special rules for carryover of disallowed losses and deductions to post-termination transition period described in section 1377(b)*—(1) *In general.* If, for the last taxable year of a corporation for which it was an S corporation, a loss or deduction was disallowed to a shareholder by reason of the limitation in paragraph (a) of this section, the loss or deduction is treated under section 1366(d)(3) as incurred by that shareholder on the last day of any post-termination transition period (within the meaning of section 1377(b)).

(2) *Limitation on losses and deductions.* The aggregate amount of losses and deductions taken into account by a shareholder under paragraph (b)(1) of this section cannot exceed the adjusted basis of the shareholder's stock in the corporation determined at the close of the last day of the post-termination transition period. For this purpose, the adjusted basis of a shareholder's stock in the corporation is determined at the close of the last day of the post-termination transition period without regard to any reduction required under paragraph (b)(4) of this section. If a shareholder disposes of a share of stock prior to the close of the last day of the post-termination transition period, the adjusted basis of that share is its basis as of the close of the day of disposition. Any losses and deductions in excess of a shareholder's adjusted stock basis are permanently disallowed. For purposes of section 1366(d)(3)(B) and this paragraph (b)(2), the basis of stock in a corporation acquired by gift is the basis of the stock that is used for purposes of determining loss.

(3) *Limitation on losses and deductions allocated to each item.* If the aggregate amount of losses and deductions treated as incurred by the shareholder under paragraph (b)(1) of this section exceeds the adjusted basis of the shareholder's stock determined under paragraph (b)(2) of this section, the limitation on losses and deductions under section 1366(d)(3)(B) must be allocated among each loss or deduction. The amount of the limitation allocated to each loss or deduction is an amount that bears the same ratio to the amount of the limitation as the amount of each loss or deduction bears to the total of all the losses and deductions.

(4) *Adjustment to the basis of stock.* The shareholder's basis in the stock of the corporation is reduced by the amount allowed as a deduction by reason of this paragraph (b). For rules regarding adjustments to the basis of a shareholder's stock in an S corporation, see § 1.1367–1.

(c) *Carryover of disallowed losses and deductions in the case of liquidations, reorganizations, and divisions*—**(1)** *Liquidations and reorganizations.* If a corporation acquires the assets of an S corporation in a transaction to which section 381(a) applies, any loss or deduction disallowed under paragraph (a) of this section with respect to a shareholder of the distributor or transferor S corporation is available to that shareholder as a shareholder of the acquiring corporation. Thus, where the acquiring corporation is an S corporation, a loss or deduction of a shareholder of the distributor or transferor S corporation disallowed prior to or during the taxable year of the transaction is treated as incurred by the acquiring S corporation with respect to that shareholder if the shareholder is a shareholder of the acquiring S corporation after the transaction. Where the acquiring corporation is a C corporation, a post-termination transition period arises the day after the last day that an S corporation was in existence and the rules provided in paragraph (b) of this section apply with respect to any shareholder of the acquired S corporation that is also a shareholder of the acquiring C corporation after the transaction. See the special rules under section 1377 for the availability of the post-termination transition period if the acquiring corporation is a C corporation.

(2) *Corporate separations to which section 368(a)(1)(D) applies.* If an S corporation transfers a portion of its assets constituting an active trade or business to another corporation in a transaction to which section 368(a)(1)(D) applies, and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, any loss or deduction disallowed under paragraph (a) of this section with respect to a shareholder of the distributing S corporation immediately before the transaction is allocated between the distributing corporation and the controlled corporation with respect to the shareholder. The amount of disallowed loss or deduction allocated to the distributing (or controlled) corporation with respect to the shareholder is an amount that bears the same ratio to each item of disallowed loss or deduction as the value of the shareholder's stock in the distributing (or controlled) corporation bears to the total value of the shareholder's stock in the distributing and controlled corporations, in each case as determined immediately after the distribution.

§ 1.1366–3 Treatment of family groups.

(a) *In general.* Under section 1366(e), if an individual, who is a member of the family of one or more shareholders of an S corporation, renders services for, or furnishes capital to, the corporation without receiving reasonable compensation, the Commissioner shall prescribe adjustments to those items taken into account by the individual and the shareholders as may be necessary to reflect the value of the services rendered or capital furnished. For these purposes, in determining the reasonable value for services rendered, or capital furnished, to the corporation, consideration will be given to all the facts and circumstances, including the amount that ordinarily would be paid in order to obtain comparable services or capital from a person (other than a member of the family) who is not a shareholder in the corporation. In addition, for purposes of section 1366(e), if a member of the family of one

or more shareholders of the S corporation holds an interest in a pass-through entity (e.g., a partnership, S corporation, trust, or estate), that performs services for, or furnishes capital to, the S corporation without receiving reasonable compensation, the Commissioner shall prescribe adjustments to the pass-through entity and the corporation as may be necessary to reflect the value of the services rendered or capital furnished. For purposes of section 1366(e), the term *family* of any shareholder includes only the shareholder's spouse, ancestors, lineal descendants, and any trust for the primary benefit of any of these persons.

(b) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. The stock of an S corporation is owned 50 percent by F and 50 percent by T, the minor son of F. For the taxable year, the corporation has items of taxable income equal to $70,000. Compensation of $10,000 is paid by the corporation to F for services rendered during the taxable year, and no compensation is paid to T, who rendered no services. Based on all the relevant facts and circumstances, reasonable compensation for the services rendered by F would be $30,000. In the discretion of the Internal Revenue Service, up to an additional $20,000 of the $70,000 of the corporation's taxable income, for tax purposes, may be allocated to F as compensation for services rendered. If the Service allocates $20,000 of the corporation's taxable income to F as compensation for services, taxable income of the corporation would be reduced by $20,000 to $50,000, of which F and T each would be allocated $25,000. F would have $30,000 of total compensation paid by the corporation for services rendered.

Example 2. The stock of an S corporation is owned by A and B. For the taxable year, the corporation has paid compensation to a partnership that rendered services to the corporation during the taxable year. The spouse of A is a partner in that partnership. Consequently, if based on all the relevant facts and circumstances the partnership did not receive reasonable compensation for the services rendered to the corporation, the Internal Revenue Service, in its discretion, may make adjustments to those items taken into account by the partnership and the corporation as may be necessary to reflect the value of the services rendered.

§ 1.1366–4 Special rules limiting the pass through of certain items of an S corporation to its shareholders.

(a) *Pass through inapplicable to section 34 credit.* Section 1.1366–1(a) does not apply to any credit allowable under section 34 (relating to certain uses of gasoline and special fuels).

(b) *Reduction in pass through for tax imposed on built-in gains.* For purposes of § 1.1366–1(a), if for any taxable year of the S corporation a tax is imposed on the corporation under section 1374, the amount of the tax imposed is treated as a loss sustained by the S corporation during the taxable year. The character of the deemed loss is determined by allocating the loss proportionately among the recognized built-in gain items giving rise to the tax and attributing the character of each recognized built-in gain item to the allocable portion of the loss.

(c) *Reduction in pass through for tax imposed on excess net passive income.* For purposes of § 1.1366–1(a), if for any taxable year of the S corporation a tax is imposed on the corporation under section 1375, each item of passive investment income shall be reduced by an amount that bears the same ratio to the amount of the tax as the amount of the item bears to the total passive investment income for that taxable year.

§ 1.1366–5 Effective date.

Sections 1.1366–1 through 1.1366–4 apply to taxable years of an S corporation beginning on or after August 18, 1998.

Par. 4. Section 1.1367–0 is amended in the table as follows:

1. The entries for § 1.1367–1 (e) through (g) are revised.

2. The entries for § 1.1367–1 (h) through (j) are added.

The additions and revisions read as follows:

§ 1.1367–0 Table of contents.

* * * * *

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

* * * * *

(e) Ordering rules for taxable years beginning before January 1, 1997.
(f) Ordering rules for taxable years beginning on or after August 18, 1998.
(g) Elective ordering rule.
(h) Examples.
(i) [Reserved]
(j) Adjustments for items of income in respect of a decedent.

* * * * *

Par. 5. Section 1.1367–1 is amended as follows:

1. The heading and introductory text of paragraph (e) are revised.

2. Paragraphs (f) and (g) are redesignated as paragraphs (g) and (h), respectively.

3. New paragraph (f) is added.

4. The first and second sentences of newly designated paragraph (g) are revised.

5. Newly designated paragraph (h) is amended as follows:

a. The heading for *Example 1* is revised.

b. *Example 2* and *Example 3* are redesignated as *Example 3* and *Example 4*, respectively.

c. New *Example 2* is added.

d. The heading of newly designated *Example 4* is revised.

e. *Example 5* is added.

6. Paragraph (i) is added and reserved and paragraph (j) is added.

The additions and revisions read as follows:

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

* * * * *

(e) *Ordering rules for taxable years beginning before January 1, 1997.* For any taxable year of a corporation beginning before January 1, 1997, except as provided in paragraph (g) of this section, the adjustments required by section 1367(a) are made in the following order—

* * * * *

(f) *Ordering rules for taxable years beginning on or after August 18, 1998.* For any taxable year of a corporation beginning on or after August 18, 1998, except as provided in paragraph (g) of this section, the adjustments required by section 1367(a) are made in the following order—

(1) Any increase in basis attributable to the income items described in section 1367(a)(1) (A) and (B), and the excess of the deductions for depletion described in section 1367(a)(1)(C);

(2) Any decrease in basis attributable to a distribution by the corporation described in section 1367(a)(2)(A);

(3) Any decrease in basis attributable to noncapital, nondeductible expenses described in section 1367(a)(2)(D), and the oil and gas depletion deduction described in section 1367(a)(2)(E); and

(4) Any decrease in basis attributable to items of loss or deduction described in section 1367(a)(2) (B) and (C).

(g) *Elective ordering rule.* A shareholder may elect to decrease basis under paragraph (e)(3) or (f)(4) of this section, whichever applies, prior to decreasing basis under paragraph (e)(2) or (f)(3) of this section, whichever applies. If a shareholder makes this election, any amount described in paragraph (e)(2) or (f)(3) of this section, whichever applies, that is in excess of the shareholder's basis in stock and indebtedness is treated, solely for purposes of this section, as an amount described in paragraph (e)(2) or (f)(3) of this section, whichever applies, in the succeeding taxable year. * * *

(h) * * *

Example 1. Adjustments to basis of stock for taxable years beginning before January 1, 1997. * * *

Example 2. Adjustments to basis of stock for taxable years beginning on or after August 18, 1998. (i) On December 31, 2001, A owns a block of 50 shares of stock with an adjusted

basis per share of $6 in Corporation S. On December 31, 2001, A purchases for $400 an additional block of 50 shares of stock with an adjusted basis of $8 per share. Thus, A holds 100 shares of stock for each day of the 2002 taxable year. For S's 2002 taxable year, A's pro rata share of the amount of items described in section 1367(a)(1)(A) (relating to increases in basis of stock) is $300, A's pro rata share of the amount of the items described in section 1367(a)(2)(B) (relating to decreases in basis of stock attributable to items of loss and deduction) is $300, and A's pro rata share of the amount of the items described in section 1367(a)(2)(D) (relating to decreases in basis of stock attributable to noncapital, nondeductible expenses) is $200. S makes a distribution to A in the amount of $100 during 2002.

(ii) Pursuant to the ordering rules of paragraph (f) of this section, A first increases the basis of each share of stock by $3 ($300/100 shares) and then decreases the basis of each share by $1 ($100/100 shares) for the distribution. A next decreases the basis of each share by $2 ($200/100 shares) for the noncapital, nondeductible expenses and then decreases the basis of each share by $3 ($300/100 shares) for the items of loss. Thus, on January 1, 2003, A has a basis of $3 per share in the original block of 50 shares ($6 + $3 − $1 − $2 − $3) and a basis of $5 per share in the second block of 100 shares ($8 + $3 − $1 − $2 − $3).

* * * * *

Example 4. Effects of section 1377(a)(2) election and distribution on basis of stock for taxable years beginning before January 1, 1997. * * *

Example 5. Effects of section 1377(a)(2) election and distribution on basis of stock for taxable years beginning on or after August 18, 1998. (i) The facts are the same as in *Example 4*, except that all of the events occur in 2001 rather than in 1994 and except as follows: On June 30, 2001, B sells 25 shares of her stock for $5,000 to D and 25 shares back to Corporation S for $5,000. Under section 1377(a)(2)(B) and § 1.1377–1(b)(2), B and C are affected shareholders because B has transferred shares to Corporation S. Pursuant to section 1377(a)(2)(A) and § 1.1377–1(b)(1), B and C, the affected shareholders, and Corporation S agree to treat the taxable year 2001 as if it consisted of two separate taxable years for all affected shareholders for the purposes set forth in § 1.1377–1(b)(3)(i).

(ii) On June 30, 2001, B and C, pursuant to the ordering rules of paragraph (f)(1) of this section, increase the basis of each share by $60 ($6,000/100 shares) for the nonseparately computed income. Then B and C reduce the basis of each share by $120 ($12,000/100 shares) for the distribution. Finally, B and C decrease the basis of each share by $40 ($4,000/100 shares) for the separately stated deduction item.

(iii) The basis of the stock of B is reduced from $120 to $20 per share ($120 + $60 − $120 − $40). Prior to accounting for the separately stated deduction item, the basis of the stock of C is reduced from $80 to $20 ($80 + $60 − $120). Finally, because the period from January 1 through June 30, 2001 is treated under § 1.1377–1(b)(3)(i) as a separate taxable year for purposes of making adjustments to the basis of stock, under section 1366(d) and § 1.1366–2(a)(2), C may deduct only $20 per share of the remaining $40 of the separately stated deduction item, and the basis of the stock of C is reduced from $20 per share to $0 per share. Under section 1366 and § 1.1366–2(a)(2), C's remaining separately stated deduction item of $20 per share is treated as having been incurred in the first succeeding taxable year of Corporation S, which, for this purpose, begins on July 1, 2001.

(i) [Reserved]

(j) *Adjustments for items of income in respect of a decedent.* The basis determined under section 1014 of any stock in an S corporation is reduced by the portion of the value of the stock that is attributable to items constituting income in respect of a decedent. For the determination of items realized by an S corporation constituting income in respect of a decedent, see sections 1367(b)(4)(A) and 691 and applicable regulations thereunder. For the determination of the allowance of a deduction for the amount of estate tax attributable to income in respect of a decedent, see section 691(c) and applicable regulations thereunder.

Par. 6. The first sentence of § 1.1367–3 is removed and two sentences are added in its place to read as follows:

§ 1.1367–3 Effective date and transition rule.

Except for § 1.1367–1(f), *Example 2* and *Example 5* of § 1.1367–1(h), and § 1.1367–1(j), §§ 1.1367–1 and 1.1367–2 apply to taxable years of the corporation beginning on or after January 1, 1994. Section 1.1367–1(f), *Example 2* and *Example 5* of § 1.1367–1(h), and § 1.1367–1(j) apply only to taxable years of the corporation beginning on or after August 18, 1998. * * *

Par. 7. Section 1.1368–0 is amended in the table as follows:

1. The entry for § 1.1368–1(e) is revised and entries for § 1.1368–1 (e)(1) and (e)(2) are added.

2. The entries for § 1.1368–2 (a)(4) and (d) are revised.

3. An entry for § 1.1368–2(a)(5) is added.

The additions and revisions read as follows:

§ 1.1368–0 Table of contents.

* * * * *

§ 1.1368–1 Distributions by S corporations.

* * * * *

(e) Certain adjustments taken into account.

(1) Taxable years beginning before January 1, 1997.

(2) Taxable years beginning on or after August 18, 1998.

* * * * *

§ 1.1368–2 Accumulated adjustments account (AAA).

(a) Accumulated adjustments account.

* * * * *

(4) Ordering rules for the AAA for taxable years beginning before January 1, 1997.

(5) Ordering rules for the AAA for taxable years beginning on or after August 18, 1998.

* * * * *

(d) Adjustment in the case of redemptions, liquidations, reorganizations, and divisions.

* * * * *

Par. 8. Section 1.1368–1 is amended by revising paragraphs (d)(1) and (e) to read as follows:

§ 1.1368–1 Distributions by S corporations.

* * * * *

(d) *S corporation with earnings and profits*—(1) *General treatment of distribution.* Except as provided in paragraph (d)(2) of this section, a distribution made with respect to its stock by an S corporation that has accumulated earnings and profits as of the end of the taxable year of the S corporation in which the distribution is made is treated in the manner provided in section 1368(c). See section 316 and § 1.316–2 for provisions relating to the allocation of earnings and profits among distributions.

* * * * *

(e) *Certain adjustments taken into account*—(1) *Taxable years beginning before January 1, 1997.* For any taxable year of the corporation beginning before January 1, 1997, paragraphs (c) and (d) of this section are applied only after taking into account—

(i) The adjustments to the basis of the shares of a shareholder's stock described in section 1367 (without regard to section 1367(a)(2)(A) (relating to decreases attributable to distributions not includable in income)) for the S corporation's taxable year; and

(ii) The adjustments to the AAA required by section 1368(e)(1)(A) (but without regard to the adjustments for distributions under § 1.1368–2(a)(3)(iii)) for the S corporation's taxable year.

(2) *Taxable years beginning on or after August 18, 1998.* For any taxable year of the corporation beginning on or after August 18, 1998, paragraphs (c) and (d) of this section are applied only after taking into account—

(i) The adjustments to the basis of the shares of a shareholder's stock described in section 1367(a)(1) (relating to increases in basis of stock) for the S corporation's taxable year; and

(ii) The adjustments to the AAA required by section 1368(e)(1)(A) (but without regard to the adjustments for distributions under § 1.1368–2(a)(3)(iii)) for the S corporation's taxable year. Any

net negative adjustment (as defined in section 1368(e)(1)(C)(ii)) for the taxable year shall not be taken into account.

* * * * *

Par. 9. Section 1.1368–2 is amended as follows:

1. Paragraphs (a)(1) and (a)(3)(ii) and the heading and introductory text of paragraph (a)(4) are revised.

2. Paragraph (a)(5) is added.

3. The heading for paragraph (d) is revised.

The additions and revisions read as follows:

§ 1.1368–2 Accumulated adjustments account (AAA).

(a) *Accumulated adjustments account*—(1) *In general.* The accumulated adjustments account is an account of the S corporation and is not apportioned among shareholders. The AAA is relevant for all taxable years beginning on or after January 1, 1983, for which the corporation is an S corporation. On the first day of the first year for which the corporation is an S corporation, the balance of the AAA is zero. The AAA is increased in the manner provided in paragraph (a)(2) of this section and is decreased in the manner provided in paragraph (a)(3) of this section. For the adjustments to the AAA in the case of redemptions, liquidations, reorganizations, and corporate separations, see paragraph (d) of this section.

* * * * *

(3) *Decreases to the AAA* * * *

(ii) *Extent of allowable reduction.* The AAA may be decreased under paragraph (a)(3)(i) of this section below zero. The AAA is decreased by noncapital, nondeductible expenses under paragraph (a)(3)(i)(C) of this section even though a portion of the noncapital, nondeductible expenses is not taken into account by a shareholder under § 1.1367–1(g) (relating to the elective ordering rule). The AAA is also decreased by the entire amount of any loss or deduction even though a portion of the loss or deduction is not taken into account by a shareholder under section 1366(d)(1) or is otherwise not currently deductible under the Internal Revenue Code. However, in any subsequent taxable year in which the loss, deduction, or noncapital, nondeductible expense is treated as incurred by the corporation with respect to the shareholder under section 1366(d)(2) or § 1.1367–1(g) (or in which the loss or deduction is otherwise allowed to the shareholder), no further adjustment is made to the AAA.

* * * * *

(4) *Ordering rules for the AAA for taxable years beginning before January 1, 1997.* For any taxable year beginning before January 1, 1997, the adjustments to the AAA are made in the following order—

* * * * *

(5) *Ordering rules for the AAA for taxable years beginning on or after August 18, 1998.* For any taxable year of the corporation beginning on or after August 18, 1998, the adjustments to the AAA are made in the following order—

(i) The AAA is increased under paragraph (a)(2) of this section before it is decreased under paragraph (a)(3) of this section for the taxable year;

(ii) The AAA is decreased (but not below zero) by any portion of an ordinary distribution to which section 1368(b) or (c)(1) applies (without taking into account any net negative adjustment (as defined in section 1368(e)(1)(C)(ii)) before it is decreased under paragraph (a)(3)(i) of this section;

(iii) The AAA is decreased under paragraph (a)(3)(i)(C) and (D) of this section before it is decreased under paragraph (a)(3)(i)(A) and (B) of this section;

(iv) The AAA is decreased under paragraph (a)(3)(i)(A) and (B) of this section; and

(v) The AAA is adjusted (whether negative or positive) for redemption distributions under paragraph (d)(1) of this section.

* * * * *

(d) *Adjustment in the case of redemptions, liquidations, reorganizations, and divisions* * * *

* * * * *

Par. 10. Section 1.1368–3 is amended as follows:

1. The heading for *Example 1* is revised.

2. *Example 2* through *Example 6* are redesignated as *Example 3* through *Example 7,* respectively.

3. New *Example 2* is added.

The revision and addition read as follows:

§ 1.1368–3 Examples.

* * * * *

Example 1. Distributions by S corporations without C corporation earnings and profits for taxable years beginning before January 1, 1997. * * *

Example 2. Distributions by S corporations without earnings and profits for taxable years beginning on or after August 18, 1998. (i) Corporation S, an S corporation, has no earnings and profits as of January 1, 2001, the first day of its 2001 taxable year. S's sole shareholder, A, holds 10 shares of S stock with a basis of $1 per share as of that date. On March 1, 2001, S makes a distribution of $38 to A. For S's 2001 taxable year, A's pro rata share of the amount of the items described in section 1367(a)(1) (relating to increases in basis of stock) is $50. A's pro rata share of the amount of the items described in sections 1367(a)(2)(B) through (D) (relating to decreases in basis of stock for items other than distributions) is $26, $20 of which is attributable to items described in section 1367(a)(2)(B) and (C) and $6 of which is attributable to items described in section 1367(a)(2)(D) (relating to decreases in basis attributable to noncapital, nondeductible expenses).

(ii) Under section 1368(d)(1) and § 1.1368–1(e)(1) and (2), the adjustments to the basis of A's stock in S described in sections 1367(a)(1) are made before the distribution rules of section 1368 are applied. Thus, A's basis per share in the stock is $6.00 ($1 + [$50/10]) before taking into account the distribution. Under section 1367(a)(2)(A), the basis of A's stock is decreased by distributions to A that are not includible in A's income. Under § 1.1367–1(c)(3), the amount of the distribution that is attributable to each share of A's stock is $3.80 ($38 distribution/10 shares). Thus, A's basis per share in the stock is $2.20 ($6.00—$3.80), after taking into account the distribution. Under section 1367(a)(2)(D), the basis of each share of A's stock in S after taking into account the distribution, $2.20, is decreased by $.60 ($6 noncapital, nondeductible expenses/10). Thus, A's basis per share after taking into account the nondeductible, noncapital expenses is $1.60. Under section 1367(a)(2)(B) and (C), A's basis per share is further decreased by $2 ($20 items described in section 1367(a)(2)(B) and (C)/10 shares). However, basis may not be reduced below zero. Therefore, the basis of each share of A's stock is reduced to zero. As of January 1, 2002, A has a basis of $0 in his shares of S stock. Pursuant to section 1366(d)(2), the $.40 of loss in excess of A's basis in each of his shares of S stock is treated as incurred by the corporation in the succeeding taxable year with respect to A.

* * * * *

Par. 11. The first sentence of § 1.1368–4 is removed and two sentences are added in its place to read as follows:

§ 1.1368–4 Effective date and transition rule.

Except for §§ 1.1368–1(e)(2), 1.1368–2(a)(5), and *Example 2* of § 1.1368–3, §§ 1.1368–1, 1.1368–2, and 1.1368–3 apply to taxable years of the corporation beginning on or after January 1, 1994. Sections 1.1368–1(e)(2), 1.1368–2(a)(5) and *Example 2* of § 1.1368-3 apply only to taxable years of the corporation beginning on or after August 18, 1998.

* * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–21639 Filed 8–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[SPATS No. MS–001–FOR]

Mississippi Regulatory Program

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

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of an amendment to the Mississippi regulatory program (hereinafter the ''Mississippi program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment that is being withdrawn concerned a complete revision of the Mississippi Surface Coal Mining Regulations, and it was intended to revise the Mississippi program to be consistent with the Federal regulations. OSM announced receipt of the amendment in the January 14, 1993, **Federal Register** (58 FR 4387). On March 26, 1998, Mississippi submitted a new amendment which replaces the one that is being withdrawn by this proposed rule document.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: aabbs@osmre.gov.

SUPPLEMENTARY INFORMATION: By letter dated December 9, 1992 (Administrative Record No. MS–0319), Mississippi submitted a proposed amendment to its program pursuant to SMCRA. The submittal was a complete rewrite of Parts 100 through 250 of the Mississippi Surface Coal Mining Regulations for surface and underground coal mining operations.

OSM announced receipt of the proposed amendment in the January 14, 1993, **Federal Register** (58 FR 4387) and invited public comment on its adequacy. The public comment period ended February 16, 1993. OSM notified Mississippi of deficiencies in the December 9, 1992, submittal, and on February 17, 1994 (Administrative Record No. MS–0322), Mississippi submitted a revised amendment. OSM reopened the public comment period in the March 10, 1994, **Federal Register** (59 FR 11225). This comment period ended April 11, 1994.

Following review of the revisions, OSM notified Mississippi of deficiencies in its February 17, 1994, revised amendment. By letter dated March 26, 1998 (Administrative Record No. MS–0355), Mississippi submitted a new amendment. This amendment replaces both the December 9, 1992, and February 17, 1994, submittals. Therefore, the proposed amendment announced in the January 14, 1993, **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 7, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–22216 Filed 8–17–98; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–29–1–7181; FRL–6144–9]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana: Reasonable-Further-Progress Plan for the 1996–1999 Period, Attainment Demonstration, Contingency Plan, Motor Vehicle Emission Budgets, and 1990 Emission Inventory for the Baton Rouge Ozone Nonattainment Area; Louisiana Point Source Banking Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the EPA is proposing to approve revisions to the Louisiana State Implementation Plan (SIP) for the Baton Rouge ozone nonattainment area submitted by the State of Louisiana for the purpose of satisfying the Post-1996 Rate-of-Progress (ROP), Attainment Demonstration, and Contingency Plan requirements of the Federal Clean Air Act (the Act), which will aid in ensuring the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. The EPA is also proposing approval of the associated 1999 Motor Vehicle Emissions Budgets (MVEBs) for the area.

The EPA proposes to take action on additional SIP revisions submitted by Louisiana including codifying revisions that were made to the 1990 base year emission inventory and submitted to the EPA as part of the Baton Rouge 15 Percent Rate-of-Progress Plan approved on October 22, 1996. Furthermore, the EPA proposes to approve additional revisions to the 1990 base year emissions inventory submitted as part of the Post-1996 Rate-of-Progress Plan. The EPA is also proposing approval of the State's point source banking regulations. This rulemaking action is being taken under sections 110, 301 and part D of the Act.

DATES: Comments must be received on or before October 19, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Office of Air Quality and Radiation Protection, H. B. Garlock Building, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana, 70810.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Schulze, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7254.

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I. Background

A. Clean Air Act Requirements

1. Reasonable Further Progress Requirements

Section 182(c)(2)(B) of the Act requires each State having one or more ozone nonattainment areas classified as serious or worse to develop a plan by November 15, 1994, that provides for additional actual volatile organic compound (VOC) reductions of at least three percent per year, averaged over each consecutive three year period, beginning six years after enactment of the Act, until such time as these areas have attained the NAAQS for ozone. These plans are referred to hereafter as Post-1996 ROP Plans. These plans were due to be submitted to the EPA as a SIP revision by November 15, 1994.

Section 182(b)(1) of the Act mandates a 15 percent VOC emission reduction, net of growth, between 1990 and 1996 for each State having one or more ozone nonattainment areas classified as moderate or worse. That SIP revision was due to the EPA by November 15, 1993. The plan for these reductions occurring between 1990–1996 is hereafter referred to as the 15% ROP Plan.

Sections 182(b)(1)(C), 182(b)(1)(D) and 182(c)(2)(B) of the Act limit the creditability of certain control measures toward the ROP requirements. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g., new car emissions standards) promulgated prior to 1990, or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure) of gasoline. Furthermore, the Act does not allow credit toward ROP requirements for post-1990 corrections to existing motor vehicle Inspection and Maintenance (I/M) Programs or corrections to Reasonably Available Control Technology (RACT) rules, since these programs were required to be in place prior to 1990. Emissions and emissions reductions shall be calculated on a typical weekday basis for the ''peak'' 3-month ozone period (generally June through August).

2. Contingency Measures Requirements

Sections 172(c)(9) and 182(c)(9) of the Act require contingency measures to be included in the ROP and attainment plans. These measures are required to be implemented immediately if reasonable further progress has not been achieved, or if the NAAQS is not met by the deadline set forth in the Act.

3. Motor Vehicle Emissions Budgets

Section 176(c) of the Act, and 40 CFR 51.452(b) of the Federal transportation conformity rule require States to establish motor vehicle emissions budgets in any control strategy SIP that is submitted for attainment and maintenance of the NAAQS.

4. Attainment Demonstration Requirements

Under section 182(c)(2)(A) of the Act, States required to submit Post-1996 ROP Plans, by November 15, 1994, for serious or worse ozone nonattaiment areas, must also submit for those areas an attainment demonstration to provide for achievement of the ozone NAAQS by the statutory deadline. This demonstration is to be based on photochemical grid modeling, such as the Urban Airshed Model (UAM), or an equivalent analytical method. In a March 2, 1995, memorandum from Mary Nichols, Assistant Administrator for the EPA's Office of Air and Radiation, the EPA set forth a phased approach to satisfy the attainment demonstration requirements under section 182(c)(2)(A) of the Act. Under this approach, Louisiana was required to submit a ROP Plan to cover the three year Post-1996 ROP period (i.e., 1996–1999) as part of its ''Phase I'' submittal by December 31, 1995. Pursuant to a December 29, 1997, memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, an attainment plan was then due by April 1998, showing how Baton Rouge would attain by its statutory attainment date. As reflected in the following discussion entitled, ''Current SIP Submittals,'' Louisiana made its Post-1996 ROP Plan and Attainment Demonstration submittals ahead of the schedules outlined in the policy memoranda.

The Baton Rouge ozone nonattainment area is classified as ''serious'' and is subject to the section 182(b)(1) 15% ROP requirements, section 182(c)(2)(B) Post-1996 ROP requirements, and section 182(c)(2)(A) attainment demonstration requirements. The Baton Rouge ozone nonattainment area is comprised of the following parishes: East Baton Rouge, West Baton Rouge, Ascension, Livingston, and Iberville. As a serious ozone nonattainment area, Baton Rouge has a statutory attainment date of November 15, 1999. Therefore, the area's Post-1996 ROP requirement is to achieve an overall 9 percent reduction in actual VOCs (net of growth) during the period 1996–1999 pursuant to section 182(c)(2)(B) of the Act.

B. Related SIP Approvals

As stated previously, section 182(b)(1) of the Act requires that moderate and above ozone nonattainment areas reduce their 1990 emissions of VOCs by 15 percent (net of growth) on or before November 15, 1996. The 15% ROP Plan submittals were required to be submitted to the EPA by November 15, 1993. The EPA approved Louisiana's 15% ROP Plan on October 22, 1996 (61 FR 54737). The rulemaking and associated technical support document (TSD), which provide detailed information on the chronology of the 15% ROP Plan submissions, control measures, etc., are available from the EPA Region 6 Office listed above.

The following is a summary of the emissions reductions in the 15% ROP Plan:

Louisiana 15 percent ROP plan required reductions (excluding RVP/FMVCP)	(Tons/Day)
15% ROP Reduction	29.7
I/M Correction	1.3
RACT Correction	0.0
Growth	3.8
Total	34.8
Reductions In the Plan:	
Stage II Vapor Recovery	3.4
Vents to Flares	3.7
Marine Vapor Recovery	8.6
Tank Fitting Controls	7.9
Fugitive Emission Controls	10.4
Federal Rules (Wastewater NESHAP, VOL Storage NSPS)	1.5
Compliance Orders/Permits	1.0
Other (Tank Vent Recovery, Secondary Roof Seal on Tank)	.9
Total	37.4
Surplus Reductions (To Be Carried Over to Post-1996 Rate-of-Progress Plan)	2.6

Louisiana subsequently submitted a site-specific revision to the approved 15% ROP Plan on December 20, 1997. On May 11, 1998, the EPA approved the 15% ROP Plan revision (63 FR 25773). The rulemaking and SIP submittal are available at the EPA Region 6 Office listed above.

In another rulemaking action, the EPA redesignated Pointe Coupee Parish, which was formerly part of the six-parish Baton Rouge nonattainment area, to attainment for the ozone NAAQS (62 FR 648, dated January 6, 1997). The Baton Rouge area was designated nonattainment for ozone and classified as serious pursuant to sections 107(d)(4) and 181(a) of the Act (56 FR 56694, dated November 6, 1991). (Note that the EPA is not reopening or requesting comment on the approval actions described in this section.)

C. Current SIP Submittals

In a letter from the Governor dated November 10, 1994, the State of Louisiana submitted to the EPA the Post-1996 ROP Plan and Attainment Demonstration according to section 182(c)(2). The combined plan submittal addressed both the 9 percent VOC emissions reduction requirement and the requirement to demonstrate attainment of the ozone NAAQS by the area's statutory attainment date, November 15, 1999. The SIP submittal was deemed administratively complete on May 15, 1995, by operation of law pursuant to section 110(k)(1)(B) of the Clean Air Act.

Subsequently, on December 22, 1995, the Governor of Louisiana submitted revisions to the November 10, 1994, submittal. The EPA determined that, in effect, this revised Post-1996 ROP Plan and Attainment Demonstration superseded the previous submittal.[1] The plan was determined to be administratively complete on March 22, 1996. The revisions Louisiana made to the plan substantially modified the mix of control measures utilized to satisfy the 9% ROP requirement, and also made changes to the attainment demonstration based on the EPA's draft guidance document on attainment modeling entitled, ''Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS.'' As provided for by the draft guidance document on modeling, the submittal included a weight-of-evidence determination in support of the urban airshed modeling results.

Finally, on January 2, 1997, the Governor of Louisiana submitted a revision to the December 22, 1995, submittal. The 1997 submittal included significant changes to the 1990 base year emissions inventory (and associated 15% and 9% ROP reductions) to account for the impending redesignation of Pointe Coupee Parish to ozone attainment. Also, the 1997 submittal incorporated into the 1990 base year emissions inventory previously unreported emissions from several point sources. In addition, the 1997 submittal removed the emission reduction credits taken for the vehicle inspection and maintenance control measure in the December 22, 1995, submittal, and replaced them with additional point source emission reductions. The submittal also incorporated enhanced mobile modeling required by Federal conformity regulations. The submittal also included an analysis of how removal of the I/M reductions would impact the attainment modeling results submitted in the December 22, 1995, Attainment Demonstration. The 1997 submittal was determined to be administratively complete on June 20, 1997.

In addition, Louisiana submitted its contingency measure, point source emissions reduction banking regulations, as part of the December 15, 1995, 15% ROP Plan pursuant to sections 172(c)(9) and section 182(c)(9) of the Act. The State subsequently submitted the same contingency measure in both the December 22, 1995, and January 2, 1997, Post-1996 ROP/Attainment Demonstration submittals. The EPA deferred taking action on the regulations in the context of the 15% ROP Plan approval until its rulemaking action on the Post-1996 ROP Plan/Attainment Demonstration SIP. (The rationale is explained in more detail in the rulemaking action and associated TSD for the 15% ROP Plan.)

II. Analysis of the Submittals

The EPA has reviewed the State's submittals for consistency with the Act, and applicable EPA regulations and policy. A summary of the EPA's analysis is provided below. More detailed support and technical discussion is contained in the July 1998 ''TSD for Proposed Clean Air Act Approval and Promulgation of the Post-1996 Rate-of-Progress Plan and Attainment Demonstration for the Baton Rouge Ozone Nonattainment Area.'' This TSD is available from the EPA's Region 6 Office listed above.

[1] In this submittal, the State deleted several of the appendices found in the previous submittal and substantially revised the remaining portion of the plan (i.e., control strategy, modeling demonstration, etc.). The December 22, 1995, submittal is capable of standing alone and does not rely on the November 10, 1994, submittal to be a complete plan. As such, the EPA's legal obligation to act on the State's original Post-1996 ROP Plan/Attainment Demonstration submittal, dated November 10, 1994, is rendered moot.

A. Post-1996 Rate-of-Progress Plan

1. Introduction

Section 182(c)(2)(B) of the Act requires each serious and above ozone nonattainment area to submit a SIP revision by November 15, 1994, which provides for an actual reduction in VOC emissions of at least 3 percent per year averaged over each consecutive 3-year period, beginning 6 years after enactment of the Clean Air Act Amendments of 1990 (CAAA), until the area attains the ozone standard.

2. Base Year Emissions Inventory

Under section 182(b)(1)(B), the baseline from which States determine the required reductions for ROP planning is the 1990 base year emissions inventory. The inventory is broken down into several emissions source categories: stationary, area, on-road mobile, and off-road mobile. The EPA originally approved the Louisiana 1990 base year emissions inventory on March 15, 1995 (60 FR 13911).

Louisiana's December 15, 1995, submittal made a number of adjustments to the base year inventory. The EPA acted upon the revised 1990 base year inventory as part of its rulemaking on the 15% ROP Plan. In that rulemaking, however, the EPA failed to codify its approval of the revised base year inventory in the *Code of Federal Regulations* (specifically, 40 CFR part 52). The EPA proposes to codify its approval of the revised base year inventory (in the context of the rulemaking on the 15% ROP Plan) in this action. (Note that EPA is not reopening or asking for comment on its March 15, 1995, approval of the base year inventory.)

Louisiana's January 2, 1997, submittal made a number of revisions to the 1990 base year emissions inventory. The following table compares the revised 1990 base year VOC emissions cited in the January 2, 1997, submittal, with those cited in the approved 15% Plan rulemaking. (It should be noted that the inventory cited in the December 22, 1995, submittal is identical to the base year inventory cited in the EPA's approval of Louisiana's 15% ROP Plan.)

BATON ROUGE, LOUISIANA, 1990 BASE YEAR INVENTORY

[Ozone Seasonal VOC Emissions (Tons/Day)]

Plan submittal	Point source emissions	Area source emissions	Onroad mobile emissions	Nonroad mobile emissions	Biogenic emissions	Total
12/15/95	115.40	26.30	55.50	23.20	120.91	341.31
1/2/97	115.00	25.40	53.40	21.80	99.60	315.20
Difference	.40	.90	2.10	1.40	21.31	26.11

The changes to the inventory in Louisiana's January 2, 1997, submittal were the result of the following:

1. Removal of Pointe Coupee emissions from the 1990 base year inventory (due to redesignation to attainment):

Point sources	Reduced	5.1 tons/day.
Area sources	Reduced	.9 tons/day.
Mobile sources	Reduced	2.1 tons/day.
Nonroad sources	Reduced	1.4 tons/day.
Biogenic sources	Reduced	21.3 tons/day.
Total Reduced		30.8 tons/day.

2. The VOC emissions of 1.0 tons/day from JN Oil and Gas facility were added to the inventory. This facility was not included in the previously approved 1990 inventory.

3. Borden Chemicals reported an increase in VOC emissions of 3.7 tons/day from its acetylene plant. The adjustment was based on recent studies indicating that the prior inventory reported was understated.

The EPA is proposing to approve the revised 1990 base year emissions inventory submitted on January 2, 1997. (It should be noted that in the January 2, 1997, submittal, these revised 1990 base year numbers have been rounded to the nearest 10th of a decimal place and the non-road and area source emissions have been combined.)

Overall, these revisions to the 1990 base year inventory decrease the ''1990 ROP inventory,'' which is the 1990 base year inventory less the biogenic emissions, for the Baton Rouge nonattainment area from 220.4 tons/day to 215.6 tons/day. The decrease of 4.8 tons/day in the 1990 ROP inventory reduces the 15% ROP Plan reductions requirement by .6 tons/day. Since the reductions in the approved 15% ROP Plan have remained unchanged, Louisiana added the .6 tons/day differential to the 15% Plan surplus reductions resulting in a total surplus of 3.2 tons/day available to be carried over to the Post-1996 ROP Plan. The EPA is proposing to find this revised surplus acceptable for use in the Post-1996 ROP Plan.

3. Adjusted Base Year Inventory

Section 182(c)(2)(B) states that the rate-of-progress reductions must be achieved ''from the baseline emissions described in subsection 182(b)(1)(B).'' This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(B) defines baseline emissions (for the purposes of calculating each milestone VOC/nitrogen oxides (NO_X) emissions reduction) as ''the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the calendar year of enactment. This section excludes from the baseline the emissions that would be eliminated by FMVCP regulations promulgated by January 1, 1990, and the Reid Vapor Pressure (RVP) regulations promulgated by the time of enactment (at 55 FR 23666, June 11, 1990), which require maximum RVP limits for gasoline to be sold in nonattainment areas during the peak ozone season.

The FMVCP/RVP reduction between 1990 and the target year of 1999 is obtained by subtracting a mobile emission inventory based on projected 1999 fleet emission factors and 1990 vehicle miles travelled (VMT) from the 1990 mobile emission inventory. The EPA is proposing to accept the State's FMVCP/RVP adjustment of 24.4 tons/day. Thus, the 1990 adjusted base year inventory relative to 1999 of 191.2 tons/day (215.6—24.4) is proposed to be

acceptable for the Baton Rouge Post-1996 ROP Plan.

Provided below is a tabular summary of the emissions inventories calculated above.

Emissions inventory	Tons/day
A. 1990 Base Year Emissions Inventory	315.2
B. 1990 Rate-of-Progress Inventory (Base Year—Biogenics)	215.6
C. Emissions Reductions from the Pre-1990 FMVCP and Phase II RVP Expected by 1999	24.4
D. 1990 Adjusted Base Year Inventory (B–C)	191.2

4. Required Rate-of-Progress Reductions

The next step is then to calculate the Post-1996 ROP reductions requirement. In order to do so, the 1990 adjusted base year VOC inventory is multiplied by 9 percent. Thus, the Post-1996 ROP reduction requirement is 17.2 tons/day (.09×191.2). The EPA is proposing to find this Post-1996 ROP reduction (i.e., the 9% ROP reduction) acceptable.

5. Fleet Turnover Correction Term

In the absence of any new requirements of the CAAA, some decrease in motor vehicle emissions will occur automatically due to fleet turnover. States are not allowed to take credit for these reductions for ROP purposes. During the State's calculation of the 1996 target level of emissions, these FMVCP reductions, along with non-creditable RVP reductions that would occur between 1990 and 1996, were subtracted from the 1990 ROP inventory to calculate the 1990 adjusted base year inventory. This 1990 adjusted base year inventory was then used to calculate the required reductions and the 1996 target level of emissions.

Between 1996 and 1999, there will be some additional reductions in emissions due to fleet turnover that are not creditable. These additional, non-creditable reductions are referred to as the fleet turnover correction term. The FMVCP/RVP mobile source reductions for 1999 are calculated above (24.4 tons/day). The FMVCP/RVP mobile source reductions for 1996 (21.4 tons/day) were calculated in the same way. The fleet turnover correction term is the difference between the 1999 and 1996 reductions, or 3.0 tons/day. The EPA is proposing to accept the State's fleet turnover correction term in the Baton Rouge Post-1996 ROP Plan.

6. Calculation of Target Level of Emissions

For the purpose of calculating the 1999 target, the 1996 target inventory (obtained from the 15% ROP Plan calculations) is used. The 1996 target inventory used by the State in this calculation was revised from the target inventory approved as part of the 15% ROP Plan rulemaking in order to account for the changes made to the 1990 base year inventory described above. The EPA is proposing to approve the State's revised 1996 target level of emissions of 163.8 tons/day in this rulemaking.

The 1999 target level of emissions is the amount of VOC emissions that must be achieved in order for the nonattainment area to demonstrate that the 9% ROP requirement has been met. The 1999 target level used by the State in the Post-1996 ROP Plan is the revised 1996 target level (163.8 tons/day), less the 9% ROP reductions (17.2 tons/day), less the fleet turnover correction term (3.0 tons/day), or 143.6 tons/day. The EPA is proposing to approve the State's 1999 target level of emissions of 143.6 tons/day in this rulemaking.

7. Growth Calculations

a. Introduction. The EPA has interpreted the Act to require that States must provide for sufficient control measures in their ROP Plans to offset any emissions growth expected to occur after 1996. Therefore, to meet the ROP requirement, a State must provide for sufficient emissions reductions to offset projected growth in emissions in addition to the 3 percent annual average reduction of VOC emissions. Thus, an estimate of growth in emissions from 1996 to 1999 is required for determining the total amount of required reductions in the Post-1996 ROP Plan. The estimate is made by taking the 1990 base year inventory for each of the various source categories and multiplying it by a factor which estimates growth from 1990 to 1999. The growth of each source is calculated separately since the sources typically grow at different rates. The following is a discussion of the State of Louisiana's growth projections for 1996–1999.

b. Point Sources. Growth factors from the EPA's Economic Growth Analysis System (EGAS) were used to estimate 1990–1999 growth for point sources. The EGAS is a computer software package that provides growth factors by Source Category Codes for each specific emissions point at a facility. The 1999 point source inventory was calculated by projecting the 1990 base year emissions inventory by the EGAS growth factors. The 1990–1999 point source growth is a negative 1.6 tons per day (TPD).

The growth estimate for 1990–1996 calculated in the 15% ROP Plan was a negative 1.8 tons/day. As stated earlier, the State is required to offset the emissions growth expected in 1996–1999. Therefore, the growth projection for 1996–1999 is a positive .2 tons/day (from negative 1.8 to negative 1.6 tons/day).

The State noted in its Post-1996 ROP plan that the point source emissions reductions reflected in the 15% ROP Plan, 34.0 tons/day, had been adjusted for projected growth through 1996. Growing the point source reductions out to 1999 increases the point source reductions to 34.2 tons/day. The .2 tons/day difference in projected reductions is shown in the plan as a reduction in the total amount of growth that must be offset. The EPA is proposing to find the State's point source growth projections for 1996–1999 acceptable.

c. Area Sources. The EGAS growth factors were used for area sources, other than gasoline distribution and leaking underground storage tanks (USTs). (Gasoline distribution growth was based on 1996 and 1999 fleet gasoline fuel efficiencies (miles/gallon) determined from the MOBILE5a model and used with 1996 and 1999 VMT to estimate gas consumption. Leaking USTs were based on an actual count.) The area source growth for 1996–1999 is .2 tons/day. The EPA is proposing to find the State's area source growth projections for 1996–1999 acceptable.

d. On-road Mobile Sources. Highway mobile source growth was determined through projections using the MOBILE5a computer model and projected growth in VMT. The VMT growth projections were developed by the Louisiana Department of Transportation, in cooperation with the Metropolitan Planning Organization, Capitol Regional Planning Commission, and Louisiana Department of Environmental Quality. The projected on-road mobile source emissions growth for the Baton Rouge area (1996–1999) is 2.4 tons/day. The EPA is proposing to

find acceptable the State's on-road mobile source growth projections for 1996–1999.

e. Non-road Mobile Sources. The EGAS growth factors were used for projecting growth in non-road mobile sources. The non-road mobile growth (1996–1999) is .2 TPD. The EPA is proposing to find acceptable the State's non-road mobile growth projections for 1996–1999 acceptable.

The following Table summarizes the emissions growth by source category from the nonattainment area:

BATON ROUGE GROWTH, 1996–1999

Source category	Tons/day
Point	0.2
Area	0.2
On-road Mobile	2.4
Non-road Mobile	0.2
Subtotal	3.0
Offset from Growth of 15% Plan Point Source Reductions	(0.2)
Total Growth in 9% Plan	2.8

In summary, the EPA proposes that the State's methodology for selecting growth factors and applying them to the 1990 base year emissions inventory to estimate growth in emissions from 1996–1999 is acceptable.

8. Total Required Reductions

The total required reductions in the plan include the 9% ROP reductions, reductions to offset projected growth (1996–1999), and the FMVCP/RVP turnover correction reductions (1996–1999). The total required reductions are 23.0 tons/day. The State's ''share'' of these reductions consists of the 9 percent reductions (17.2 tons/day) plus the growth offset (2.8 tons/day), or 20.0 tons/day. The FMVCP/RVP turnover correction reductions (3.0 tons/day) are the Federal reductions that are not creditable towards meeting the ROP/growth offset requirements.

9. Measures to Achieve the Required Reductions

a. Surplus Reductions in the 15 Percent ROP Plan. As stated previously, the surplus reductions in the 15% ROP Plan total 3.2 tons/day. The State has carried these reductions over to the Post-1996 ROP Plan, which the EPA is proposing to find acceptable. A detailed description of the control measures are included in the TSD to this proposed rulemaking, as well as in the 15% ROP Plan rulemaking and its associated TSD.

b. Tier I FMVCP. Section 202 of the Act sets new Tier 1 emission standards for motor vehicles. The EPA promulgated Tier 1 standards for 1994 and later model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). The Tier 1 standards are approximately twice as stringent as prior (pre-1990 CAAA) motor vehicle emissions standards. The State employed the MOBILE5a emission factor model to estimate the amount of VOC emissions reductions from this control measure. The State has calculated that the Tier I FMVCP reductions will achieve a total of 1.0 tons/day in emissions reductions in 1996–1999. The EPA is proposing that the State's emission reduction estimates are adequately documented and acceptable for credit towards the Post-1996 ROP Plan.

c. Federal Non-road Small Engine Standards. The Federal standards for non-road engines (25 horsepower and below) were promulgated on July 3, 1995 (60 FR 34582). The standards primarily affect two stroke and four stroke lawn and garden equipment and light commercial, construction, and logging equipment. States are allowed to take credit for this measure in their ROP Plans pursuant to EPA's policy memoranda, ''Guidance on Projection of Nonroad Inventories to Future Years,'' dated February 4, 1994, and ''Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards,'' dated November 28, 1994. Based on this policy, Louisiana took credit in its Post-1996 ROP Plan for the reductions expected to result by 1999 from the Federal non-road small engine standards (22.9 percent from 1990 levels). The EPA is proposing that the 22.9 percent emissions reduction figure is adequately documented, follows EPA guidance, and is therefore, acceptable. Thus, the reductions claimed, 1.1 tons/day (5.0 tons/day projected 1999 uncontrolled emissions × 22.9 percent) are proposed by the EPA to be creditable towards the Post-1996 ROP Plan.

d. Architectural and Industrial Maintenance (AIM) Coatings. The State has chosen to rely on the Federal AIM rule for emission reductions in the Post-1996 ROP Plan. The EPA proposed this national rule on June 25, 1996 (61 FR 32729). The rule is expected to be finalized in the August 1998 time frame. The State has followed the EPA's policy memoranda entitled, ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coating Rule,'' dated March 22, 1995, and ''Update on the Credit for the 15% Rate-of-Progress Plans for Reductions from Architectural and Industrial Maintenance Coatings Rule,'' dated March 7, 1996, in estimating the amount of creditable emission reductions that will result from the final rule when promulgated. The guidance allow States to assume a 20 percent emission reduction from this source category. The State's projected uncontrolled AIM emissions in 1999 are 5.4 tons/day. Applying the 20 percent reduction credit results in a reduction of 1.1 tons/day. The EPA is proposing that the State has properly estimated the emissions reductions that will result from the Federal AIM rule, and the reductions, therefore, are creditable towards the Post-1996 ROP Plan. It should be noted, however, that if the final rule does not provide the amount of credit indicated in the memorandum that States can claim in their ROP plans, Louisiana is responsible for developing measures to make up the shortfall.

e. Autobody Refinishing National Rule. Autobody shop emissions come from the painting of damaged vehicles or the reconditioning of old vehicles typically done in an industrial or small business shop. The coatings used emit VOCs in significant amounts and the EPA is in the process of developing a national rule to address the VOC content in those coatings. The EPA intends to finalize the rule in the August 1998 time frame. In a November 29, 1994, memorandum, ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule and Autobody Refinishing Rule,'' the EPA set forth policy on the creditable reductions from the final autobody refinishing rule. That memorandum allowed for a 37 percent reduction from

1990 base year emissions. Louisiana is claiming a 37 percent emissions reduction from projected 1999 uncontrolled emissions. Louisiana's January 2, 1997, submittal, states the inventory is 1.5 tons/day; however, based on the supporting documentation submitted, the EPA has recalculated the projected emissions to actually be 1.68 tons/day (based on a 1990 uncontrolled inventory of 1.4 multiplied by a 1999 EGAS growth factor of 1.2013). The submittal takes credit for a reduction of only .5 tons/day (1.5 × 37%). However, the EPA has found this figure to be incorrectly computed. The reductions should actually be .62 tons/day (1.68 × 37%). The EPA is proposing that .62 tons/day of reductions be creditable towards the Post-1996 ROP reduction requirement. It should be noted, however, that if the final rule does not provide the amount of credit indicated in the memorandum that States can claim in their ROP plans, Louisiana is responsible for developing measures to make up the shortfall.

f. Consumer Products National Rule. Section 183(e) of the Act required the EPA to conduct a study of VOC emissions from consumer and commercial products. The EPA was then required to list (and eventually) to regulate those product categories that account for 80 percent of the consumer products emissions in the ozone nonattainment area. Group I of the EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule—including personal, household, and automotive products. The EPA intends to issue a final rule covering these products in the August 1998 time frame.

In a June 22, 1995, memorandum entitled, ''Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act,'' the EPA set forth policy regarding the amount of emissions reductions credit States could take from the Federal consumer products rule. The policy allows areas to take a 20 percent reduction from 1990 baseline levels.

The consumer products portion of the State's 1999 uncontrolled inventory is 4.71 tons/day. However, the January 2, 1997, submittal inaccurately states that the inventory is 5.1 tons/day. This figure is actually the uncontrolled 1990 base year inventory figure. When a 1999 EGAS growth factor of .9227 is applied to the 1990 uncontrolled inventory, 5.1 tons/day, the projected 1999 inventory is 4.71 tons/day. Applying a 20 percent reduction from 4.71 tons/day (per the EPA's guidance) results in reductions of .94 tons/day that are creditable toward the Post-1996 ROP Plan requirement. The .06 tons/day difference between the amount of reductions creditable (.94 tons/day) and those claimed in the plan (5.1 tons/day × 20% = 1.0 tons/day) are more than offset by the additional .12 tons/day reductions creditable to the Post-1996 ROP Plan from the autobody refinishing regulation (above). The EPA is proposing that .94 tons/day, versus 1.0 tons/day, be creditable towards the Post-1996 ROP reduction requirement. It should be noted, however, that if the final rule does not provide the amount of credit that the memorandum indicates States can claim in their ROP plans, Louisiana is responsible for developing measures to make up the shortfall.

g. Glycol Dehydrator Controls. Controls have been installed on glycol dehydrators in Louisiana to comply with the State's waste gas regulations (LAC 33:III.2115). Section 2115 was SIP-approved as part of the EPA's Louisiana RACT ''Catch-up'' rulemaking (59 FR 17078, dated April 11, 1994). The natural gas industry had been unaware of the amount of VOC emissions from this source until several years ago. As a result, the glycol dehydrator VOC emissions from several facilities were not included in the original base year inventory. The emissions were subsequently reported by the facilities for the 1993 Periodic Emissions Inventory. The State has added these glycol dehydrator emissions (totalling 9.31 tons/day) back to the 1990 base year inventory. (As noted previously in the base year emissions inventory section, the EPA is proposing to approve these revisions to the 1990 base year inventory.) The vent streams have been controlled by routing them to control devices (incinerators). The EPA is proposing that the control efficiency and rule effectiveness rates are acceptable. The State has taken 8.4 tons/day of emissions reduction credit in the Post-1996 ROP Plan for six facilities that have installed controls on glycol dehydrators to comply with the State's waste gas regulations. The EPA is, therefore, proposing the emissions reductions from the glycol dehydrator controls have been properly quantified and are creditable towards the Post-1996 ROP Plan requirements.

h. Vents to Flare. A flare system was installed at a carbon black plant, Sid Richardson, to control vent streams containing VOCs. The controls were installed to comply with the State's waste gas regulation (LAC 33:III.2115). As stated above, section 2115 has been Federally approved into the Louisiana SIP. The 1999 projected emissions (uncontrolled) were 412 tons/year. Installation of the control device has resulted in emissions reductions of 400 tons/year or 1.1 tons per day. The EPA is proposing that the control efficiency and rule effectiveness rates are acceptable, and the emissions reductions claimed, 1.1 tons/day, are creditable towards the Post-1996 ROP reductions requirements.

i. Barge Cleaner (Permit Modification). Trinity, Inc., is a barge cleaning facility in East Baton Rouge Parish whose uncontrolled VOC emissions were determined to be .9 tons/day. The State issued a permit modification (#0840–00065–04) limiting emissions from the facility to no more than .1 tons/day of VOCs. The State submitted the permit modification as part of the January 2, 1997, Post-1996 ROP Plan submittal. The permit modification was issued under a SIP-approved nonattainment new source review permitting program and is, therefore, Federally enforceable. The modification has been reviewed to verify that the emissions limits in the permit are enforceable, the emissions reductions are properly quantified, and the permit contains acceptable recordkeeping, reporting, and monitoring requirements. The EPA is proposing that the amount of emissions reductions claimed, .8 tons/day, is creditable towards the Post-1996 ROP reductions requirement.

j. Acetylene Plant (Agreed To Order). Borden Chemicals and Plastics, located in Ascension Parish, discovered that emissions from two sources in the acetylene plant, the quench water system and a barometric leg vent, were understated. The State issued a Reasonable Further Progress Agreed To Order to control these two sources by November 1, 1999. The order was included in the January 2, 1997, Post-1996 ROP Plan submittal. Reducing emissions from the barometric condenser system will involve modification of the barometric condenser system and the addition of a non-contact cooling tower and heat exchanger system. The emissions reduction project from the quench water system involves handling quench water from the soot decanters. Water exiting the soot decanters is presently cooled via a contact cooling tower. A closed loop design is planned whereby water returning to the quench will be cooled by heat exchanger. The exchanger cooling water will be recycled through a non-contact cooling tower similar to that described for the barometric condenser system.

As stated previously (in the discussion of the 1990 base year inventory), the understated emissions

have been added back to the 1990 base year point source inventory.

The emissions reductions anticipated from controlling the quench water system and the barometric leg vent are 1.8 and 1.4 tons/day, respectively. The EPA has reviewed the Agreed To Order to verify that the emissions limits in the order are enforceable, and that the reductions have been properly quantified. In addition, the EPA verified that the order contains acceptable recordkeeping, reporting, and monitoring requirements. The EPA is proposing to approve the Agreed To Order as part of the Post-1996 ROP plan and the associated emissions reductions, 3.2 tons/day, as creditable towards the 9% ROP Plan.

k. Summary of Reductions in the Plan. The following is a summary of the emissions reductions claimed in the 9% ROP Plan:

Louisiana 9 percent plan required reductions (excluding RVP/FMVCP):	(Tons/day)
9% ROP Reduction	17.2
Growth	2.8
Total	20.0
Reductions in Plan:	
Federal Measures:	
FMVCP Tier 1 Standards	1.0
Small Engines Rule	1.1
AIM Rule	1.1
Autobody Refinishing Rule	0.6
Consumer Products Rule	0.9
Other Sources:	
Surplus Reductions in 15% Plan	3.2
Barge Cleaner (Permit Modification)	0.8
Acetylene Plant (Agreed Order)	3.2
Glycol Dehydrator Controls	8.4
Vents to Flares	1.1
Total Reductions	21.4
SURPLUS REDUCTIONS	1.4

l. EPA Action. The EPA is proposing that the control measures' associated emissions reductions claimed in the January 2, 1997, Post-1996 ROP Plan are creditable towards the 9% ROP requirements of section 182(C)(2)(B) of the Act. The EPA is also proposing to approve the Borden Chemical and Plastics Reasonable Further Progress Agreed To Order as part of the Baton Rouge Post-1996 ROP Plan.

B. Motor Vehicle Emissions Budgets

1. Introduction

As stated previously, section 176(c) of the Act, and the Federal Transportation Conformity Rule require States to establish motor vehicle emissions budgets in any control strategy SIP that is submitted for attainment and maintenance of the NAAQS. Louisiana submitted, in the January 2, 1997, Post-1996 ROP Plan, 1999 projected motor vehicle emissions budgets for VOC and NO_X for the 5-parish Baton Rouge ozone nonattainment area.

In developing the projections, the State followed the requirements of section 51.452(b)(1) of the then-effective Federal Transportation Conformity Rule, which stipulate refined modeling requirements to be used for the areas classified as serious and above for ozone nonattainment for conformity determinations made after January 1, 1995. These enhanced transportation modeling requirements are aimed at improving the accuracy with which mobile source emissions are estimated. The modeling requirements are discussed in detail in the document, ''1999 Mobile Source Emissions Budget for East Baton Rouge Parish Utilizing Post-Processor for Air Quality,'' prepared by the Capital Region Planning Commission, dated October 1996. (The document is available from the EPA Region 6 Office listed above.)

2. EPA Action

For the 5-parish serious ozone nonattainment area, the State established VOC/NO_X mobile vehicle emissions budgets as follows:

BATON ROUGE, LA 1999 MOTOR VEHICLE EMISSIONS BUDGETS

Pollutant	Budget (tons/day)
VOC	33.93
NO_X	58.03

These totals are the official mobile emissions budgets to be used for transportation conformity determinations. The EPA is proposing to approve the MVEBs in the table above.

C. Contingency Measures

1. Introduction

Under section 172(c)(9) of the Act, ozone nonattainment areas classified as moderate or above must submit contingency measures to be implemented if reasonable further progress (RFP) is not achieved or if the standard is not attained by the applicable attainment date. The ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved in a timely manner and additional planning by the State is needed.

In the General Preamble, the EPA interpreted the Act to require States with moderate and above ozone nonattainment areas to include sufficient contingency measures in their November 1993 submittals so that, upon implementation of such measures, additional emissions reductions of up to 3 percent of the emissions in the adjusted base year inventory (or a lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. States must show that their contingency measures can be

implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

Additional contingency provisions are included in section 182(c)(9) for serious ozone nonattainment areas. These latter provisions are similar to the section 172(c)(9) requirements except that the focus in section 182 (''Ozone Areas'') is on meeting emissions reductions milestones (section 182(g)).

a. Point Source Emissions Banking. Louisiana identified, in both its 15% and Post-1996 ROP Plans submittals, the State's point source banking regulations (LAC 33:III sections 601, 613, 617, 619, and 621) as the 3 percent contingency measure. The banking regulations are intended to meet the contingency measure requirements of both section 172(c)(9) and section 182(c)(9) of the Act. The adopted point source banking regulations were initially submitted to the EPA for approval in the December 15, 1995, 15% ROP Plan submittal. The EPA deferred taking action on the regulations in the context of the 15% ROP Plan approval until its rulemaking action on the Post-1996 ROP Plan/Attainment Demonstration SIP. (The rationale for ''carving out'' the contingency measures is explained in more detail in the the TSD to this proposed rulemaking as well as the TSD to the 15% ROP Plan rulemaking.)

These banking regulations enable point sources of VOC and NO_X emissions in Federally designated ozone nonattainment areas to identify and preserve emissions reductions for offsetting or netting purposes. Emission reduction credits which are established in the bank are also available to the State for confiscation if needed to meet a reasonable further progress milestone. The banking regulations prohibit sources from withdrawing reduction credits below the minimum balance needed to meet the 3 percent contingency requirement. Sources were allowed six months from the date the regulation was promulgated to apply for banking their surplus emissions reduction credits which had occurred prior to enactment of the regulations. If an application for the credits was not received within the six-month period, the credits were subject to confiscation by the State. The banking regulations require that all emission reductions must be surplus and Federally enforceable for approval by the State as emission reduction credits in the bank.[2]

In the December 22, 1995, Post-1996 ROP Plan submittal, the State provided a table of the emissions reductions that had been banked by industry to date pursuant to the regulations. The State's contingency measure requirement is 5.7 tons/day (3 percent times the adjusted base year inventory of 191.2 tons/day). The VOC reductions ''on deposit,'' 13.0 tons/day, are well in excess of the 3 percent requirement. The table also identified the amount of NO_X credits ''on deposit'' in the bank (5.65 tons/day) as of the date of the submittal.

Sections 172(c)(9) and 182(c)(9) specify that the contingency measures shall ''take effect without further action by the State or the Administrator.'' In the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' the EPA interpreted this requirement to be that no further rulemaking activities by the State or the EPA would be needed to implement the contingency measures. The EPA recognized that certain actions, such as notification of sources, modification of permits, etc., would probably be needed before a measure could be implemented effectively. States would need to show that their contingency measures could be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review. In general, the EPA expected all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notified the State of its failure.

The EPA is proposing that the State has met these contingency measures requirements by having adopted and submitted the point source banking regulations and demonstrating the bank has sufficient VOC credits ''on deposit'' and available for confiscation in the event of a missed milestone/failure to attain. To ensure that sufficient credits remain in the bank to cover the contingency requirement, the regulations stipulate that emission reduction credits may not be drawn down below the amount claimed by the State in its three percent contingency measure. The State has discretion in determining which credits should actually be confiscated (i.e., pro-rata, last-in/first-out, etc.).

As a result of the confiscation, the credits would no longer be available to facilities for either offsetting new source growth or netting out of nonattainment new source review. As such, the banking regulations stipulate that the State shall provide written notice to the affected facility(ies) of its intention to confiscate credits to meet the contingency measures. A 30-day comment period is then allowed for the affected facility(ies) to respond to the confiscation or submit an alternative emissions reduction proposal. The EPA is proposing to find that the banking rules provide for expeditious implementation of the contingency measures consistent with the time frames identified in the General Preamble.

Louisiana also submitted to the EPA, in the January 2, 1997, Post-1996 ROP Plan submittal, a correction to a typographical error in section 615, ''Schedule for Submitting Applications.'' The EPA is, therefore, proposing to act upon both the correction and the base rule in this rulemaking.

b. EPA Action. The EPA is proposing to approve only the already-banked point source VOC emissions reductions credits of 5.7 tons/day towards meeting the 3 percent contingency measure requirement. Although, the EPA's ''NO_X Substitution Guidance'' permits serious and above ozone nonattainment areas to use both NO_X and VOC reductions, rather than VOC reductions alone, to meet RFP requirements after 1996, the policy requires that the cumulative VOC/NO_X RFP reductions be consistent with the emissions reductions in the modeled attainment demonstration or comparable modeling analysis. Consistent with the NO_X substitution policy, the EPA issued guidance allowing States to substitute up to 2.7 percent NO_X reductions for the 3 percent contingency measure (which would be implemented after 1996) in their 15% ROP Plans.

On January 16, 1996, however, the EPA approved a section 182(f) NO_X exemption for the Baton Rouge ozone nonattainment area (see 61 FR 2438, dated January 26, 1996). The exemption was based on an urban airshed modeling analysis that showed additional NO_X reductions would not contribute toward attainment. Like the section 182(f) modeling analysis, the Attainment Demonstration submittal of December 22, 1995, also did not model any additional NO_X reductions beyond

[2] Although the regulations are clear that, at the time of deposit, emission reductions credits must be surplus, the rules do not expressly state that they must be surplus at the time they are used. However, the rules do state that sources must comply with new source review requirements and preconstruction permit regulations in accordance with 40 CFR 51.18, 51.24, 51.307, 52.21, 52.24, 52.27, and 52.28. (Please see the EPA's restructuring of 40 CFR part 51 at 51 FR 40660 to 40661 (November 7, 1986).)

40 CFR 51.165(a)(3)(i) (formerly 40 CFR 51.18(j)), in particular, specifically requires that the baseline be tied to allowable (or actual in some cases) emissions at the time a permit application is filed. Hence, the EPA believes the requirement that the emission reductions be surplus when actually used is adequately addressed by the regulations.

some early (1990–1994) voluntary NO_X reductions. Therefore, the EPA believes that allowing banked NO_X reductions to be used toward the 3 percent contingency measure would be inconsistent with the NO_X waiver already approved for the area, as well as the Attainment Demonstration SIP.

The EPA has determined that the point source banking regulations, which generated the 5.7 tons/day of banked VOC reductions, are generally consistent with the Act, EPA policy/guidance and Federal regulations. The EPA bases its decision on the following: (1) The rules mandate that major sources bank their surplus emission reductions credits (2) the State is vested with the authority to confiscate the necessary reductions to cover the 3 percent contingency measure (if triggered following a failure to meet an RFP milestone and/or attain the NAAQS); (3) the regulations prohibit drawing down credits below the 3 percent requirement; and (4) the State has demonstrated that it has sufficient credits currently ''on account'' to cover the contingency measure requirement of 5.7 tons/day of VOCs. Thus, EPA is proposing to approve 5.7 tons/day of the banked point source VOC reductions (which total 13.0 tons/day), towards meeting the 3 percent contingency measure requirement required pursuant to sections 172(c)(9) and 182(c)(9) of the Act.

In addition, the EPA is proposing to approve the point source VOC/NO_X emissions reductions banking regulations as meeting the requirements for SIP approval under part D and section 110 of the Act.

A detailed analysis of the banking regulation is provided in the TSD to this proposed rulemaking.

It should be noted that the scope of this proposed rulemaking is to approve the banked VOC emissions reductions as creditable towards the contingency measures pursuant to sections 172(c)(9) and 182(c)(9) of the Act, and to approve all of the point source banking regulations as an acceptable SIP revision pursuant to part D and section 110 of the Act. The EPA is not approving the banking regulations as an economic incentive program (EIP) pursuant to the EPA's Economic Incentives Program Rules (59 FR 16690) and section 182(g) of the Act.

Under section 182(g)(3), if a State fails to submit a milestone compliance demonstration for any serious or severe area as required by section 182(g)(2), the State must choose from three options: to bump-up to the next higher classification, to implement additional measures (beyond those in the contingency plan which will already be triggered and implemented) to achieve the next milestone, or to adopt an economic incentive program (as described in section 182(g)(4)). Under section 182(g)(5), if a State fails to submit a compliance demonstration for any extreme area as required by section 182(g)(2), or if the area has not met an applicable milestone as required by section 182(g)(1), the State must submit a plan revision to implement an economic incentive program (as described in section 182(g)(4)) within 9 months of such failure.

An EIP is not required for the Baton Rouge serious ozone nonattainment area. The EPA encourages the adoption of ''discretionary'' EIPs by States, as allowed for in the Act (section 110(a)(2)(A)), as a means of stimulating the adoption of incentive-based, innovative programs, where appropriate, that will assist States in meeting air quality management goals. However, since the State has not expressly submitted the point source banking regulations as a section 182(g) SIP revision, the EPA believes it beyond the scope of this rulemaking to act upon the banking regulations as an EIP.

D. Additional Rule Submitted

The State elected to include regulation LAC 33:III.611, ''Mobile Sources Emissions Reductions,'' in the January 2, 1997, submittal for the EPA's approval as part of the overall emissions banking program. However, the State is not taking any reduction credit in the contingency plan from this voluntary mobile source emissions reduction program. In fact, no vehicles have actually been scrapped to date under the program and, hence, no mobile emission reduction credits have been banked statewide as part of the vehicle scrappage program.

Since the State's submission of section 611, certain national policy issues have arisen surrounding the use of mobile source-generated emissions reductions credits for use by point sources. Pending resolution of these issues, the EPA is deferring action on the regulation at this time. Deferring action on this rule will have no effect on either the Post-1996 ROP Plan or the Attainment Demonstration since the State is not relying on reductions from the vehicle scrappage program to meet the reductions target or demonstrate attainment. A more in-depth discussion of the EPA's rationale for deferring action on the rule is provided in the TSD to this proposed rulemaking.

E. Attainment Demonstration

1. Introduction

According to section 182(c)(2)(A) of the Act, serious and above ozone nonattainment areas must submit a revision to the SIP that includes a demonstration that the plan, as revised, will provide for attainment of the NAAQS for ozone by November 15, 1999. In addition to the 15% and 9% (net of growth) ROP reductions requirements, if the mandatory emission reductions are not sufficient to demonstrate attainment of the ozone NAAQS by November 15, 1999, emissions (VOCs and/or NO_X) must be further reduced until attainment is demonstrated through photochemical grid modeling.

For ozone nonattainment areas classified as serious or above, section 182(c)(2)(A) of the Act requires an attainment demonstration based on photochemical grid modeling, for which the Urban Airshed Model (UAM) is the EPA-approved model. *See* appendix W of 40 CFR part 51.

The modeling portion of the SIP submittal was reviewed in terms of technical accuracy and for consistency with EPA modeling guidelines. The following guidance documents establish the acceptable techniques for application of UAM demonstrating attainment of the ozone NAAQS:

EPA's *Guideline on Air Quality Models (Revised)* (July 1986);

EPA's *Guideline for Regulatory Application of the UAM* (July 1991); and

EPA's final *Guidance on use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* (June 1996).

Thus, the review covered the appropriateness of data sources, appropriateness of technical judgements and procedures followed in input preparation, performance of quality assurance and diagnostic procedures, adequacy of model base case performance, consistency of control measure simulation inputs with the submitted control measures, adequacy of the demonstration of attainment of the NAAQS, and consistency and completeness of documentation.

The UAM model uses an inventory of pollutant emissions, together with air quality and meteorological data, as input to a system of algorithms incorporating chemistry and dispersion, in order to simulate an observed pollution episode. Once a ''base case'' is developed that meets the minimum performance criteria, projected future emissions are used as input to simulate air quality in the attainment deadline year. Various combinations of

geographically uniform emission reductions are simulated to determine approximate attainment reduction targets. Planners design a control strategy to meet these targets, and then simulate it with UAM, including the spatially and temporally varying effects of the selected controls. Attainment is demonstrated when the modeled air quality with emission controls in effect is below the NAAQS throughout the geographical modeling domain.

2. Uncertainty and Model Performance

A modeling attainment demonstration is subject to several uncertainties. The meteorological and air quality inputs have their own associated uncertainties, both in measurement and in representativeness. In addition, not all variables can be measured for all hours, so default and interpolated values must be used. Processes such as chemical reaction and advection necessarily appear in the model in simplified form. The selected episodes may not represent all conditions conducive to high pollutant levels. Finally, base case and projected emissions are uncertain. Biogenic emission methodologies are also in a state of flux. In spite of these sources of uncertainty, photochemical grid modeling is the best tool that is available for determining the emission reductions that are needed for NAAQS attainment. The Guideline procedures are meant to ensure that inputs are set in a scientifically sound manner, and to uncover compensating errors that can be present even when the model predicts ozone well.

In recognition of these uncertainties, the EPA's *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* was developed to better reflect experience gained in model applications since 1991. The guidance was intended to assist States' efforts to develop their ''Phase II'' SIP revisions demonstrating attainment of the ozone NAAQS pursuant to the March 2, 1995, EPA memorandum from Assistant Administrator Mary Nichols entitled, ''Ozone Attainment Demonstrations.'' The guidance allows States to use a ''weight-of-evidence'' determination if the modeled attainment test is not fully passed, showing that attainment of the NAAQS is still likely. (An explanation of the attainment tests is provided below.)

As explained in the Guideline, episodes are chosen for modeling based on their high ozone levels, data availability, and other criteria. Generally, episodes should be chosen that are approximately as severe as the area's design value, which is based on the historical ozone highs. During a particular episode, the observed ozone peak may be higher or lower than the design value; but as long as it is relatively close, that episode can be accepted for use in an attainment demonstration. (See also the discussion of the attainment test below.)

Once an episode is chosen, modelers attempt to simulate it with UAM. Various performance statistics and diagnostic tests are available to gauge their success. (A discussion of the statistical and diagnostic tests employed in the evaluation of the Baton Rouge modeling demonstration is provided below.) The most commonly stated one is the peak accuracy, since it is the ozone peak that is ultimately to be reduced to the NAAQS level. However, it uses only one place and time out of all those simulated. In judging model performance to be acceptable, predictions at many places and times are examined. Also the overall pattern of ozone and other chemical species are evaluated, in light of the changing emissions and meteorology occuring during the episode. Sometimes a lengthy process of diagnostic testing and refinement of inputs is required. Thus, the finally accepted base case may show some bias (e.g., simulated ozone peak not matching the observed), and yet be fully adequate as a simulation of the episode, and for use in an attainment demonstration. The EPA is proposing to find that the Baton Rouge episodes had acceptable performance and met EPA's Guideline criteria.

3. Episodes Modeled

The Guideline calls for a minimum of 3 primary episode days to be modeled. The EPA may allow areas to use just two if they are based on a field study, since this provides substantially more complete data, and, hence, more confidence in model development procedures and results. The tradeoff of higher quality modeling for fewer episodes is deemed by EPA to be a reasonable one. In the case of the Baton Rouge demonstration, however, the State modeled all three primary episode days.

The following three episodes were selected for use in the December 22, 1995, Baton Rouge Attainment Demonstration SIP submittal: August 15–16, 1989; May 24–25, 1990; and August 18–19, 1993.

4. Attainment Tests

The *Guidance on use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* (June 1996) identifies two approaches that the State can use for demonstrating attainment of the ozone NAAQS. One of the acceptable approaches is called the ''Deterministic Approach,'' which consists of a deterministic test and an optional weight-of-evidence determination. The deterministic test is passed if predicted maximum ozone concentrations are less than or equal to 124 parts per billion (ppb) in all surface grid cells on all modeled primary episode days. If the test is not passed, a weight-of-evidence determination may be used to show that attainment of the NAAQS is still likely.

Meanwhile, the second acceptable approach is called the ''Statistical Approach.'' This approach consists of two parts: a ''Statistical Test,'' and a weight-of-evidence determination. The ''Statistical Test'' includes three benchmarks. The first of these limits the number of allowed exceedances. The second restricts the magnitude of an allowed exceedance. The third benchmark requires a minimum level of improvement in air quality to be exceeded. If one or more of the benchmarks is failed, a weight-of-evidence determination may also be performed using corroborative information. If the corroborative information is consistent with the likelihood that a proposed strategy will lead to attainment of the ozone NAAQS by statutory dates, attainment has been demonstrated.

As discussed below, the State has met these requirements by demonstrating attainment of the ozone NAAQS through UAM modeling consistent with the EPA's guidance using the ''Statistical Approach.''

5. Photochemical Grid Model Used

The State used UAM version IV, an EPA-approved photochemical grid model, to develop the attainment demonstration for the Baton Rouge area. The State's modeling activities were performed as outlined in the UAM modeling protocols and according to the EPA's ''Guideline for Regulatory Application of the Urban Airshed Model.'' (A specific modeling protocol was developed by the State for its modeling activities. The State's modeling protocol was reviewed and approved by the EPA.)

The Baton Rouge modeling domain covers all or part of 20 parishes in Louisiana, including the Baton Rouge serious ozone nonattainment area consisting of East Baton Rouge, West Baton Rouge, Livingston, Iberville, and Ascension Parishes.

a. Modeling Inputs. i. Meteorological and Air Quality Inputs. In performing the base case analyses, meteorological models were employed to simulate the weather patterns characteristic of each

episode. Concurrently, models of emissions of NO_X, VOCs, and carbon monoxide (CO) were developed to characterize the spatial and temporal distributions of these ozone precursors.

The meteorological data and air quality data used in this modeling study were obtained from a variety of sources including the Aerometric Information Retrieval System, the National Climatic Data Center, and the Louisiana Department of Environmental Quality. Land-use data were obtained from the U.S. Geological Survey (USGS). The meteorological data were collected from various surface meteorological monitoring sites. These were supplemented with aircraft data. The State followed the EPA's UAM guidance to develop domain-wide hourly wind field data, mixing heights, temperature, and meteorological scalars for Baton Rouge.

The State used the air quality data (i.e., ambient ozone, nitric oxide, nitrogen dioxide and CO concentrations) measured at monitoring stations throughout the domains to construct initial conditions. In addition, EPA-recommended background concentration values were used where measurements were unavailable.

ii. Base Case Emissions Inventories. The State followed the EPA's procedures for developing episode-specific base case emissions inventories. The Baton Rouge modeling exercises were conducted using emissions inventories compiled by survey and direct measurement by the State. The modeling emissions inventories are composed of point source, area, on-road mobile, non-road mobile, and biogenic emissions. Where applicable, emissions were adjusted for pertinent conditions related to the episode day to be modeled, thus producing day-specific emissions. Adjustments were related to meteorology, operating conditions at major point sources, and upset conditions or other unusual events that may have affected the emissions.

In the Baton Rouge modeling exercises, the State developed separate modeling inventories for all the episodes primarily based on the 1990 and 1993 base year emissions inventories. The State employed the EPA's UAM Emissions Preprocessor System (EPS), Version 2.0, to facilitate developing detailed emission inventories.

For the point source modeling inventory, the State compiled and used the 1990 base year and 1993 periodic point source inventories for the entire modeling domain. These annual emissions were adjusted to reflect seasonal and day-of-week variations in activity levels. The episode-specific hourly NO_X emissions rates of several major electric utilities in the area (i.e., Big Cajun #1, Big Cajun #2) were also taken into account in the modeling. This information was then processed through EPS 2.0.

For area sources, the State developed the episodic inventory for the Baton Rouge ozone nonattainment area based on the ''top-down'' approach, wherein parish emissions are spatially allocated using surrogate parameters. The area source emissions estimates were developed for all parishes in the modeling domain except Avoyelles Parish. Area source emissions for Avoyelles Parish were extracted from the EPA's 1990 Interim Inventory. In addition, emissions from autobody refinishing were only provided for the then-six nonattainment parishes, so the emissions for this source category from the 1990 Interim Inventory were extracted and added to the area source inventory for the remaining parishes in the modeling domain. The State used EPS 2.0 to process these area source emissions.

On-road mobile source episode-specific emissions were developed based on the top-down approach, also. This top-down approach employed the output of the EPA's mobile emissions factor model, MOBILE5a, coupled with the LADOTd vehicle miles traveled (VMT) estimates. The VMT was estimated for each parish in the domain. A seasonal adjustment was applied to the VMT estimates by LADOTd to reflect peak ozone seasonal levels before calculating the parish-level onroad motor vehicle emissions. The final inventories produced by EPS 2.0 for each episode day accurately reflect episodic daily diurnal temperature variations.

For the non-road mobile source emissions estimates (for the then-six nonattainment parishes), the State used 1990 county level estimates of emissions assembled by Energy and Environmental Analysis, Inc., for the EPA's Office of Mobile Sources (1992). For the remaining parishes in the modeling domain, the State used emissions data from the EPA's 1990 Interim Inventory to develop the non-road mobile modeling inventory.

The State developed biogenic emissions estimates for the Baton Rouge modeling domain based on information provided by the Georgia Institute of Technology (GIT). The biogenic emissions data provided by GIT represented biogenic emission rates for one hour, calculated at 30 degrees Celsius and full solar intensity, for each grid cell. In addition, biogenic emission estimates provided by GIT were adjusted for specific episodes based on hourly variations in temperature and solar intensity.

iii. Projection Inventories. The State used the EPS 2.0 utility program (i.e., Bureau of Economic Analysis Factors (BEAFAC)) to generate state-level projection factors from to 1999 for area, non-road mobile, and point sources. The factors produced by BEAFAC are based on the Bureau of Economic Analysis' ''Regional Projections to 2040,'' which contains the state data related to population, personal income, employment and earnings for 57 industrial groupings. For this application, the BEAFAC cross-reference glossary was modified to use the employment projections rather than earnings, since the State considered the employment factors as more representative of anticipated growth in the Baton Rouge area. Meanwhile, the 1999 mobile source emission inventories for the Baton Rouge modeling domain were based on MOBILE5a emission factors and LADOTd's VMT projections. (LADOTd's VMT projection was the 1999 VMT estimates by parish and functional classification for only the Baton Rouge then-six parish ozone nonattainment area.) Future year VMT estimates for other parishes were not available and, therefore, were kept at the 1990 level. (The EPA believes this is acceptable because the parishes, which are outside of the Baton Rouge nonattainment area, are, for the most part, rural in nature and have not experienced significant population growth since 1990.)

The future year (1999) baseline emissions inventories are summarized in Appendix E to the ''Final Technical Support Document: Application of the Urban Airshed Model to the Baton Rouge, Louisiana Ozone Nonattainment Area (December 1995),'' which was included in the December 22, 1995, attainment demonstration submittal. The 1999 baseline emission estimates account for the effects of growth and mobile-source emission reductions due to fleet turnover. The federally mandated 15 percent reduction in VOC emissions between 1990 and 1996, and additional 9 percent (1996–1999) reduction required for serious ozone nonattainment areas are accounted for in the 1999 baseline modeling inventories as well. The controls affect point, area, onroad and nonroad mobile sources. The industrial-source NO_X reductions between 1990 and 1994 resulting from several facilities' participation in a voluntary early NO_X reduction program were also incorporated into the modeling

inventory. Other control programs in effect, such as the existing vehicle anti-tampering inspections required for attainment areas as well as for nonattainment parishes were taken into account in the projected modeling inventory.

iv. Future Boundary Conditions. Improvements in air quality in the Baton Rouge area are anticipated by 1999, and these are reflected in the boundary condition estimates. For determining future-year boundary conditions for the three episodes, the State took into account the emission reductions that would take place between the base and future years.

b. Base Case Model Performance. In the Baton Rouge model performance evaluation, both graphical and statistical performance measures were implemented for all meteorological episodes and monitoring networks. The graphical measures include time series plots of the observed and simulated pollutant concentrations, and contour plots showing isopleths of simulated pollutant concentrations, and, where available, observed surface-layer concentrations. The statistical performance measures consisted of the mathematical calculation of a number of statistical measures of bias including the unpaired highest-prediction accuracy, the normalized bias test, and the gross error of all pairs greater than 60 ppb. A sensitivity analysis was also conducted to assess the stability of the models across a range of possible input parameters. In the Baton Rouge base case simulations, the model performance for the August 15–16, 1989, and August 18–19, 1993, episodes was good. The model performance for the May 24–25, 1990, episode was very good. The TSD to this proposed rulemaking provides a detailed analysis of the base case model performance.

6. Attainment Demonstration

The EPA's *Guideline for the Regulatory Application of the Urban Airshed Model* stipulates that, for the primary episode days modeled, there should be no predicted daily maximum ozone concentrations greater than 0.124 ppm anywhere in the modeling domain for each primary episode day modeled. However, as stated previously, The EPA has revised the model test for demonstrating attainment of ozone NAAQS. The revisions purposely make the modeled attainment test more closely reflect the form of the NAAQS. The revised tests are laid out in the EPA's guidance document entitled, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* (June 1996). In the guidance, the EPA recommends either a Statistical Approach or Deterministic Approach should be used for the attainment demonstration of the ozone NAAQS.

Briefly, the Statistical Approach consists of a test and an optional weight-of-evidence determination. The statistical test includes the application of three benchmark tests which examine: (1) the number of simulated exceedances within defined subregions of the modeling domain, (2) the magnitude of the simulated exceedances compared to calculated limits, and (3) the simulated reduction in areal ozone coverage relative to the base case simulation. A weight-of-evidence determination entails use of supplementary analyses to determine whether attainment is likely, despite the model results which do not pass the statistical test.

Meanwhile, the Deterministic Approach consists of a deterministic test plus an optional weight-of-evidence determination. The deterministic test is passed if daily maximum concentrations predicted in every surface grid cell are less than or equal to 124 ppb for all primary episode days. Again, a weight-of-evidence determination may be undertaken to demonstrate attainment despite results which do not pass the deterministic test.

To be consistent with the EPA guidance, the State used the three episodes, all having good to very good model performance, for demonstrating attainment of the ozone NAAQS. These episodes were modeled using the projected 1999 emission inventory, which includes the emission controls to be implemented through 1999. As a result, for the August 15–16, 1989 episode, the maximum simulated (peak) concentration is reduced from 15.9 to 12.2 parts per hundred million (pphm) on the first day of the episode and from 16.0 to 12.7 pphm on the second day. For the May 24–25, 1990, episode, the maximum simulated ozone concentration is reduced from 13.8 to 12.6 pphm on the first day of the episode and from 16.4 to 13.8 pphm on the second day. For the August 18–19, 1993 episode, the maximum predicted concentration is reduced from 15.9 to 15.0 pphm on the first day of the episode and from 14.8 to 14.2 pphm on the second day. (These results are provided in the TSD to this rulemaking at Figures 7.1a, 7.1b, 7.3a, 7.3b, 7.5a, 7.5b, and Tables 7–4 through 7–6).

These future year simulation results were then reviewed in accordance with the updated EPA guidance on the use of modeled results to demonstrate attainment of the ozone standard. The State elected to use the Statistical Approach along with weight-of-evidence determination to demonstrate attainment of the ozone NAAQS.

As stated previously, Benchmark Test #1 examines the number of simulated exceedances within defined subregions of the modeling domain. For the test, the State used the Classification and Regression Tree analysis software to classify the three episodes based on the meteorological and air quality conditions. For Baton Rouge, the test limits the number of projected exceedance days per subregion in the modeling domain to 2. The maximum number of days for which an exceedence occurs within any subregion is 2. Hence, Benchmark Test #1 is passed. (A more detailed explanation of this statistical test is provided in the TSD to this proposed rulemaking.)

Benchmark Test #2 requires that the predicted daily maxima corresponding with each allowed modeled exceedance may not be greater than concentration derived from a distribution of observed daily maxima at sites currently just attaining the ozone NAAQS. This was defined as the site having 1 to 3 exceedances within this time frame, and the fourth highest maximum ozone concentration was less than 12.4 pphm but greater than or equal to 11.5 pphm. The State used the data collected at Louisiana monitoring sites for the period 1984–1994 to determine a distribution of maximum ozone concentrations for monitoring sites just satisfying the ozone NAAQS. Thus, the State calculated the resultant maximum allowed concentration for each meteorological episode by determining the concentration obtained from the distribution which would correspond to a day with the same likelihood of being exceeded as the day in question. As a result, the exceedance limits for the August 16, 1989, May 25, 1990, and August 19, 1993, primary episode days are 12.4 pphm, 13.7 pphm and 12.4 pphm, respectively. Meanwhile, the simulated maximum ozone concentrations for the August 16, 1989, May 25, 1990, and August 19, 1993, primary episode days are 12.7 pphm, 13.8 pphm, and 14.2 pphm, respectively. Thus, the August 16, 1989, and May 25, 1990, primary episode days came very close to meeting the benchmark, while the August 19, 1993, episode did not.

Benchmark Test #3 requires that, for a composite of all primary episode days, areal ozone coverage for a cutoff concentration of 12.4 pphm is reduced by at least 80 percent compared to that for the base case simulation. This test is only required if ozone concentrations are underestimated in the base case

simulation. In the base case simulations for Baton Rouge, the fractional bias, a measure of over/underestimation, for the simulation of the August 16, 1989, and August 19, 1993, episodes are within plus or minus 5 percent, and the May 25, 1990, episode value is 7.3 percent (the positive value indicates overestimation). Therefore, Benchmark Test #3 did not apply because the model over predicted for the composite of the three episodes.

7. Modeling Evaluation Summary

The EPA believes that the State's attainment demonstration for the Baton Rouge ozone nonattainment area fulfills the requirements of section 182(c)(2)(A) of the Act. The State has adequately followed the EPA's guidance on the application of the UAM for demonstrating attainment of the ozone NAAQS. Following the Statistical Approach, it was demonstrated that two of the three episodes met or nearly met all the specified benchmark criteria. However, supplementary information (i.e., mid-course review, severity of selected episodes, uncertainty in the boundary condition estimates, etc.) provided by the State for consideration in the weight-of-evidence has supported the State's attainment demonstration.

In addition, the ''Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS,'' allows the use of normalized trend data, results from observational models and or other models and consideration of incremental cost/benefit estimates, etc., in a weight-of-evidence determination. In determining whether the State's statistical approach and weight-of-evidence determination was adequate, EPA considered trend data, in particular, which reflect significant reductions in monitored ozone values, precurser emissions, etc. since 1990.

For example, air quality in the Baton Rouge ozone nonattainment area has shown a steady improvement toward attaining the ozone NAAQS. The ozone design value has dropped significantly from the 1990 design level of 168 ppb. The current design value (based on 1995–1997 air quality data) is 139 ppb. (A historical account of the design values since 1990 is provided in the TSD to this proposed rulemaking.)

This position is further strengthened by the results of a recent analysis of precursor emissions in the area conducted by EPA Region 6.[3] A review of the total non-methane organic compound trend data (1985–1996) in Baton Rouge shows a 61 percent decrease at the Capitol Site of the summer mean concentrations—from 795 parts per billion carbon (ppbC) in 1985 to 307 ppbC in 1996.

Furthermore, the number of exceedence days has also been on a generally downward trend. A historical account of the exceedences days is provided in the TSD to this proposed rulemaking.

In summary, based on the results of the Statistical Approach, along with the weight-of-evidence determination, EPA is proposing that the modeled control strategy will provide for attainment of the ozone NAAQS by the statutory attainment date.

8. Control Strategy Evaluation

Tables 7–1 through 7–3 of the December 22, 1995, submittal compare the 1999 projected VOC and NO_X inventories with the base case inventories for the modeling domain. For the August 16, 1989, primary episode day, the total anthropogenic VOC emissions for 1999 are 29.7 percent lower than the 1989 emissions estimates and the total 1999 anthropogenic NO_X emissions are 9.0 percent lower than the 1989 emissions. For the May 25, 1990 primary episode day, the total anthropogenic VOC emissions for 1999 are 28.2 percent lower than the 1990 emissions estimates and the total 1999 anthropogenic NO_X emissions are 8.3 percent lower than the 1990 emissions. For the August 1993 primary episode day, these percentages are 14.9 percent (lower) for VOC and 2.7 percent (higher) for NO_X. (The smaller reductions for the 1993 episode reflect the following: (1) the projection period (1993–1999) is shorter, and (2) the actual baseline inventories include the VOC reductions and the voluntary early NO_X reductions that occurred between 1990 and 1993.)

Although the EPA believes that reducing NO_X emissions can have positive effects on ozone levels, particularly in terms of lowering the background concentrations in downwind areas, the modeling demonstrations submitted by the State to EPA to date have not demonstrated conclusively that the voluntary early NO_X emissions reductions are essential for attaining the ozone standard throughout the modeling domain. As such, at this time, the EPA is not requiring the State to establish permanent and enforceable limits for those sources at the levels resulting from voluntary early NO_X reductions. The EPA bases its decision on the following:

First, additional UAM modeling results submitted to EPA have been inconclusive with regards to the benefits of the early NO_X reductions on projected ozone levels. In its November 17, 1994, section 182(f) NO_X waiver, the State included a three-episode UAM demonstration showing that additional NO_X reductions (beyond the ''early'' NO_X reductions achieved to date) would not contribute to attainment in the area. For the demonstration, the State modeled three emission reduction scenarios (i.e., substantial VOC reductions, substantial NO_X reductions; and VOC and NO_X reductions) for all three episodes using a 1999 projected emissions inventory that included the early point source NO_X reductions and the 15% ROP reductions. The State modeled the scenarios using across-the-board reductions in the projected VOC[4] and NO_X point source emission inventories. For all three episodes, the controlling day showed that the domain-wide predicted maximum ozone concentrations were lowest when only VOC reductions were modeled. In contrast, further NO_X reductions increased the domain-wide maximum ozone concentrations. The modeling results are explained in detail in the EPA's TSD to the section 182(f) rulemaking. The EPA's approval of the State's section 182(f) petition was published on January 26, 1996 (61 FR 2438).

In the section 182(f) modeling demonstration, the State plotted the effect of the 15% ROP, early NO_X, and across-the-board VOC/NO_X reductions on predicted maximum ozone values. These plots were also included in the TSD to the proposed rulemaking on the section 182(f) petition in Figures 7, 9, and 11. Most noteworthy was the inconclusiveness of the effect of the early NO_X reductions on predicted peak ozone concentrations. In the case of the July 28, 1989, episode, the early NO_X reductions resulted in a slight increase in peak concentrations (from 138 ppb to 139). In the August 16, 1989, episode, peak concentrations remained unchanged (138 ppb). Lastly, in the May 25, 1990, episode, peak concentrations were decreased slightly from the early NO_X reductions (145 to 144).

In addition, in the case of the August 19, 1993, episode, the early NO_X

[3] U.S. Environmental Protection Agency Region 6, *Initial Analysis of 1996 Photochemical Assessment Monitoring Stations (PAMS) Data from Baton Rouge, El Paso, Dallas, and Houston*, December 3, 1997.

[4] It should be noted that, for the purposes of the section 182(f) demonstration, the State did not model the post-1996 ROP (9%) emission reduction strategy since a specific control strategy had not been developed at the time of submitting the section 182(f) demonstration. However, the point source reductions scenarios that were modeled represent equal or greater VOC reductions than those required to meet the Post-1996 ROP emissions reduction target.

reductions are included in the actual emissions (the majority of the reductions having occurred by 1993). From that baseline level, areawide point source NO_X emissions are projected to 1999. In 1999, the projected point source NO_X emissions are 2.7 percent greater in 1999 than in the base case (i.e., 1993). In spite of the growth in point source NO_X emissions from 1993–1999, however, the peak modeled ozone concentration was reduced from 148 ppm in the base case to 142 ppm. (See Table 7–6 in the TSD to this proposed rulemaking).

In summary, the EPA proposes that the modeling results for Baton Rouge adequately demonstrate that the area could attain the ozone standard by 1999 through the implementation of a VOC-only control strategy consisting of the Federally enforceable 15 percent and Post-1996 ROP reductions (net of growth) from the 1990 base year levels, and without the voluntary early NO_X reductions.

9. Modeling Attainment Without I/M

As mentioned previously, the UAM analyses in the December 22, 1995, submittal modeled on-road mobile emissions reductions that were expected to result, by November 15, 1999, from a decentralized, low enhanced vehicle I/M program. The I/M program, which was scheduled to begin January 1, 1999, consisted of a biennial two-speed idle test in East Baton Rouge Parish, with remote sensing in all of the (then six) ozone nonattainment parishes. The program's authorizing legislation included a sunset clause requiring reauthorization of the program by the Legislature every two years. Ultimately, the Louisiana Legislature did not approve the reauthorization of the program, and the EPA was required to disapprove the Baton Rouge low enhanced I/M SIP.

In light of this, the State opted to remove the I/M reductions from the Post-1996 ROP Plan and replace them with additional point source emissions reductions in the January 2, 1997, Post-1996 ROP Plan revision. However, in order for the State to replace the I/M reductions in the plan submittal with point source reductions, the EPA required the State, in the January 2, 1997, submittal, to provide an analysis of the impact that removing the reductions from I/M would have on the modeling results. (In the December 22, 1995, submittal, the State claimed 2.1 tons/day of reduction credits from implementing the low enhanced I/M program in the nonattainment area.)

In the January 2, 1997, submittal, Louisiana described observed impacts on modeling results resulting from increases in the projected on-road mobile emissions inventory. First, the State noted that, in the case of the August 1989 and May 1990 episodes, the State initially modeled a domain-wide projected on-road mobile VOC emissions inventory of 39.5 tons/day. This represented the projected mobile inventory assuming a full enhanced (I/M 240) vehicle inspection/maintenance program that was initially proposed by the State. Subsequently, the EPA revised the Federal I/M regulations to allow for a low enhanced I/M program. Under the low enhanced I/M program, the domain-wide projected on-road mobile emissions were 42.2 tons/day (for the August 1989 episode) and 42.0 tons/day (for the May 90 episode). The projected increase in VOCs, 2.8 tons/day for the August 89 episode and 2.6 tons/day for the May 90 episode, had no discernable effect on the maximum simulated ozone or the areal ozone coverage above 124 ppb for the modeled attainment demonstration.

The lack of sensitivity to changes in the onroad mobile VOC emissions was also demonstrated with the August 1993 modeling episode. Due to a mobile inventory processing error, domain-wide on-road mobile VOC projected emissions of 56.5 tons/day were initially modeled, which corresponded to a maximum simulated ozone value of 145 ppb. Correcting the mobile processing error produced a projected on-road mobile VOC inventory of 45.3 tons/day (under the low enhanced I/M program). When the UAM modeling simulation was rerun using the corrected inventory, the maximum simulated ozone was 142 ppb. The 13.6 tons/day decrease in mobile VOCs accounted for only a 3 ppb reduction in the maximum simulated ozone. This further exemplified the lack of response in maximum simulated ozone levels to changes in projected mobile VOC emissions.

The EPA is proposing that the analysis has adequately demonstrated that this increase in projected (1999) mobile source VOC emissions (resulting from the removal of the low enhanced I/M program from the control strategy) would have no discernable effect on the maximum simulated ozone or the areal ozone coverage above 124 ppb for the modeled attainment demonstration.

It should be noted that the EPA did not request that the State provide a commensurate analysis of the effect that substituting additional point source VOC emissions reductions (2.1 tons/day) for the I/M reductions would have on the modeled results. The EPA considered this type of analysis unnecessary for the following reasons:

First, as a percentage of the domain-wide VOC point source emissions reductions modeled, the additional 2.1 tons/day of point source emissions reductions are not significant and, thus, are not expected to influence the modeling results. For instance, in the case of the August 16, 1989, episode, base case point source emissions were reduced by 48.3 percent in the projection (1999) year. Reducing the projected point source emissions by 2.1 tons/day constitutes an additional reduction of only 2.0 percent from the base case levels (from 48.3 to 50.3 percent). In the case of the May 25, 1990, episode, base case point source emissions were reduced by 48.7 percent in the projection year. Reducing the projected point source emissions by 2.1 tons/day also constitutes an additional reduction of only 2.0 percent from the base case levels (from 48.7 to 50.7 percent). Lastly, in the case of the August 19, 1993, episode, base case point source emissions were reduced by 22.4 percent in the projection year. Reducing the projected point source emissions by 2.1 tons/day constitutes an additional reduction of only 3.0 percent from the base case levels (from 22.4 to 25.4 percent).

Second, EPA expects that further reducing the point source VOC emissions would only contribute to attainment of the NAAQS. This is consistent with the control strategy being modeled for attainment (which relies on significant emissions reductions from point sources) and other directional modeling submitted by the State to date, namely, the modeling submitted in the section 182(f) NO_X waiver request. As stated previously, in the section 182(f) UAM demonstration, the State modeled across-the-board point source VOC reduction scenarios in addition to the 15% ROP reductions (namely 25, 50, 75, and 100 percent across-the-board reductions in point source VOC emissions). For all three episodes, the controlling day modeling results showed that domain-wide predicted maximum ozone concentrations were lowest when the across-the-board point source VOC reductions were modeled. A more detailed discussion of the across-the-board VOC reductions scenarios modeled is provided in the TSD to the EPA's rulemaking action approving the Baton Rouge section 182(f) NO_X exemption.

10. EPA Action

The EPA is proposing to approve Louisiana's Attainment Demonstration SIP submittals, dated December 22, 1995, and January 2, 1997, as meeting

the requirements of section 182(c)(2)(A) of the Act for demonstrating attainment of the NAAQS for ozone by November 1999. Through photochemical grid modeling, the State has demonstrated to the EPA's satisfaction that the VOC reductions in the 15% and Post-1996 ROP Plans (34.8 tons/day and 21.4[5] tons/day, respectfully) are sufficient to demonstrate attainment of the ozone NAAQS by the statutory deadline and that further reductions in VOC and/or nitrogen oxides (NO_X)) are not necessary to attain.

III. Proposed Rulemaking Action

The EPA has reviewed the SIP submittals for consistency with the Act, applicable EPA regulations and EPA policy, and is proposing to approve the following under sections 110(k)(3), 301(a), and Part D of the Act:

A. Post-1996 ROP Plan

The Baton Rouge, Louisiana, Post-1996 Rate-of-Progress Plan as originally submitted December 22, 1995, and revised January 2, 1997, as meeting the requirements of section 182(c)(2)(B) of the Act to achieve a reduction in VOC emissions (net of growth) of 9 percent between 1996 and 1999.

B. Contingency Plan

The Baton Rouge, Louisiana, contingency plan, initially submitted as part of the 15% ROP Plan on December 15, 1995, and, subsequently, as part of the Post-1996 Rate-of-Progress Plan submitted December 22, 1995, and revised January 2, 1997. The EPA is proposing approval of the contingency plan as meeting the requirements of sections 172(c)(9) and 182(c)(9) of the Act that moderate and above ozone nonattainment areas include contingency measures in their ROP Plan submittals. Specifically, the EPA is proposing to approve the contingency-reserved VOC banked emissions reductions of 5.7 tons/day (achieved through the State's banking regulations), identified in a table in Appendix T of the December 22, 1995, submittal, as creditable towards the 3 percent contingency requirements of sections 172(c)(9) and 182(c)(9) of the Act. In addition, the EPA is proposing to approve the point source VOC and NO_X emissions reductions banking regulations (LAC 33:III sections 601, 613, 617, 619, and 621), submitted December 15, 1995, and revised January 2, 1997, as meeting the requirements for SIP approval under part D and section 110 of the CAAA.

C. Motor Vehicle Emissions Budgets

The 1999 Motor Vehicle Emissions Budgets for on-road mobile VOC and NO_X emissions for the Baton Rouge 5-parish ozone nonattainment area submitted January 2, 1997, as meeting the requirements of section 176(c) of the Act and 40 CFR 51.452(b) of the Federal Transportation Conformity Rule.

D. Attainment Demonstration

The Baton Rouge, Louisiana Attainment Demonstration submitted December 22, 1995, and revised January 2, 1997, including the modeling analyses, as meeting the requirements of section 182(c)(2)(A) of the CAAA to provide for attainment of the ozone NAAQS by the applicable November 15, 1999, attainment date.

E. Emission Inventory Revisions

Revisions to the 1990 base year VOC emissions inventory submitted January 2, 1997 as meeting the requirements of section 182(a)(1) of the Act. In addition, the EPA is proposing to codify the revisions to the 1990 base year emissions inventory submitted as part of the 15% ROP Plan approved October 22, 1996 (61 FR 54737).

F. Revisions to 1996 Target Level of Emissions

The revision to the 1996 target level of VOC emissions submitted January 2, 1997, as meeting the requirements of part D and EPA guidance.

The EPA is deferring taking any action at this time on the State's accelerated vehicle retirement regulation (LAC 33:III.611) entitled, ''Mobile Sources Emission Reductions,'' which was submitted to the EPA on January 2, 1997. Deferred action on this regulation has no effect on either the Baton Rouge Post-1996 ROP Plan or on the Baton Rouge Attainment Demonstration since the State took no credit in these plans for reductions from vehicle scrappage.

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

IV. Administrative Requirements

A. Executive Orders (E.O.) 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review,'' review.

The proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, 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 will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not

[5] The 21.4 tons/day in emissions reductions includes the 3.2 tons/day surplus reductions from the 15% ROP Plan carried over to the Post-1996 ROP Plan.

include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 3, 1998

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 98–22062 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK 15–1703; FRL–6146–4]

Approval and Promulgation of Implementation Plans; Alaska

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) invites public comment on its proposed approval of numerous revisions to the State of Alaska Implementation Plan submitted to EPA by the Director of the Alaska Department of Environmental Conservation (ADEC) on January 8, 1997, and March 17, 1998. The revisions were submitted in accordance with the requirements of section 110 and Part D of the Clean Air Act (hereinafter the Act). EPA is taking no action at this time on the provisions relating to the permitting of stationary sources, including the construction of new and modified stationary sources, Part D new source review, and prevention of significant deterioration permitting, but will propose action on those provisions in a separate notice. EPA is also taking no action on a number of provisions which are unrelated to the purposes of the implementation plan, including the Alaska provisions for implementing the Title V operating permit program.

DATES: Comments must be postmarked on or before September 17, 1998.

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

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act Amendments of 1990, Title V, requires States to develop operating permit programs for most stationary sources. While Title V operating permit programs are not approved as part of the State Implementation Plan (SIP) under section 110 of the Act, many provisions of the SIP will interact closely with the Title V operating permit program. As such, many States will be revising provisions of their SIPs to facilitate and improve the relationship between their SIP and their Title V operating permit program. The ADEC amended numerous provisions of its current rules for air pollution sources and submitted them to EPA on January 8, 1997, and March 17, 1998, as revisions to the Alaska SIP.

II. Description of Submittals

On January 8, 1997, the Director of ADEC submitted the Alaska air quality regulations, 18 Alaska Administrative Code (AAC) 50, effective January 18, 1997 (with the exception of 18 AAC 50.055(a)(9), 50.085, 50.090, 50.110, 50.300(g), and 50.310(I)), to EPA as a revision to the Alaska SIP. These regulations are intended to replace entirely the current version of the 18 AAC 50 in the EPA-approved SIP. (See 40 CFR 52.75 for identification of the regulations contained in the current EPA-approved SIP.) The January 8, 1997, submittal also includes the current Alaska Statutes for air pollution control, specifically the 1993 Alaska Act (Chapter 74 State Legislative Act 1993) relating to air quality control and the prevention, abatement, and control of air pollution as a revision to the statutes in the EPA-approved SIP. Finally, the submittal includes the ''In Situ Burning Guidelines for Alaska (revised 5/94),'' which implement certain provisions of the open burning regulations in 18 AAC 50.065. On March 17, 1998, the Director of ADEC resubmitted revisions to the opacity and particulate emission standards for urea prilling towers in operation before July 1, 1972 (18 AAC 50.055(a)(3) and (b)(6)), along with the ambient impact demonstrations required under 40 CFR part 51, appendix V to support the changes in emission standards.

III. Proposed Action

A. Changes to Emission Standards

The amended rules include two changes to the emission standards for urea prilling towers in operation prior to July 1, 1972. First, the opacity limit in 18 AAC 50.055(a)(3) is changed from 30 percent to 55 percent (not to be exceeded for more than three minutes in any one hour), and a 40 percent (24-hour average) standard is added. Second, the particulate emission limit in 18 AAC 50.055(b)(6) is changed from 0.1 grains per dry standard cubic foot to 0.04 grains per dry standard cubic foot. The SIP revision submittal includes an adequate demonstration, including dispersion modeling, that the revised emission standards ensure attainment and maintenance of the national ambient air quality standards (NAAQS) for PM–10 and prevent the significant deterioration of air quality in the area affected by urea prilling towers. EPA, therefore, proposes to approve the amended emission limitations as a revision to the Alaska SIP.

B. Revisions to Current Provisions

The amended rules include a number of changes to current provisions to strengthen and improve air quality protection in certain areas of Alaska. Special protection areas for sulfur dioxide are established in 18 AAC 50.025 in order to apply more stringent requirements in the Unalaska and substantially revised, primarily through the addition of provisions regulating firefighter training and the use of open burning as an oil spill response countermeasure. The opacity standards for marine vessels (18 AAC 50.070) are revised to address more and different modes of operation for vessels operating within three miles of the Alaska coastline. The regulations for wood-fired heating device visible emission standards (18 AAC 50.075) are revised to incorporate provisions of the Code of the city and Borough of Juneau, Alaska and an Ordinance of the City and Borough of Juneau, Alaska, both of

which are provisions of the PM–10 attainment plan for the Juneau PM–10 nonattainment area. Finally, the provisions for enforceable test methods (18 AAC 50.220) are revised and expanded to specify the compliance methods for all emission standards and limitations established in and pursuant to 18 AAC 50. EPA has determined that these amendments improve and strengthen the provisions of the Alaska SIP and proposes, therefore, to approve the changes as revisions to the Alaska SIP.

C. Excess Emission Provisions

The amended rules include the addition of new provisions addressing excess emissions (18 AAC 50.240). These provisions specify the demonstration necessary to determine that excess emissions are unavoidable and describe how periods of unavoidable excess emissions are to be addressed in an enforcement action. Excess emissions which are determined to be unavoidable under these provisions will be excused and are not subject to penalty. However, the provisions do not limit ADEC's authority to enjoin the emissions or require corrective action. EPA has determined that these provisions conform to EPA requirements for SIP excess emission rules (see February 15, 1983 memorandum entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation to Regional Administrators, Regions 1–X) and therefore, proposes to approve them as a revision to the Alaska SIP.

D. Other New Provisions

The amended rules include the following new provisions which strengthen and improve the rules: 18 AAC 50.005 ''Purpose and Applicability of Chapter;'' 18 AAC 50.035 ''Documents, Procedures, and Methods Adopted by Reference;'' 18 AAC 50.200 ''Information Requests;'' 18 AAC 50.201 ''Ambient Air Quality Investigation;'' 18 AAC 50.205 ''Certification;'' 18 AAC 50.400 ''Permit Administration Fees,'' subsections (a), (b)(1), and (c); 18 AAC 50.420 ''Billing Procedures;'' 18 AAC 50.430 ''Appeal Procedures;'' and 18 AAC 50.900 ''Small Business Assistance Program.'' EPA has determined that these new provisions are consistent with the requirements of 40 CFR Part 51 and EPA guidance for SIPs and therefore, proposes to approve the new provisions as revisions to the Alaska SIP.

E. Definitions

The amended rules add a number of new definitions to 18 AAC 50.990 (formerly 18 AAC 50.900). In this action, EPA is proposing to approve the new definitions of the following terms: ''Air pollution,'' ''air pollution control equipment,'' ''air quality control requirement,'' ''ambient air quality standards,'' ''black smoke,'' ''Clean Air Act,'' ''conservation vent,'' ''contaminant,'' ''contaminant outlet,'' ''delivery tank,'' ''emission limitation,'' ''emission standard,'' ''EPA,'' ''excess emissions,'' ''expected,'' ''federal administrator,'' ''fire service,'' ''gasoline distribution facility,'' ''hazardous waste,'' ''industrial process,'' ''marine vessel,'' ''maximum true vapor pressure,'' ''nonroutine repair,'' ''operator,'' ''organic vapors,'' ''owner,'' ''person,'' ''rated capacity,'' ''scheduled maintenance,'' ''shutdown,'' ''small business facility,'' ''startup,'' ''state air quality control plan,'' ''uncontaminated fuel,'' ''upset,'' ''vapor collection system,'' ''vapor-laden delivery tank,'' ''volatile liquid,'' ''volatile liquid loading rack,'' ''volatile liquid storage tank,'' and ''well servicing equipment.'' The amended rules also include revisions to the definitions of the following terms: ''air contaminant,'' ''incinerator,'' ''PM–10,'' ''stack,'' and ''wood-fired heating device.'' EPA has determined that these new definitions, and revisions to the existing definitions are consistent with EPA's definitions in 40 CFR 51.100 and with the requirements of 40 CFR part 51. (See the ''Technical Support document for Action on Provisions of 18 AAC 50 Related to the State Implementation Plan,'' available at the addresses listed above, for definitions that EPA is not proposing to act on at this time.)

F. Legal Authority

EPA has reviewed the 1993 Alaska Air Act (Chapter 74 State Legislative Act 1993, codified primarily at Title 46 Alaska Statutes (AS) Chapter 14 and scattered sections of Titles 28, 29, 37, 42, 44, and 45) relating to air quality and the prevention, abatement and control of air pollution. EPA has determined that the statutes relating to State policy, procedures, and investigatory and enforcement authority are adequate to provide the necessary assurances sufficient to insure implementation of the SIP as required for federal approval in accordance with section 110 of the Act and 40 CFR Part 51, Subpart L of EPA's regulations. In addition to establishing adequate legal authority for the State, certain provisions of the Alaska Air Act also establish enforceable requirements for owners or operators of sources of air pollution in addition to those included in the State rules. These provisions are AS 46.14.110(e) and (g) (relating to contaminant control measures); AS 46.14.120(a) (relating to permits to construct); AS 46.14.130(a) (relating to permits to construct); AS 46.14.240(a) (relating to permit administration fees); AS 46.14.250(a) (relating to emission fees); AS 46.14.510(b) (relating to motor vehicle pollution control equipment); AS 46.14.550 (responsibilities of owner and operator); AS 46.14.560 (unavoidable malfunctions and upsets); AS 46.14.990 (definitions); and AS 45.45.400(a) (related to the sale of motor vehicles). EPA is proposing to approve as federally enforceable provisions of the SIP, the following provisions of the Alaska Statutes: AS 46.14.110(e) and (g); AS 46.14.510(b); AS 46.14.550; AS 46.14.560; AS 46.14.990, subsections (1), (2), (3), (6), (7), (8), (10), (13), (15), (16), (17), (18), (22), (24), and (25); and AS 45.45.400(a). EPA is taking no action at this time on the following provisions, but will propose action on them in a subsequent notice: AS 46.14.120(a); AS 46.14.130(a); AS 46.14.240(a); AS 46.14.250(a); and AS 46.14.990, subsections (4), (5), (9), (11), (12), (14), (19), (20), (21), and (23).

G. Removing Provisions of the Current SIP

The SIP revision submittal includes a request from the State to remove a provision of the ADEC rules from the current EPA-approved SIP. Specifically, the State has requested that EPA remove 18 AAC 50.110 ''Air Pollution Prohibited'' from the SIP. This provision is a general nuisance provision which prohibits any source from causing emissions which are injurious to human health or welfare, animal or plant life, or property, or which would unreasonably interfere with the enjoyment of life or property. Since this provision is not relied upon to meet any requirement of the Act or EPA regulations, EPA is proposing to remove the provision from the EPA-approved SIP.

H. Editorial Changes

The amended rules include numerous editorial changes to make the rules internally consistent and easier to read and understand. The primary changes include updated references to Alaska statutes, a complete reorganization and renumbering of the rules, and updating the internal cross references within the renumbered rules. EPA has determined that the editorial changes improve and strengthen the rules and proposes to

approve the amended rules as revisions to the Alaska SIP.

IV. Summary of Action

EPA is soliciting public comment on its proposed approval of revisions to the State of Alaska Implementation Plan. Specifically, EPA is proposing to approve the following provisions of 18 AAC 50 as adopted by ADEC and effective on January 18, 1997: Section 005; Section 010, except for subsections (7) and (8); Section 025; Section 030; Section 035; Section 045; Section 050; Section 055, except for paragraph (d)(2)(B) (note that paragraph (a)(9) was not submitted by ADEC); Section 060; Section 065; Section 070; Section 075; Section 200; Section 201; Section 205; Section 220; Section 240; Section 245; Section 400, paragraphs (a), (b)(1), and (c); Section 420; Section 430; Section 900; and Section 990, subsections (2), (3), (4), (5), (6), (8), (9), (10), (11), (14), (15), (16), (17), (19), (20), (23), (24), (25), (26), (29), (31), (32), (33), (34), (35), (37), (39), (40), (42), (43), (45), (47), (48), (50), (51), (53), (58), (59), (60), (61), (62), (63), (65), (66), (67), (69), (70), (71), (72), (74), (75), (78), (79), (80), (81), (83), (84), (85), (86), (89), (90), (91), (92), (93), (94), (95), (96), (97), (99), and (100). (Note that 18 AAC 50, Sections 700 through 735 were already approved by EPA on September 27, 1995 (60 FR 49765).) EPA is also proposing to approve the requested revocation of 18 AAC 50: Section 010 ''Applicability of Local Government Regulations;'' Section 070 ''Motor Vehicle Emissions;'' and Section 900 ''Definitions,'' subsections (19) ''emission allowance,'' (27) ''maximum combustion efficiency,'' (30) ''opacity,'' (45) ''ug/m3,'' (46) ''regional supervisor,'' and (48) ''wood smoke control area.'' Also, as requested by the Director of ADEC in the January 8, 1997 submittal, EPA is proposing to remove 18 AAC 50.110 ''Air Pollution Prohibited'' (effective 5/26/72) from the EPA-approved SIP. EPA is proposing to approve as federally enforceable provisions of the SIP, the following provisions of the Alaska Statutes: AS 46.14.110(e) and (g); AS 46.14.510(b); AS 46.14.550; AS 46.14.560; AS 46.14.990, subsections (1), (2), (3), (6), (7), (8), (10), (13), (15), (16), (17), (18), (22), (24), and (25); and AS 45.45.400(a). Finally, EPA is proposing to approve the ''In Situ Burning Guidelines for Alaska (revised 5/94).''

EPA is taking no action at this time on the following provisions of 18 AAC 50 which relate to the permitting of new and modified stationary sources: Section 015; Section 020; Section 100; Section 210; Section 215; Section 225; Section 230; Section 250; Section 300; Section 305; Section 310; Section 315; Section 320; Section 400, paragraphs (b)(2) through (b)(5); Section 910; and Section 990, subsections (1), (7), (13), (21), (22), (27), (28), (30), (36), (38), (41), (44), (46), (49), (52), (54), (55), (56), (57), (64), (68), (73), (76), (77), (82), and (98). Additionally, EPA is taking no action at this time on the revocation of Section 520 ''Emission and Ambient Monitoring'' (effective 7/21/91) and Section 900 ''Definitions,'' subsections (52) and (54) (effective 4/23/94). Finally, EPA is taking no action at this time on the following provisions of the Alaska Statutes which relate to the permitting of new and modified stationary sources: AS 46.14.120(a); AS 46.14.130(a); AS 46.14.240(a); AS 46.14.250(a); and AS 46.14.990, subsections (4), (5), (9), (11), (12), (14), (19), (20), (21), and (23).

EPA is taking no action on the following provisions of 18 AAC 50 which do not relate to the purposes of the SIP under section 110 of the Act, or which implement other provisions of the Clean Air Act (e.g., NSPS, NESHAP, Title V): Section 010, subsections (7) and (8); Section 040; Section 055, paragraph (d)(2)(B); Section 080; Section 235; Section 300, paragraphs (f) and (h)(10); Section 310, paragraph (h); Section 315, paragraph (e)(6); Section 322; Sections 325 through 380; Section 400, paragraphs (b)(6) through (b)(10); Section 410; and Section 990, subsections (12), (18), (87), and (88).

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted to the address listed in the front of this Notice. Public comments postmarked by September 17, 1998 will be considered in the final rulemaking action taken by EPA.

V. Administrative Review

A. Executive Order 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled, ''Regulatory Planning and Review'' review. The proposed rule is not subject to E.O. 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Alaska's Audit Law

Nothing in this action should be construed as making any determination or expressing any position regarding Alaska's audit privilege and penalty immunity law, (Alaska Audit Act, AS 09.25.450 *et seq.*, enacted in 1997) or its impact upon any approved provision in

the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Alaska's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

Authority: 42 U.S.C. 7401 *et seq.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 10, 1998.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 98–22194 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 102–0093 ; FRL –6144–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution Control District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for ozone. These revisions concern the control of oxides of nitrogen (NO_X) from stationary internal combustion (IC) engines. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on these proposed rules will incorporate these rules into the Federally approved SIP. EPA has evaluated these rules and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority. These revisions, while strengthening the SIP, do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments on this proposed action must be received in writing on or before September 17, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for limited approval and limited disapproval into the SIP are El Dorado County Air Pollution Control District (EDCAPCD) Rule 233-Stationary Internal Combustion Engines, and Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.32-Stationary Internal Combustion Engines. Rule 233 was submitted by the EDCAPCD to EPA on October 20, 1994. Rule 2.32 was submitted by the YSAQMD to EPA on September 28, 1994.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a proposed rule entitled, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. Both EDCAPCD and YSAQMD are classified as serious;[1] therefore these areas were subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for El Dorado County Air Pollution Control District (EDCAPCD) Rule 233-Stationary Internal Combustion Engines, and Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.32-Stationary Internal Combustion Engines. EDCAPCD adopted Rule 233 on October 18, 1994. YSAQMD adopted Rule 2.32 on August 10, 1994. The State of California submitted Rule 233 on October 20, 1994, and Rule 2.32 on September 28,

[1] EDCAPCD and YSAQMD retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

1994. Both rules was found to be complete on October 21, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V.[2]

NO_X emissions contribute to the production of ground level ozone and smog. EDCAPCD Rule 233 and YSAQMD Rule 2.32 specify exhaust emission standards for NO_X and carbon monoxide (CO). The rules were adopted as part of EDCAPCD's and YSAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

There is currently no version of either El Dorado County Air Pollution Control District (EDCAPCD) Rule 233-Stationary Internal Combustion Engines, or Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.32-Stationary Internal Combustion Engines in the SIP. The submitted rules include the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X) and carbon monoxide (CO).
- Administrative and monitoring requirements including compliance schedule, reporting requirements, monitoring and recordkeeping, and test methods.

In evaluating the rules, EPA must also determine whether the section 182(b) requirement for RACT implementation by May 31, 1995 is met. In a Proposed Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Internal Combustion Engines dated December, 1997, the State of California Air Resources Board (CARB) determined RACT limits for IC engines rated at 50 brake horsepower or more to be 50 parts per million volume (ppmv) for rich-burn spark-ignited engines, 125 ppmv for lean-burn spark-ignited engines, and 350 ppmv for diesel engines. These limits were determined based on previously implemented regulatory control in Ventura County and San Diego County. EPA agrees that these limits are consistent with the Agency's guidance and policy for making RACT determinations in terms of general cost-effectiveness, emission reductions, and environmental impacts. Both EDCAPCD Rule 233 and YSAQMD Rule 2.32 provide three options for demonstrating compliance. In each rule the first option, which applies to existing IC engines that meet the limits by May 31, 1995, sets emission limits of 640 ppmv, 740 ppmv and 700 ppmv for rich-burn spark-ignited engines, lean-burn spark-ignited engines, and diesel engines respectively. The EPA has determined that these limits do not meet RACT for IC engines.

Although the monitoring and recordkeeping provisions of EDCAPCD Rule 233 and YSAQMD Rule 2.32 will strengthen the SIP, these rules contain deficiencies related to the emissions limits for oxides of nitrogen (NO_X), as well as other deficiencies. A more detailed discussion of the sources controlled, the controls required, explanation of why these controls fail to represent RACT, and other rule deficiencies can be found in the Technical Support Documents (TSD's) prepared by EPA for each rule. Both of these TSD's are dated July 21, 1998.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of EDCAPCD's submitted Rule 233 and YSAQMD's submitted Rule 2.32 under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section 110(a) and part D. At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), and part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this document have been adopted and are currently in effect in their respective districts. EPA's

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

final limited disapproval action will not prevent the EDCAPCD, the YSAQMD, or EPA from enforcing these rules.

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

V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rules are not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because they are not ''economically significant'' actions under E.O. 12866.

B. Regulatory Flexibility Act

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

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 31, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–22200 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA181–0081b; FRL–6141–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mohave Desert Air Quality Management District & South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from wood product coating operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on the rule. Any parties interested in commenting on the rule should do so at this time.

DATES: Comments must be received in writing by September 17, 1998.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

South Coast Air Quality Management District, 218 East Copley Drive, Diamond Bar, CA 91765

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1226

SUPPLEMENTARY INFORMATION: This document concerns Mohave Desert Air Quality Management District Rule 1114—Wood Product Coating Operations and South Coast Air Quality Management District, Rule 1136—Wood Product Coatings submitted to EPA by the California Air Resources Board to EPA on March 3, 1997 and August 28, 1996, respectively. For further information, please see the information provided in the Direct Final action that

is located in the Rules Section of this **Federal Register**.

(Authority: 42 U.S.C. 7401 *et seq.)*

Date signed: July 29, 1998.

Nora L. McGee,

Acting Regional Administrator, Region 9.

[FR Doc. 98–21897 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY–99–1–9820b; FRL–6142–8]

Designation of Areas for Air Quality Planning Purposes Kentucky: Redesignation of the Muhlenberg County Sulfur Dioxide Secondary Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 21, 1997, the Commonwealth of Kentucky submitted, through the Natural Resources and Environmental Protection Cabinet (the Cabinet), a request for redesignation of Muhlenberg County, Kentucky, to attainment for the secondary sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The secondary nonattainment designation for SO_2 was based on the fact that the Tennessee Valley Authority (TVA) Paradise Steam Plant was out of compliance with its allowable emission limit. The Cabinet submitted air dispersion modeling which demonstrates that the secondary (NAAQS) for SO_2 are now being maintained. The EPA is approving the request for redesignation.

In the Final Rules section of this **Federal Register**, EPA is approving the Kentucky State Implementation Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received in writing by September 17, 1998.

ADDRESSES: Written comments should be addressed to Scott Martin at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Mr. John E. Hornback, Director, Division of Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: August 3, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–22055 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6146–7]

RIN–2040–AC27

Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comment on an additional regulatory option the Agency is considering in conjunction with minor revisions to the National Primary Drinking Water Regulations for Lead and Copper. The option would modify the way in which compliance with optimal corrosion control requirements is determined for water systems subject to the rule's water quality parameter monitoring requirements and would give systems greater flexibility and remove disincentives for water systems to implement good process control procedures. The intended effect is to avoid putting systems that monitor water quality parameters more frequently than required under the lead and copper regulations at greater risk of non-compliance than those systems that only conduct the minimum required monitoring. This option would not increase, and may decrease, the burden associated with compliance with the lead and copper rule.

DATES: Written comments should be postmarked or delivered by hand by September 17, 1998.

ADDRESSES: Send written comments to the Lead and Copper Rule Comment Clerk, Water Docket (MC–4101), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references). If you wish to hand-deliver your comments, please call the Docket at (202) 260–3027 between 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays, to obtain directions to Room EB57. Please see Supplementary Information under the heading ''Additional Information for Commenters'' for detailed filing instructions, including electronic submissions.

The record for this rulemaking has been established under docket name National Primary Drinking Water Regulations for Lead and Copper. The record includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, Room EB57, 401 M Street, SW, Washington, DC 20460. For access to the Docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free 1–800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact Judy Lebowich, Standards and Risk Management Division, Office of Ground Water and Drinking Water, EPA (MC–4607), 401 M Street SW, Washington, DC 20460; telephone (202) 260–7595.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this regulatory option include all community water systems (CWSs) and

non-transient non-community water systems (NTNCWSs) that serve more than 50,000 people and those CWSs and NTNCWSs serving 50,000 or fewer people that exceed, or expect to exceed, the lead or copper action level after the installation of corrosion control treatment. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Privately-owned CWSs and NTNCWSs serving > 50,000 people or likely to exceed an action level after the installation of corrosion control treatment.
State, Tribal, and Local Governments	Publicly-owned CWSs and NTNCWSs serving > 50,000 people or likely to exceed an action level after the installation of corrosion control treatment.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the possible changes to the Lead and Copper Rule discussed in this document. If EPA decides to promulgate the regulatory option discussed in this document, the Agency plans to incorporate this modification in the Lead and Copper Minor Revisions Rule that the Agency plans to promulgate in the near future. Readers should note that all CWSs and NTNCWSs may be affected by the Lead and Copper Minor Revisions Rule. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by the Lead and Copper Minor Revisions Rule, you should carefully examine the applicability criteria in §§ 141.3 and 141.80(a) of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of the Lead and Copper Minor Revisions Rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Additional Information for Commenters

To ensure that EPA can read, understand and therefore properly respond to your comments, the Agency requests that commenters follow the following format: type or print comments in ink, and cite, where possible, the paragraph(s) in this document to which each comment refers. Please use a separate paragraph for each issue discussed and limit your comments to the issues addressed in today's document. Comments on issues other than those discussed in today's document will not be considered.

If you want EPA to acknowledge receipt of your comments, enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments also may be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as a WordPerfect 5.1, WordPerfect 6.1, or ASCII file avoiding the use of special characters and forms of encryption and must be transmitted by midnight September 17, 1998. Electronic comments must be identified by the docket name, number, or title of the **Federal Register**. Comments and data also will be accepted on disks in WordPerfect 5.1, WordPerfect 6.1, or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Discussion of Regulatory Option

On June 7, 1991, the Environmental Protection Agency (EPA) promulgated National Primary Drinking Water Regulations (NPDWRs) for Lead and Copper (56 FR 26460, June 7, 1991). The Lead and Copper Rule (LCR) requires water systems to optimize corrosion control in order to minimize lead and copper levels at consumers' taps and requires States to designate water quality parameter (WQP) values representing optimal corrosion control (OWQPs) for certain systems after the installation of corrosion control treatment. OWQPs must be designated for pH at all sampling locations. The State also must designate OWQPs for other water quality parameters including alkalinity, orthophosphate, silica, and calcium, depending on the sampling location and the corrosion control treatment.

Once the State has designated OWQPs, those systems subject to routine water quality parameter monitoring requirements demonstrate that they are properly operating and maintaining optimal corrosion control treatment (OCCT) by measuring water quality parameters biweekly (i.e., every two weeks) at entry points and periodically at taps throughout the distribution system. If a system conducts more than the minimally required sampling, all results must be used in determining compliance, with the exception that States have discretion to delete results of obvious sampling errors from the compliance determination calculations.

Presently, a system incurs a violation if the WQP value of any sample is below the minimum value or outside the range designated by the State. The system may take a confirmation sample for any WQP value no later than 3 days after the initial sample, which is averaged with the original sample to determine compliance.

Some States have questioned the technical merit of using averaging for determining compliance. The following example illustrates the problem. A system with an original value for pH of 7.2 (outside the designated range of 7.4–7.6) and a confirmation value of 7.8 would be in compliance while a system with an original value of 7.3 and a confirmation value of 7.4 would incur a violation. One of the most important factors in maintaining OCCT is to maintain a stable pH. Systems which do not maintain a stable pH are probably not maintaining optimal corrosion control and are the most likely to have elevated lead and/or copper levels. However, under the current compliance scheme, those systems, even though they may not be maintaining optimal corrosion control, are still deemed in compliance.

Issues have also been raised by some States and water systems regarding how to determine compliance for systems that monitor OWQPs more frequently than biweekly. Systems monitoring for OWQPs on a more frequent basis than biweekly have a greater chance of incurring a violation, since all measurements must be used in compliance determinations. The LCR as written may be viewed as providing a disincentive for systems to conduct more frequent OWQP monitoring than the minimum required. For example, a system monitoring for pH every 4 hours would need to include all measurements in compliance determinations, which substantially increases the likelihood of incurring a violation compared to a system conducting biweekly monitoring. The next (confirmation) sample following an excursion would be only 4 hours away, leaving little time to adjust treatment.

EPA acknowledges that averaging the original and confirmation samples may inadvertently reward systems that do not properly maintain optimal corrosion control. EPA also acknowledges the merits of conducting more frequent WQP monitoring, and does not intend to penalize systems which perform such monitoring. To address these problems,

in April 1998, EPA requested comment on a regulatory option that would replace the confirmation sample approach with one that would allow compliance to be determined on the basis of a repeat sample that could be taken within three days of the original sample when the original sample is below the minimum value or outside the range designated by the State (63 FR 20038, April 22, 1998). Many commenters noted that, while the repeat sample approach represents an improvement over the current approach, it does not address the issue of systems that monitor WQPs several times a day.

After reviewing the comments received, EPA is considering further refinements to the method for determining compliance with OWQP requirements. Under this newest alternative, OWQP compliance would be determined quarterly for each WQP and sampling location. For each WQP measured more frequently than once per day at a sampling location, that sampling location would be in compliance for a calendar quarter as long as the results of at least 95% of the samples taken within that quarter were above the minimum value or within the range designated by the State. For each WQP measured once per day or less frequently at the sampling location, a repeat sample approach similar to the one described in the April 22, 1998, document would be used to determine compliance. A water system would incur a WQP treatment technique violation for any quarter in which non-compliance occurs for any WQP at any sampling location at which WQP measurements are collected during the quarter.

The following is an example of how this option would work at a water system required to monitor for more than one WQP and where the frequency of sampling depends on the parameter and sampling location. Assume the State has designated OWQPs for pH and orthophosphate and that the system monitors pH continuously at each of two entry points and takes grab samples biweekly for pH at 10 distribution system taps and for orthophosphate at every entry point and distribution system tap. During a quarter, two percent of the pH results at one entry point and four percent of the results at the other entry point were outside the State-designated range. Neither entry point had a pH excursion that lasted more than 72 hours. The system collected samples from five distribution system taps. The original pH results from two of the tap samples were outside the range; a repeat sample for pH was taken at both of these taps 48 hours later and the results were within the range. The system was therefore in compliance during the quarter.

The system would be out of compliance, however, under any one of the following scenarios.

- The results of the pH monitoring at one of the entry points were outside the range 5.1% of the time.
- The results of the pH monitoring at one of the entry points were outside the range for 76 consecutive hours.
- The result of one biweekly distribution system tap pH sample was outside the range and the result of a repeat pH sample collected at the same tap 72 hours later also was outside the range.
- The result of one biweekly orthophosphate sample was outside the range and no repeat orthophosphate sample was collected.
- The result of one biweekly orthophosphate sample was outside the range and the result of a repeat orthophosphate sample taken at the same location 72 hours later also was outside the range.

Water systems are required to measure WQPs at entry points at least biweekly. The Agency believes that incurring a violation every two weeks due to relatively minor excursions, as could happen with the current requirements, would result in triggering the public notification (PN) requirements of § 141.32, even when the excursion is not necessarily indicative of a public health concern. Moreover, triggering PN on such a frequent basis that PN could cause the information to lose its effectiveness while imposing significant burden on the water utility and not truly distinguishing excursions of public health concern from those that are not. The Agency believes that a more appropriate frequency of PN for a OWQP treatment technique violation is approximately once every three months, for as long as the non-compliance exists. EPA also does not believe that there should be a significant difference, from a consumer perspective, whether OWQP non-compliance occurs at an entry point, in the distribution system, or both. For this reason, the Agency thinks it appropriate that compliance with OWQPs be determined quarterly. While entry point samples are collected each quarter, there may be some quarters each year in which no distribution system tap samples are required to be collected. For the purposes of determining the minimum number of tap water WQP samples taken in an interval of time, the Agency plans to retain the monitoring periods currently specified in § 141.87(c)–(e), *i.e.*, every six-months, annually, or every 3 years.

The Agency selected the 95th percentile based on considerations of the total amount of time a system might have excursions at one location during a quarter. By setting compliance at the 95th percentile, a water system can have excursions at a single entry point no more than approximately four and one-half days in a single quarter. Since no one excursion can persist for more than 72 hours (approximately 3 days) without becoming a violation, EPA believes that a system measuring WQPs several times a day at each entry point and meeting the compliance criteria described above is maintaining optimal corrosion control at least as effectively as a water system monitoring less frequently and determining compliance based on individual biweekly grab samples.

The Agency does not believe that a water system normally measuring a WQP at individual sampling locations once a day or less frequently can have any excursions and still be in compliance at least 95% of the time unless the system ''pads'' the sample results with additional samples collected during the quarter merely for the sake of having enough within range. For this reason, the Agency believes it is more appropriate for compliance to be determined using the repeat-sample approach when sampling occurs once a day or less often.

In some instances, a system should realize it is out of compliance before the end of a calendar quarter. This could occur, for example, if a distribution system tap water sampling location is out of compliance. In such cases, the system is required by § 141.31(b) to report the non-compliance to the State within 48 hours and to initiate PN in accordance with the schedule specified in § 141.32 for a treatment type violation.

Since § 141.86(d) and § 141.87(e) require systems on reduced monitoring, and subject to the WQP monitoring requirements after State designation of OWQPs, to maintain compliance with § 141.82(g) to retain eligibility for reduced monitoring, any system on reduced monitoring that incurs an OWQP violation must resume standard monitoring until such time as it is again eligible for reduced monitoring. The resumption of standard monitoring should occur as soon as practicable, but no later than the start of the calendar quarter following the one in which the OWQP violation occurs.

EPA is considering the following changes to § 141.82(g) and § 141.87(d) as a part of this revision. Section 141.82(g) currently reads:

Continued operation and monitoring. All systems shall maintain water quality parameter values at or above minimum values or within ranges designated by the State under paragraph (f) of this section in each sample collected under § 141.87(d). If the water quality parameter value of any sample is below the minimum value or outside the range designated by the State, then the system is out of compliance with this paragraph. As specified in § 141.87(d), the system may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under this paragraph. States have discretion to delete results of obvious sampling errors from this calculation.

Under the revision EPA is considering, the language of § 141.82(g) would be revised to read:

Continued operation and monitoring. All systems shall maintain water quality parameter values at or above minimum values or within ranges designated by the State under paragraph (f) of this section in each sample collected under § 141.87(d)–(f). A water system is out of compliance with the requirements of this paragraph during any calendar quarter in which at least one entry point or distribution system tap sampling location from which water quality parameter samples are collected during the quarter does not meet the compliance requirements of this paragraph for any water quality parameter. States have the discretion to delete obvious sampling errors from the compliance determination. Compliance for each water quality parameter at each sampling location is determined as follows.

(1) Where measurements for a water quality parameter are taken more frequently than once per day at the sampling location, the sampling location is in compliance for that water quality parameter if excursions occur in no more than five percent of the samples taken during the quarter and no single excursion lasts more than 72 hours.

(2) Where measurements for a water quality parameter are taken once per day or less often at the sampling location, the sampling location is in compliance if either:

(i) No excursions occur; or

(ii) A repeat sample collected for the same water quality parameter at the same location within 72 hours of the excursion is not an excursion. If more than one repeat sample for that water quality parameter is collected at that sampling location within the 72-hour period, the compliance will be based on the results of the last sample taken during that period.

Section § 141.87(d) currently reads:

Monitoring after State specifies water quality parameter values for optimal corrosion control. After the State specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under § 141.82(f), all large systems shall measure the applicable water quality parameters in accordance with paragraph (c) of this section during each monitoring period specified in § 141.86(d)(3). Any small or medium-size system shall conduct such monitoring during each monitoring period specified in § 141.86(d)(3) in which the system exceeds the lead or copper action level. The system may take a confirmation sample for any water quality parameter no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under § 141.82(g). States have discretion to delete results of obvious sampling errors from this calculation.

It would be revised to read:

Monitoring after State specifies water quality parameter values for optimal corrosion control. After the State specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under § 141.82(f), all large systems shall measure the applicable water quality parameters in accordance with paragraph (c) of this section during each monitoring period specified in § 141.86(d)(3). Any small or medium-size system shall conduct such monitoring during each monitoring period specified in § 141.86(d)(3) in which the system exceeds the lead or copper action level. At sampling locations where sampling for a water quality parameter occurs once per day or less often, the system may take a repeat sample for that water quality parameter at the same location within 72 hours of the first sample for any water quality parameter value that is below the minimum value or outside the range designated by the State under § 141.82(f). If more than one repeat sample for that water quality parameter is taken at the same location within that 72-hour period, the last sample taken for that water quality parameter at the location within the period shall be used for compliance determinations under § 141.82(g). If the system takes repeat sample(s), the schedule for the next routine sample shall be based on the date of the original sample. As specified in § 141.82(g), compliance with the requirements of § 141.82(g) shall be determined quarterly for each water quality parameter and sampling location based on all the water quality parameter measurements taken for the water quality parameter at the sampling location during the quarter. States have the discretion to delete results of obvious sampling errors from any compliance determination calculations under § 141.82(g).

As a part of this new option, EPA also would modify the language of § 141.87(c)(2) to clarify how the results of any continuous monitoring should be factored into the compliance determinations. Section 141.87(c)(2) currently reads: ''[Systems required to monitor for water quality parameters after the State designates OWQPs shall measure the WQPs at] each entry point to the distribution system, one sample every two weeks (bi-weekly) for: * * *.'' The Agency is considering the following rewording. ''At each entry point to the distribution system, systems [required to monitor for water quality parameters after the States designates OWQPs] shall collect at least one sample every two weeks (bi-weekly). Where continuous monitoring for a water quality parameter occurs at an entry point, the system shall record the results no less frequently than once every four hours and use those recorded results for determining compliance under § 141.82(g). Entry point sampling shall occur for: * * *.''

The Agency believes that recording the results every four hours is an appropriate interval where continuous monitoring is occurring because it provides relatively frequent readings and is consistent with the recording requirements of other drinking water regulations that include continuous monitoring.

Finally, as a part of this option, EPA would make corresponding changes to the reporting requirements at § 141.90(a)(1) to clarify that systems must report to the State on a quarterly basis all water quality parameter results collected pursuant to § 141.87(d)–(f) during the quarter, unless a more frequent reporting schedule is specified by the State. The introductory text of § 141.90(a)(1) currently reads:

A water system shall report the information specified below for all tap water samples within the first 10 days following the end of each applicable monitoring period specified in § 141.86 and § 141.87 and § 141.88 (i.e., every six-months, annually, or every 3 years).

To reflect the revised approach for determining OWQP compliance, EPA is considering revising the paragraph to read:

Except as provided in paragraph (a)(1)(viii) of this section, a water system shall report the information specified below for all tap water and entry point samples within the first 10 days following the end of each applicable monitoring period specified in § 141.86 and § 141.87 and § 141.88 (i.e., quarterly, every six-months, annually, or every 3 years).

EPA also would add a paragraph (viii) to § 141.90(a)(1) that would read: ''States have the discretion to require the reporting of the results of all tap water and entry point water quality parameter monitoring collected under § 141.87(c)–(e) more frequently than quarterly.''

EPA believes there will be little or no change in burden as a result of this alternative. Monitoring burden is not affected since there is no change in the number of WQP samples that a water system is required to collect to remain in compliance with the LCR. Section 141.87(f) already requires that the

results of any WQP sampling conducted in addition to the minimum requirements of the LCR be considered as a part of any compliance determination under § 141.82(g); therefore, no additional burden is assumed in conjunction with recording the results of continuous monitoring every four hours since it is reasonable to conclude that systems doing continuous monitoring already are recording these results at these intervals in compliance with other drinking water regulations. If anything, this alternative may result in a slight burden decrease for those systems that would be triggered into PN more frequently than once per quarter under the current requirements.

EPA solicits public comment on this new approach, including such issues as:

- Does it make sense for systems that sample more frequently than once per day to use a percentile-based approach for determining compliance with OWQPs;
- Is the 95th percentile the appropriate percentile and, if not, what percentile should be used and why;
- Is it appropriate to use different compliance-determination approaches depending on the frequency of monitoring;
- Would it be more appropriate to use the percentile-based approach where a water quality parameter is measured daily at a sampling location and, if so, why;
- Should some other approaches be allowed for determining compliance and, if so, what and how should the approach be structured and when should it be used;
- Is it appropriate to require systems conducting continuous monitoring to record the results every 4 hours and, if not, what is the appropriate frequency and why; and
- Is it clear from the existing rule language of § 141.86(d)(4) and § 141.87(e) that a system loses its eligibility for reduced monitoring if it is out of compliance with § 141.82(g) but not if it incurs an excursion that does not result in a violation.

After considering the public comments on today's Notice, EPA may change various components of this new compliance scenario in the final rule if the Agency believes such changes are warranted.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indians-lands Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: August 10, 1998.

J. Charles Fox,

Acting Assistant Administrator, Office of Water.

[FR Doc. 98–22196 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6145–1]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Delaware. In the final rules section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the authorization is set forth in the immediate final rule. If no adverse written comments are received on this action, the immediate final rule will become effective and no further activity will occur in relation to this proposal. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a document containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before September 17, 1998.

ADDRESSES: Mail written comments to Marie Owens, 3WC21, RCRA State Programs Branch, 1650 Arch Street, Philadelphia, PA 19103. You can examine copies of the materials submitted by the Delaware Department of Natural Resources and Environmental Control during normal business hours at the following locations: EPA Region III Waste and Chemicals Management Division, 10th Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–3384; and Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903.

FOR FURTHER INFORMATION CONTACT: Marie Owens, Mailcode 3WC21, RCRA State Programs Branch, 1650 Arch Street, Philadelphia, PA 19103, phone (215) 814–3384.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Authority: This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 7, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 98–22058 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6144–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Denzer & Schafer X-Ray Company site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the Denzer & Schafer X-Ray Company Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9605. EPA and the State of New Jersey have determined that the site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this site may be submitted on or before September 17, 1998.

ADDRESSES: Comments may be mailed to: Matthew Westgate, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th floor, New York, NY 10007–1866.

Comprehensive information on this site is available through the EPA Region

II public docket, which is located at EPA's Region II Office in New York City.

Background information from the Regional public docket is also available for viewing at the Site's information repositories located at:

Berkeley Township Library 42 Station Road, Bayville, New Jersey 08721, Phone: (908) 269–2144

Berkeley Township Municipal Building, P.O. Box B, Pinewald-Keswick Road, Bayville, New Jersey 08721, Phone: (908) 244–7400

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Westgate, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway 19th floor, New York, NY 10007–1866, Phone: (212) 637–4422.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency Region II announces its intent to delete the Denzer & Schafer X-Ray Company Site, located at 186 Hickory Lane (Block 858, Lot 46A), in Bayville, Berkeley Township, Ocean County, New Jersey, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of the NCP, 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning the Denzer & Schafer X-Ray Company Site for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(l)(i)-(iii) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site:

(1) EPA Region II and the State of New Jersey issued a Record of Decision (ROD) which documented that no further remedial action is necessary at the Denzer & Schafer Site to ensure protection of human health and the environment;

(2) The State of New Jersey concurred with the proposed deletion decision;

(3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state and local officials and other interested parties announcing the commencement of a 30 day public comment period for EPA's Notice of Intent to Delete; and

(4) All relevant documents have been made available for public review in the local Site information repositories.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Region II office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary, which will address any significant public comments received during the public comment period.

The deletion occurs when the EPA Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect any deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Region II Office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

A. Site Background

The Denzer & Schafer X-Ray Company was located at 186 Hickory Lane (Block 858, Lot 46A) approximately 4,700 feet west of Route 9 in the Bayville area of Berkeley Township. Barnegat Bay is approximately two miles to the east of the Site and Tom's River is two miles to the north.

B. History

The Denzer and Schafer X-Ray Company was engaged in the reclamation of silver from microfilm and x-rays. Past activities at the facility have included the reclamation of silver by chemical stripping or incineration of spent film. In 1974, the company switched from incineration to a caustic soda and salt silver reclamation process. Between 1974 and 1981, the facility disposed of its stripping solution by discharging it to the plant's subsurface sanitary septic system.

In addition to the silver recovery business, Microindustries, Inc., a microfilming service company, was located at the Site. Microindustries, Inc. was in operation since 1970 and operated exclusively as a microfilming service company. Microfilm processing wastes, such as photographic developers and fixers, were generated as part of the company's operations. These wastes were discharged to the plant's sanitary septic system prior to 1981.

Periodic sampling of wells installed by the owner since August 1981 and analyses of soil samples collected at the Site indicated that waste from past operations contaminated ground water and soils at the Site.

The Site was proposed for inclusion on the NPL on December 30, 1982 and subsequently added to the NPL on September 8, 1983.

In 1986, DEP under a cooperative agreement with EPA, began a Remedial Investigation and Feasibility Study (RI/FS). Based on the results of the multi-phased RI and subsequent studies, a Record Of Decision (ROD) was signed by the Regional Administrator on September 28, 1995. The ROD documented the decision that no further remedial action was necessary at the Denzer & Schafer X-Ray Site because the conditions pose no unacceptable risk to human health and the environment. The State of New Jersey will continue to monitor the groundwater because some

residual lead contamination remains in the aquifer above drinking water standards near the old source area.

In April 1996, EPA conducted a removal assessment on the abandoned facility and subsequently remediated chemicals left at the site. In September 1996, the remaining underground storage tank was excavated and removed.

In June 1997, the Berkeley Development Corporation hired Brinkerhoff Environmental Services to sample, demolish and dispose of the remaining plant building and debris and properly abandon the two remaining septic systems. This work was completed in August 1997.

C. Characterization of Human Health Risk

The RI included the collection and analysis of soil, ground water and air samples, an aquifer testing program which included a pump test, borehole gamma ray logging, a surface electromagnetic conductivity survey, tank testing, test pit excavation and sampling, and process waste water sampling.

Groundwater

Hazardous substances were found in the ground water above Maximum Contaminant Levels (MCLs).

The RI and supplemental investigations concluded that lead in the ground water is the only contaminant that exceeds Federal and State Drinking Water Standards. Currently, there is not a verified toxicity factor for lead that can be used in normal risk assessment methodologies to determine the health risks associated with this contaminant. However, EPA has developed the Integrated Exposure Uptake Bio-Kinetic Model (IEUBK) as a useful tool to aid in making more informed decisions about the concentrations of lead in the environment that might be expected to impact human health.

The IEUBK Model was designed to model exposure from lead in the environment to predict blood levels in children. Incorporating site-specific soil and ground water data into the model predicted that 100 percent of the population would be below the threshold of 10 micrograms per deciliter (ug/dl) for children exposed to lead off site. For children exposed to lead on site, 99.99 percent of the population would be below the threshold of 10 ug/dl. These results indicate that for both future residential land use on and off site, the levels are consistent with Superfund's lead directive that employs a level of protectiveness which results in 95% of the population distribution falling below 10 ug/dl.

However, since the aquifer still exhibits low levels of contamination at the Site itself, DEP and EPA developed a monitoring program which included sampling of ground and surface waters and sediment, including the intermittent pond directly east of the Denzer & Schafer X-Ray Company building, Potter Creek to the south and Mill Creek to the north.

In February 1996, the sampling showed lead levels (123 ppb and 19.8 ppb) above drinking water standards (15 ppb) in two of the five groundwater monitoring wells and elevated lead levels (1.9 ppb) in the headwaters of Mill Creek, approximately 5,000 feet to the northwest of the source area, and in Potter Creek (lead—3.2 ppb), approximately 2,000 feet to the southeast of the source area. The lead was found at levels below the Federal Water Quality Criteria and therefore, does not represent a risk to human health or the environment. Upon further consultation with DEP and EPA's Biological Technical Assistance Group (BTAG), EPA concluded that, because of the great distances separating them, the lead found in the groundwater adjacent to the source area is not related to the lead found in the headwaters of the two creeks, and no future sampling of the creeks would be necessary.

DEP established a Classification Exception Area in January 1998 based on the ground water monitoring to ensure that new wells will not be installed in the area without appropriate precautions.

Air and Surface Water

Air samples collected during both phases of the RI showed levels of contamination similar to normal background levels.

Surface water samples were generally free of priority pollutant compounds.

Soils

Some subsurface soils on-site exceed the health-based standards for silver. However, it was determined that soil contamination does not pose an unacceptable risk. The possibility for oral, dermal, and inhalation exposure to silver in subsurface soils is remote.

D. Ecological Risk

Ecological risks were not characterized because the significant risk is associated with contaminated ground water and no exposure pathway exists.

E. Protectiveness

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate. EPA, with the concurrence of the DEP, believes this criterion for deletion has been met. Details on the decision can be found in the ROD issued in September 1995. Subsequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket.

Dated: July 8, 1998.

William J. Muszynski,

Regional Administrator, Region II.

[FR Doc. 98–21894 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket 98–117; FCC 98–147]

1998 Biennial Regulatory Review—Review of ARMIS Reporting Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is required, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications service to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of such service and whether such regulations should be repealed or modified. In this Notice of Proposed Rulemaking (''NPRM''), we propose as part of the biennial review to reduce the reporting requirements of our Automated Reporting Management Information System (''ARMIS''). These modifications are designed to minimize the reporting burden on carriers, improve the quality and use of the reported information and reduce the cost to the Commission of collection, verification, and distribution of the data. This Notice invites interested parties to comment on several modifications to the ARMIS ten reports.

DATES: Comments are to be filed on or before August 20, 1998 and reply comments are due on or before September 4, 1998. Written comments

and reply comments by the public on the information collections are due October 19, 1998.

ADDRESSES: Federal Communications Commission, Secretary, Room 222, 1919 M Street NW., Washington, D.C. 20554. In addition to filing comments with the Commission's Secretary, a copy of any comments on the proposed information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Anthony Dale, Common Carrier Bureau, Accounting Safeguards Division, (202) 418–2260, or via E-mail to ''adale@fcc.gov''. For additional information concerning information collections, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in the matter of 1998 Biennial Regulatory Review—Review of ARMIS Reporting Requirements, CC Docket 98–117, adopted July 6, 1998, and released July 17, 1998. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the Commission's Reference Center, Room 239, 1919 M Street, NW, Washington, DC. The NPRM is available through the Internet at http://www.fcc.gov/Bureaus/Common__Carrier/Notices/1998/fcc98147.wp. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.), at 1231 20th Street NW., Washington, DC 20036 (202–857–3800).

Paperwork Reduction Act

This NPRM contains proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this notice; OMB notification of action is due October 19, 1998. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: 1998 Annual Biennial Review of ARMIS Reporting Requirements.

Form No.: FCC Reports 43–01 through 43–08 and FCC Reports 495A and 495B.

Type of Review: New collections.

Respondents: Business or other for profit.

Title	No. of respondents	Estimated time per response	Total annual burden
ARMIS Annual Summary Report	150	135	20,250
ARMIS USOA Report	50	190	9,500
ARMIS Joint Cost Report	150	110	12,450
ARMIS Access Charge Report	150	621	93,150
ARMIS Service Quality Report	12	625	7,500
ARMIS Customer Satisfaction Report	8	675	5,400
ARMIS Infrastructure Report	8	412	3,296
ARMIS Operating Data Report	50	120	6,000
ARMIS Forecast of Investment Usage & Actual Usage Reports	300	21	6,300

Total Annual Burden: 163,846.

Estimated costs per respondent: $0.

Needs and Uses: As part of the biennial regulatory review, we are required to review our regulation applicable to providers of telecommunications service to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of such service and whether such regulations should be repealed or modified. In this NPRM we propose as part of the biennial review to reduce the reporting requirements of our ARMIS. ARMIS is needed to administer our accounting, jurisdictional separations, access charges and joint cost rules and rules to analyze revenue requirements and rates of reform, service quality and infrastructure development. It collects financial and operating data from certain local exchange carriers. The information contained in the reports provide the necessary detail to enable this Commission to fulfill its regulatory responsibilities. These proposed modifications will reduce the reporting burdens on carriers, improve the quality and use of the reported information. If adopted the proposed modifications will reduce public burden by approximately 50% for the ARMIS reports.

Synopsis of Notice of Proposed Rulemaking

A. Eliminating Paper Filing Requirement

1. The Common Carrier Bureau (''the Bureau'') currently requires carriers to submit both paper and electronic copies of the ARMIS reports. The Commission has, in recent years, relied increasingly on the data filed electronically to maintain internal databases and generate meaningful reports for policy making. We tentatively conclude that paper versions of the ARMIS reports do not significantly contribute to the Commission's current efforts or future goals in administering its accounting, joint cost, jurisdictional separations, access charge rules, or in monitoring the quality of service and infrastructure development in the public network. Therefore, we tentatively conclude that we should eliminate the paper filing requirement. We anticipate that the transition to an electronic-only reporting program will represent a substantial cost savings for all carriers that file ARMIS reports. We seek comment on this tentative conclusion and request suggestions for improving the electronic filing system for ARMIS reports.

2. The paper versions of the ARMIS reports, however, are our primary means for distributing ARMIS data to the public. To satisfy the frequent requests

from the public for ARMIS data, we plan to meet the demand by making it available through the Internet. This will require Commission staff to develop software that will allow interested parties to obtain ARMIS reports over the Internet, which we anticipate to be a costly process. We seek comment on this proposal and request parties to provide information on the costs of filing paper copies of ARMIS data so that we can assess the utility of eliminating the paper filing requirement. In considering whether to make ARMIS data available on the Internet, we plan to balance the benefits of such availability, in particular the frequency of requests from the public and the reduced administrative burden on Commission staff, against the costs of this course of action.

B. Equal Access, Payphone, and Inside Wire Data

3. The ARMIS 43–04 Access Report provides jurisdictional separations and access charge data by part 36 category at the study area level. The data collected in this report are used by Commission staff to verify cost information filed in tariffs. We propose to modify the ARMIS 43–04 Access Report by eliminating 114 rows and three columns in which carriers report data pertaining to equal access, inside wire, and payphone investment. We tentatively conclude that the equal access information is no longer necessary because the nearly complete transition to equal access has reduced our need to monitor its deployment. We tentatively conclude that we can eliminate the inside wire and payphone investment columns because these two categories are no longer regulated. In the NPRM, Appendix A presents the specific row and column deletions and our reasons for their removal. We solicit comment on these tentative conclusions and seek additional suggestions from interested parties on streamlining the ARMIS 43–04 Access Report.

4. The ARMIS 43–01 Annual Summary Report summarizes the carriers' accounting, rate base, and cost allocation data prescribed in parts 32, 36, 64, 65, and 69 of the Commission's rules (*See* 47 CFR 32, 36, 64, 65, and 69). The Annual Summary Report consists of two tables: (1) Table I, the ''Cost and Revenue Table;'' and (2) Table II, the ''Demand Analysis Table.'' In order to make the ARMIS 43–01 Annual Summary Report consistent with the streamlined version of the ARMIS 43–04 Access Report, we tentatively conclude that we should eliminate the corresponding rows and columns pertaining to equal access, inside wire, and payphone investment. Appendix B presents the specific row and column deletions and our reasons for their removal. We seek comment on this proposal and ask whether any additional streamlining or consolidation of these reports should be made.

C. Reduced Reporting Requirements for Mid-Sized Incumbent LECs

5. Incumbent LECs whose annual operating revenues exceed an indexed revenue threshold are required to file ARMIS reports (*See* Reform of Filing Requirements and Carrier Classifications; Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual, *Report and Order,* (FR cite 62 FR 39776 (July 24,1997) 12 FCC Rcd 8071)). The indexed revenue threshold, which has recently been increased to $112 million, is based on annual operating revenues for both regulated and nonregulated activities and is adjusted for inflation. (*See* 47 CFR 32.9000). Based on our experience with administering the ARMIS reporting system, it appears that the carriers' costs of implementing that system are largely fixed with respect to the number of access lines served. This implies that, on a per-access-line basis, the cost of complying with the full ARMIS reporting requirements is substantially higher for mid-size incumbent LECs than for large incumbent LECs, because the large incumbent LECs are able to average their fixed reporting costs over a larger number of access lines. Reducing the reporting requirements on mid-sized carriers would eliminate a costly reporting burden on those carriers that must recover the cost from a smaller number of customers.

6. We propose to streamline the ARMIS reporting requirements for certain mid-sized incumbent LECs based on the aggregate revenues of the incumbent LEC and any LEC that it controls, is controlled by, or with which it is under common control (*See* 47 CFR 32.9000). If the aggregate revenues of these affiliated incumbent LECs are less than $7 billion, then each LEC within that group would be eligible for the streamlined reporting requirements described below. Incumbent LECs with individual annual operating revenues below the indexed revenue threshold would continue to be exempt from all ARMIS reporting requirements. The $7 billion threshold will still provide the Commission with data for nearly 90% of the industry for local exchange telecommunications, as measured by annual operating revenues. We seek comment on our proposal to streamline the reporting requirements for mid-sized LECs and on utility of this threshold mechanism. In addition to the reporting requirements detailed below, we seek comment on other suggestions for reducing the reporting burden on mid-sized incumbent LECs while still collecting the information needed to perform our oversight functions and protect ratepayers from the effects of improper cost allocations.

7. The ARMIS 43–02 USOA Report provides the annual operating results of carriers' activities for every account in the Uniform System of Accounts (''USOA''), which we use to review the operations of communications common carriers subject to our jurisdiction. The USOA encompasses both balance sheet and income statement accounts that we use to review overall investment and expense levels, affiliate transactions, property valuation, and depreciation rates. The ARMIS 43–02 USOA Report collects accounting and financial data in 27 tables. We tentatively conclude that we should reduce the filing burden of eligible reporting carriers by eliminating the requirement to file 21 tables in the ARMIS 43–02 USOA Report. Our experience administering the ARMIS reporting system and our accounting rules suggests that routine reporting of the balance sheet information contained in tables B–3 and B–5 through B–15 may not be crucial for eligible reporting carriers to report on a regular basis. Because we will continue to have access to the underlying data and source documents, we tentatively conclude that eliminating these reporting requirements will not impair our ability to perform necessary oversight functions.

8. This tentative conclusion, if adopted, would result in eligible reporting carriers filing only six tables in the USOA Report: (1) Table B–1, ''Balance Sheet Accounts;'' (2) Table B–2, ''Statement of Cash Flows;'' (3) Table B–4, ''Analysis of Assets Purchased from or Sold to an Affiliate;'' (4) Table C–3, ''Board of Directors and General Officers;'' (5) Table I–1, ''Income Statement Accounts;'' and (6) Table I–2, ''Analysis of Services Provided from or Sold to an Affiliate.'' Together, these tables provide the information, such as the complete financial statements, needed to perform our audit and other oversight functions. In addition, we tentatively conclude that we should allow eligible reporting carriers to file the Class B level of detail for applicable schedules. (*See* 47 CFR 32.11) This proposed modification would not relieve eligible reporting carriers of their responsibility to maintain their books of accounts in accordance with part 32 of the Commission's rules, but would reduce the filing burden imposed on

eligible reporting carriers that file ARMIS reports. We seek comment on this tentative conclusion.

9. We note that our pole attachment formulas are based on the Class A level of accounting detail. If the Commission adopts Class B accounts for mid-sized LECs as proposed herein, the ARMIS reports of the mid-sized LECs would no longer provide the details needed to calculate pole attachment fees using the pole attachment formulas. The details provided in eight Class A accounts are needed to provide data for the pole attachment formulas: six accounts associated with cable and wire facilities investment and expenses, and two accounts associated with network operations expenses. We seek comment on whether mid-sized LECs should be required to maintain subsidiary record categories to provide the data now provided in the eight Class A accounts and to report in ARMIS the information in the noted accounts as well as other information required by the pole attachment formulas.

10. The ARMIS 43–03 Joint Cost Report details the regulated and nonregulated cost and revenue allocations by study area in accordance with the Commission's rules (*See* 47 CFR 64.901–904). In order to be consistent with the modifications to the USOA Report, we tentatively conclude that we should allow eligible reporting carriers to file only the Class B level of detail. This proposal, if adopted, would eliminate roughly two-thirds of the entries for eligible reporting carriers. We seek comment on this proposal.

11. The ARMIS 495A Forecast Report and the ARMIS 495B Actual Usage Report provide the information needed to monitor our requirement that incumbent LECs allocate the costs of certain telephone plant investment used for both regulated and nonregulated activities on the basis of forecasted regulated and nonregulated usage. Carriers file these reports at the same time as their annual access tariff filing. The ARMIS 495A Forecast Report displays forecasts of expected regulated and nonregulated investment usage at the study area level. The ARMIS 495B Actual Usage Report displays the actual usage of regulated and nonregulated investment at the study area level. We tentatively conclude to allow eligible reporting carriers to report the data in the ARMIS 495A Forecast Report and the ARMIS 495B Actual Usage Report at the Class B level of detail. This tentative conclusion, if adopted, will provide flexibility for eligible reporting carriers to aggregate types of equipment and to forecast the regulated and nonregulated usage of such equipment. We seek comment on this tentative conclusion.

D. ARMIS Reporting Requirements for Large Incumbent LECs

12. For the largest incumbent LECs, we tentatively conclude that we should maintain the Class A level of detail for their ARMIS reporting requirements. The more detailed reporting requirements are necessary for the Commission to uphold our statutory obligations to prevent cross-subsidization and discrimination under sections 254(k), 260, 271, 272, 273, 274, 275, and 276 of the Act. *See* 47 USC 254(k), 260, 271–276. The Class A level of detail specified in the part 32 accounting rules allows us to identify potential cost misallocations beyond those revealed by the Class B system of accounts. In addition, the Class A level of detail is critical for monitoring large incumbent LECs because such carriers typically conduct a higher volume of transactions involving competitive services. We need sufficient detail to adequately perform audit and verification functions of the largest incumbent LECs that represent nearly 90% of the local exchange industry as measured by annual revenues. Moreover, the Class A level of detail is required to monitor the large incumbent LECs as competition begins to develop in local telephony markets. Therefore, we tentatively conclude that any further reduction in reporting requirements for ARMIS financial, cost allocation, and access charge data would impair our ability to guard against improper cost allocations, to assess the impact of our policies on incumbent LECs, and to monitor the development of competition in the telecommunications marketplace. We have long recognized that, for managerial decision-making and other purposes, incumbent LECs maintain their financial records in significantly more detail than that required for Class A carriers in our part 32 rules. Because incumbent LECs disaggregate their financial records into much greater detail than our Class A requirements, we tentatively conclude that the burden on the largest incumbent LECs resulting from Class A accounting and reporting requirements does not outweigh our needs for collecting financial information. We seek comment on these tentative conclusions to maintain the Class A accounting requirements for the largest incumbent LECs, and, alternatively, on whether there are certain ARMIS reporting requirements we could eliminate or streamline for the largest LECs.

Procedural Matters

13. *Ex Parte Presentations.* This is a permit-but-disclose proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules (*See* 47 U.S.C. 1.102, 1.203 and 1.206).

14. *Initial Regulatory Flexibility Analysis.* The Regulatory Flexibility Act (''RFA'') (*See* 5 U.S.C. 601) requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' (*See* 5 U.S.C. 605(b)). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' (*See* U.S.C. 601(b)). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'') (See 15 U.S.C. 632).

15. This NPRM proposes to eliminate the requirement to file paper versions of ARMIS reports, to reduce the specific reporting requirements on all incumbent LECs that file ARMIS reports, and to further reduce the reporting requirements for certain mid-sized incumbent LECs. Neither the Commission nor SBA has developed a definition of ''small entity'' specifically applicable to LECs. The closest definition under SBA rules is that for establishments providing ''Telephone Communications, Except Radiotelephone,'' which is Standard Industrial Classification (SIC) code 4813. Under this definition, a small entity is one employing no more than 1,500 persons.

16. We certify that the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities. Pursuant to long-standing rules, incumbent LECs with annual operating revenues exceeding the indexed revenue threshold must report financial and operating data to the Commission. This NPRM proposes to reduce certain of these reporting requirements and eliminate the subject paper filing requirement. These changes should be easy and inexpensive for incumbent LECs to implement and will not require

costly or burdensome procedures. We therefore expect that the potential impact of the proposal rules, if such are adopted, is beneficial and does not amount to a possible significant economic impact on affected entities. If commenters believe that the proposals discussed in the NPRM require additional RFA analysis, they should include a discussion of these issues in their comments.

17. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this NPRM, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration. (*See* 5 USC 605(b)).

Comment Filing Procedures

18. Interested parties may file comments no later than August 20, 1998 and reply comments may be filed no later than September 4, 1998. All pleadings should reference CC Docket No. 98–117. A copy of each pleading should be sent to Anthony Dale, Accounting Safeguards Division, Common Carrier Bureau, FCC, 2000 L Street, Suite 201, Washington, DC 20554, and another copy should be sent to International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. All pleadings will be made available for public inspection and copying in the Accounting Safeguards Division public reference room, 2000 L Street, NW, Suite 812, Washington, DC 20554.

19. Comments and replies must also comply with § 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and replies. In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 1231 20th Street, NW, Washington, DC 20037, (202) 857–3800. All pleadings are available for public inspection and copying in the Accounting and Audits public reference room.

List of Subject in 47 CFR Part 43

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph and Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–22162 Filed 8–17–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 64

[IB Docket No. 98–148; FCC 98–190]

1998 Biennial Regulatory Review—Reform of the International Settlements Policy and Associated Filing Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On August 6, 1998, the Federal Communications Commission adopted a Notice of Proposed Rulemaking (NPRM) to adopt significant changes to the Commission's International Settlements Policy (ISP) and associated rules. The changes in this policy are intended to promote greater competition and lower international calling prices. The Commission proposes to lift regulations under the existing policy that restricts the kinds of arrangements U.S. carriers may enter into with foreign telecommunications carriers in World Trade Organization (WTO) member countries. This action is part of the FCC's biennial review to eliminate or modify rules where appropriate.

DATES: Comments are due on or before September 16, 1998 and reply comments are due on or before October 16, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert C. McDonald, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 98–190, adopted on August 6, 1998. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. The complete text of this NPRM is available over the Internet on the Commission's World Wide Web page, http://www.fcc.gov. The text of the NPRM also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

Summary of Notice

1. The Commission proposes to scale back significantly on the Commission's application of the International Settlements Policy (ISP) and associated filing requirements. The ISP has governed U.S. carriers' bilateral accounting rate negotiations with foreign carriers for many years. These policies have largely been a success in safeguarding U.S. carrier dealings with monopoly foreign carriers. These rules may not, however, be necessary on routes where there is competition in the foreign market and they may, in fact, impede the further development of competition on such routes. In light of the significant number of countries that recently have introduced competition in their telecommunications markets, the NPRM proposes significant changes to the Commission's ISP and associated rules.

2. The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest.

3. The ISP and related filing requirements were implemented to prevent whipsawing. These rules currently apply to U.S. carrier arrangements for IMTS with all foreign carriers, except where a U.S. carrier receives authorization to enter into an alternative settlement arrangement under our flexibility policy or to provide ISR. We believe, however, that whipsawing is a concern that is largely associated with foreign carriers with monopoly power. Where U.S. carriers are able to terminate international traffic by interconnecting with a carrier that lacks market power, we believe that whipsawing is not a significant danger. We thus seek comment in this Notice on whether we should continue to apply the ISP and related filing requirements to U.S. carrier arrangements with foreign carriers from WTO Member countries that lack market power in the relevant foreign telecommunications market.

4. With respect to the ISP, there also appears to be little danger that a foreign carrier that lacks market power will have the ability to whipsaw U.S. carriers. Indeed, without market power over facilities and services essential to terminate international traffic, an attempt at whipsawing by a foreign carrier that lacks market power should be countered by a defection by U.S.

carriers to another operator. We thus tentatively conclude that we should not apply the ISP to agreements concluded with foreign carriers from WTO Member countries that lack market power on the relevant route. U.S. carriers would therefore be free to enter unencumbered into commercial negotiations with foreign carriers in WTO Member countries that lack market power. We seek comment on whether carriers that lack market power in the foreign market may retain some ability to whipsaw where government policies or other foreign market conditions preclude real competition. We tentatively conclude that the long term benefits of removing our ISP for arrangements with foreign carriers that lack market power will outweigh any short-term risks involved. We seek comment on this tentative conclusion.

5. We also seek comment on whether to exempt U.S. carriers from filing contracts and accounting rate information under section 43.51 and 64.1001 of our rules for arrangements with foreign carriers that lack market power. 47 CFR 43.51, 64.1001. We tentatively conclude that we should amend the § 43.51 contract filing requirement and the § 64.1001 accounting rate filing requirements so that contracts and accounting rate information for arrangements with foreign carriers that lack market power in WTO Member countries would not need to be filed with the Commission. We seek comment on this tentative conclusion.

6. In the *Foreign Participation Order,* 62 FR 64741, December 9, 1997, recon. pending, we adopted a presumption, for the purpose of applying the No Special Concessions rule, that carriers with less than 50 percent market share in the relevant markets lack sufficient market power to affect competition adversely in the United States. We propose to apply this same 50 percent market share presumption for purposes of determining whether to apply our ISP and related filing requirements. We seek comment on how, if we adopt our proposal to eliminate the ISP and filing requirements for arrangements with foreign carriers that lack market power in WTO Member countries, we should make the determination that the foreign carrier lacks market power. For example, should the Commission make an affirmative finding whether a foreign carrier possesses market power, or should we leave the determination of whether a foreign carrier falls outside our presumptive 50 percent market share screen, so that the ISP and our filing requirements apply, to the carrier that concludes the arrangement? We note that carriers that accept a special concession from a foreign carrier that lacks market power are currently required to file publicly contracts with the Commission along with information that the foreign carrier has a market share of less than 50 percent in the relevant markets. Opposing parties thus have the opportunity to rebut this presumption by demonstrating that the carrier indeed possesses market power. If we were to adopt our tentative conclusion to eliminate the contract filing requirement for agreements with foreign carriers that lack market power in the foreign market, we seek comment on whether the Commission and potential competitors would lack the information needed to determine whether an agreement qualifies for the exception to our filing requirement and No Special Concessions rule.

7. We believe that, in most foreign markets, the determination of whether a carrier has market power is clear cut, because most foreign markets are divided between a former incumbent with a market share of well over 50 percent and new entrants with market shares far below 50 percent. Nevertheless, we recognize that there may be some need to preserve Commission oversight to ensure that carriers do not engage in exclusive dealings with foreign carriers that possess market power. This oversight should, however, be balanced with our goal of allowing carriers the freedom to negotiate agreements freely with carriers that lack market power. We seek comment on several alternatives for determining whether to apply our ISP and related filing requirements to a particular arrangement. First, we could adopt a rule that arrangements with foreign carriers with less than 50 percent market share do not have to be filed, and not require any filing to substantiate the claim that the foreign carrier lacks market power. Second, we could require that a carrier that seeks to enter an arrangement with a foreign carrier that lacks market power identify the route and file a certification that the carrier on the foreign end of the international route lacks market power, without revealing the identity of the foreign correspondent. Third, we could require a carrier to identify the foreign carrier and publicly file data indicating that the foreign carrier possesses less than 50 percent market share in each of the relevant markets or file a petition for declaratory ruling that a foreign carrier with greater than 50 percent market share nevertheless lacks market power. We also seek comment on whether, if we adopt this third proposal, we should allow confidential treatment for such filings.

8. We seek to simplify our regulatory requirements to the greatest extent possible, consistent with our commitment to preventing abuse of market power by foreign carriers in their dealings with U.S. carriers. We seek comment on whether our proposal to eliminate the ISP and related filing requirements for arrangements with foreign carriers that lack market power in WTO Member countries achieves this goal. We tentatively conclude that this approach is warranted because carriers without market power have a substantially diminished ability to whipsaw U.S. carriers. We further tentatively conclude that this approach is consistent with the regulatory framework we adopted in our *Foreign Participation Order,* 62 FR 64741, December 9, 1997, recon. pending. We seek comment on our proposed approach for regulating arrangements between U.S. carriers and foreign carriers that lack market power in WTO Member countries, and on any other approaches that would further our goals.

9. We also seek comment on whether, under certain circumstances, we should decline to apply the ISP and related filing requirements to U.S. carrier arrangements with all foreign carriers in selected WTO Member country markets, including arrangements with those carriers that possess market power. We seek comment on what standard we should employ for identifying routes on which we should not apply the ISP. We propose to decline to apply the ISP on routes where the Commission has already authorized ISR.

10. Alternatively, we seek comment on whether a settlement rate threshold lower than a benchmark rate is appropriate. For example, we could apply the current best practices rate of $.08 per minute, established in our Benchmarks Order, as the threshold. Under this proposal, we would decline to apply our ISP on routes where at least 50 percent of the traffic is settled at a rate of $.08 per minute or less. Commenters suggesting an alternative settlement rate threshold should provide a documented basis for any threshold suggested.

11. We also seek comment on whether any other standard is appropriate. For instance, we could decline to apply the ISP only in cases where 50 percent of traffic on the route is settled at or below benchmark rates and the foreign market permits U.S. carriers to provide service via ISR. We seek comment on these alternatives, and on any other alternative standard we could adopt to

identify routes on which we need not apply our ISP.

12. We also seek comment on whether we should decline to apply our § 43.51 contract filing and § 64.1001 accounting rate filing requirements to the extent we decline to apply the ISP on certain routes. *See* 47 CFR 43.51, 64.1001. We seek comment on whether we should require public filing, require confidential filing or remove the filing requirements altogether for arrangements on certain routes where we decline to apply the ISP. For instance, if we remove these filing requirements generally, should we maintain them for arrangements entered into with foreign carriers with market power, or only for affiliated foreign carriers with market power?

13. Our proposal to eliminate the ISP and related filing requirements on routes where we permit ISR would greatly reduce regulatory oversight for arrangements between U.S. carriers and foreign carriers on those routes. We believe that our proposal will further our goal of eliminating unnecessary regulatory burdens, while continuing to prevent abuse of market power by foreign carriers in their dealings with U.S. carriers. We seek comment on our proposed approach for eliminating regulatory requirements on routes where we believe they are not necessary, and on any other approaches that would further our goals.

14. We further seek comment on what modifications we can make to our flexibility policy to encourage more carriers to negotiate alternative settlement arrangements. Specifically, we propose to modify our flexibility policy to limit the filing of commercial information on routes that qualify for flexibility. Our current flexibility rules require a carrier seeking to implement a flexible arrangement to obtain approval by filing a petition for declaratory ruling with the Commission. Under our rules, carriers must include a summary of the terms and conditions of the alternative settlement arrangement in their petition. In addition, carriers are required under § 43.51 of our rules to file a copy of all settlement arrangements, including alternative settlement arrangements.

15. We seek comment on whether these filing requirements inhibit carriers from negotiating alternative settlement arrangements. Would a foreign carrier be less willing to negotiate a favorable arrangement with one U.S. carrier if the terms of the agreement must be disclosed to all competing carriers in the U.S. market? We seek comment on whether we should modify our flexibility policy for alternative settlement arrangements which do not trigger our safeguards. Thus, for alternative settlement arrangements affecting less than 25 percent of the inbound or outbound traffic on a particular route, and for arrangements that are not between affiliated carriers or carriers involved in a joint venture, we propose to allow carriers to file a petition for authorization to enter into a flexible settlement arrangement without including a summary of the terms and conditions of the agreement or identifying the foreign correspondent in their petition. We also seek comment on whether we should decline to apply our § 43.51 contract filing requirement for alternative settlement arrangements in these circumstances. We note that under this proposal, carriers could only seek approval without filing agreements with the Commission to the extent the presumption in favor of flexible treatment is not rebutted (*i.e.* there are not multiple facilities-based competitors capable of terminating international traffic operating in the foreign market).

16. We also seek comment on the two safeguards we adopted in our *Flexibility Order*, 62 FR 5535, February 6, 1997, recon. pending. The first of these safeguards requires that any alternative arrangement affecting more than 25 percent of the outbound or inbound traffic on a particular route may not contain unreasonably discriminatory terms and conditions and must be publicly filed. The other safeguard requires that all alternative arrangements between affiliated carriers and carriers involved in non-equity joint ventures be publicly filed. We adopted these safeguards to protect against potential anticompetitive actions by foreign and U.S. carriers with a significant share of their markets, and to provide a ''safety net'' for possible unanticipated consequences of our flexibility policy. We tentatively conclude that we should maintain these safeguards. We seek comment on this tentative conclusion and on our tentative conclusion to modify our filing requirements for alternative settlement arrangements that do not trigger our safeguards. We also seek comment, however, on whether we should modify the safeguard that currently requires all flexible arrangements entered into with affiliated carriers and joint-venture partners to be publicly filed with the Commission. Where the U.S. carrier's foreign affiliate does not possess market power in the foreign market, there is little danger that a flexible arrangement would have anticompetitive effects. The current safeguard, however, requires a U.S. carrier to make public flexible arrangements entered into with its foreign affiliate even if it lacks market power. We therefore seek comment on whether we should only require public availability of flexible arrangements entered into by U.S. carriers with affiliated carriers or with joint-venture partners that possess market power in the foreign market.

17. If we adopt these proposals, we propose to modify the flexibility policy to require only that a carrier file a certification that the arrangement does not trigger our flexibility safeguards (*i.e.*, that it affects less than 25 percent of traffic on the route and is not with an affiliate or joint venture partner) and to identify the destination market. We propose to permit other parties to file comments to rebut the presumption in favor of flexibility (demonstrating that the foreign market lacks multiple facilities-based competitors), but not comment on the nature of the flexible arrangement itself. We believe that this approach would enable U.S. carriers to enter into innovative arrangements that would otherwise not be viable if the full contents of the agreement were disclosed.

18. We note that these proposed modifications to our flexibility rule may not be needed if we adopt our proposals in this Notice to lift the ISP and related filing requirements for settlement arrangements with foreign carriers that lack market power in WTO Member countries and settlement arrangements on WTO country routes where we permit ISR. Our flexibility policy provides an exception to the ISP. Thus, to the extent our ISP does not apply, our flexibility rules would be irrelevant. We seek comment on the proposals in this *Notice* for modifying our flexibility policy, and on any other modifications to our flexibility policy that would further our goals of encouraging the negotiation of more market-based arrangements and eliminating unnecessary regulatory burdens.

19. We also seek comment on whether we should modify our ISR rules as a mechanism for putting greater pressure on settlement rates. We seek comment in this NPRM on whether we can permit ISR on more routes, consistent with our commitment to prevent one-way bypass. For example, should we permit carriers to provide ISR for a limited amount of traffic on routes where we would otherwise not authorize the provision of ISR? We believe that a limited offering of ISR could put significant pressure on settlement rates, while limiting the potential damage from one-way bypass. Another approach might be to decide in advance to lift our ISP requirement at some future point when international markets have become sufficiently

competitive overall, *e.g.* when 50 percent of routes have been approved for ISR. We note that regulators in other markets that allow ISR, such as the United Kingdom, Sweden, Germany, and others, do not impose restrictions on ISR similar to those we have in place in the United States. We seek comment on whether it is possible to deter foreign carriers from engaging in one-way bypass that distorts the U.S. market through an approach other than prohibiting ISR altogether. For example, in the *Benchmarks Order*, 62 FR 45758, August 29, 1997, recon. pending, appeal filed, Cable & Wireless *et al.* v. FCC, No. 97–1612 (D.C. Cir. filed Sept. 26, 1997), we adopted a safeguard that would impose sanctions on a carrier whose provision of ISR results in a market distortion, *i.e.*, one-way bypass. We adopted a presumption that a market distortion would occur if the ratio of inbound/outbound traffic increases by ten or more percent over two successive reporting periods. We seek comment on whether this or a different competitive safeguard would be an effective means of preventing one-way bypass in lieu of our existing safeguards, either now or as competitive conditions evolve.

20. We seek comment on the effect of adopting the above proposals on our No Special Concessions rule as well as on the existing ISR and flexibility policies. We also seek comment on whether additional safeguards are necessary to address any possible competitive distortion that may result from limiting the scope of our ISP. We note that if we adopt our proposals to scale back our application of the ISP, our flexibility and ISR policies will apply only to arrangements with foreign carriers with market power in foreign markets to which the Commission does not allow ISR and to arrangements with carriers in non-WTO Member countries.

21. Our No Special Concessions rule prohibits U.S. international carriers from ''agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market * * *.'' 47 CFR 63.14(a). We seek comment on whether to maintain the No Special Concessions rule for U.S. carrier arrangements with foreign carriers with market power if we adopt the proposal in this Notice not to apply the ISP and related filing requirements on ISR routes. It may be necessary to maintain the No Special Concessions rule because it applies more broadly than the ISP. For example, the No Special Concessions rule prohibits U.S. carriers from agreeing to accept from a foreign carrier that possesses market power exclusive arrangements with respect to operating agreements, interconnection of international facilities, private line provisioning and maintenance, as well as quality of service. The ISP, however, applies only to the settlement of international traffic and allocation of return traffic. We seek comment on whether such exclusive arrangements with a foreign carrier that possesses market power could adversely affect competition in the U.S. market on routes where we permit ISR, such that we should continue to apply the No Special Concessions rule.

22. We also seek comment on the extent to which the No Special Concessions rule applies within the context of our ISR and flexibility policies in light of the changes to our rules proposed in this Notice. In the *Flexibility Order*, 62 FR 5535, February 6, 1997, recon. pending, the Commission stated that arrangements approved under the flexibility rules are permitted as an exception to the No Special Concessions rule. By contrast however, we have not made clear how the No Special Concessions rule applies to the settlement of traffic under an ISR arrangement. An ISR arrangement between a foreign carrier and a U.S. carrier, for example, could be viewed as a prohibited special concession if the foreign carrier also exchanges traffic in a traditional correspondent relationship with other U.S. carriers under financial terms and conditions that differ from those governing the ISR arrangement. We believe that such an interpretation of our No Special Concessions rule was not contemplated when we adopted our ISR policy. We therefore tentatively conclude that our No Special Concessions rule does not apply to the terms and conditions under which traffic is settled, including allocation of return traffic, by a U.S. carrier on an ISR route. Notwithstanding an ISR arrangement, however, the No Special Concessions rule would prohibit exclusive arrangements with a foreign carrier with market power with respect to interconnection of international facilities, private line provisioning and maintenance, as well as quality of service. We seek comment on this tentative conclusion. We also seek comment on whether we should apply the No Special Concessions rule in this manner if we decide to retain the No Special Concessions rule for U.S. carrier arrangements that deviate from the ISP on ISR routes, as discussed above.

23. Finally, although we seek to remove regulatory impediments to competition, we recognize that carriers that possess market power in the foreign market may have the potential to leverage that market power into the U.S. market. By removing the ISP and transparency requirements, we may be removing measures which limit the ability of such carriers to distort competition in the U.S. market. We therefore seek comment on whether we should adopt additional safeguards to prevent a competitive distortion, such as one-way inbound bypass, and on measures we should take in the event a competitive distortion occurs. For instance, we seek comment on whether we should modify our reporting requirements in order to more easily detect such a competitive distortion. We also seek comment on what measures we can take to ensure that the Commission is able to take swift action in the event of a competitive distortion. We recognize, however, that any safeguards we adopt may, to the extent they are not absolutely necessary, preclude carriers from responding to market influences and concluding agreements that may bring settlement rates closer to cost.

24. We note in particular that removing our ISP and filing requirements may, in certain cases, allow carriers to conclude some types of arrangements upon which the Commission has not yet ruled. For example, commenting parties in other proceedings have expressed concern regarding whether carriers may negotiate arrangements to accept ''groomed'' traffic, *i.e.* traffic that terminates in particular geographic regions. If we adopt our above proposal to remove the ISP and our filing requirements with respect to arrangements with carriers with market power in selected markets, we would no longer require pre-approval or public filing of such arrangements. We seek comment on whether these types of grooming arrangements present a potential for anticompetitive effects, particularly with respect to arrangements between foreign carriers with market power and incumbent local exchange carriers. We also seek comment on whether the potential for such anticompetitive effects would justify an exception to our proposals to relax our application of the ISP or whether it would justify application of other safeguards.

25. Currently, the Commission requires that carriers seek approval for changes in their accounting rate arrangements with foreign correspondents. Under the procedures set out in the Commission's rules, carriers seeking such approval must file

either a modification request or a notification. The notification requirement applies to simple reductions in the applicable accounting rate. Such notifications must be filed prior to the effective date of the change in the accounting rate. Grant of these filings is automatic the day after filing. The accounting rate modification filing procedures apply to all other changes in accounting rates (except flexibility filings), including retroactive changes in the applicable accounting rate. Modification filings are automatically granted 21 days after filing if the filing is unopposed and the International Bureau has not notified the applicant that approval of the modification may not serve the public interest. Where a filing is not automatically granted, approval is only granted by formal action of the Bureau. The Bureau's experience indicates that there is confusion regarding the filing procedures applicable to a given agreement. For instance, in many cases carriers seek to use notification filing procedures for accounting rate arrangements that should be filed under modification procedures, causing increased staff workload and additional paperwork for filing parties.

26. In light of the confusion caused by the existence of two standards for accounting rate filings, along with the fact that few filings are made under the notification procedure, we find that adopting the notification filing procedure has not had its intended effect of removing regulatory barriers to simple reductions in accounting rates. On the contrary, it is our experience that having two procedures for accounting rate filings has made procedures more complicated than they need to be. We therefore tentatively conclude that we should remove the option of filing a notification and require that all accounting rate filings be governed under the existing procedures for accounting rate modifications. We seek comment on this tentative conclusion.

27. Our international settlements policy requires that U.S. carriers not accept exclusive settlement arrangements with foreign carriers and prohibits U.S. carriers from entering into any arrangement not made available to all U.S. carriers providing service on the route. For this reason, carriers making modification or notification filings are required under our rules to serve a copy of their filings on all facilities-based carriers providing services on the same route.

28. The Commission is implementing an electronic filing system that will replace the current paper filing system for accounting rate modifications. This system will automatically generate reports of all accounting rate filings and will be available over the Internet on the Commission's web page. We seek comment on whether, in light of detailed information regarding accounting rate filings that will be available on the Internet, we can eliminate the increasingly cumbersome requirement that copies of accounting rate filings be served on all carriers providing service on a given route. We seek comment, alternatively, on whether the Commission should issue a public notice when it receives accounting rate filings instead of maintaining the service requirement. Due to the significant volume of such filings, we tentatively conclude that the information contained in public notices for accounting rate filings would be far less helpful than the information that will be available on the Commission's web page.

29. We seek comment on these proposed changes to our accounting rate modification and notification filing requirements. We also seek comment on any other modifications that would simplify our regulations but also enable the Commission and interested parties to obtain the information necessary to monitor accounting rate agreements effectively, where necessary.

30. Following adoption of the *Flexibility Order*, 62 FR 5535, February 6, 1997, recon. pending, the Commission received petitions for reconsideration from several parties, requesting that the Commission alter its competitive safeguards to differing degrees. In light of the above proposals to modify our ISP, we seek further comment on the issues raised by parties that filed petitions for reconsideration in the *Flexibility* proceeding. We invite interested parties to comment on the issues raised in the petitions for reconsideration of the *Flexibility Order* in light of the recent changes in our rules and the proposals detailed above.

Initial Regulatory Flexibility Certification

31. The Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The rule changes proposed in this Notice may directly affect approximately 10 facilities-based international telecommunications carriers. Neither the Commission nor SBA has developed a definition of ''small entity'' specifically applicable to these international carriers. Therefore, the definition to be used is the most appropriate definition under the SBA rules, which here is the definition of Communications Services, Not Elsewhere Classified (NEC). Under this definition, a small entity is one with $11.0 million or less in annual receipts. Based on information filed with the Commission, the subject facilities-based international telecommunications carriers do not fall within the above definition of ''small entity'' because they each have more than $11.0 million in annual receipts. We therefore certify that this document will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this document, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Paperwork Reduction Act of 1995 Analysis

32. This Notice of Proposed Rulemaking contains a proposed information collection and will be submitted to the Office of Management and Budget (OMB).

Comment Filing Procedures

33. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 16, and reply comments on or before October 16. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

34. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html≤. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen,

commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

35. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. N.W., Room 222, Washington, D.C. 20554.

36. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Donna Christianson, International Bureau, Federal Communications Commission, 2000 M Street, N.W., Room 836, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (Docket No. 98–148), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

Ordering Clauses

37. Accordingly, it is ordered that, pursuant to §§ 1, 4(i)-(j), 201(b), 214, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 214, 303(r), and 403, this Notice of Proposed Rulemaking is hereby adopted.

38. It is further ordered that the commission's office of public affairs, reference operations division, shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 43, and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 98–22292 Filed 8–17–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AE65

Migratory Bird Permits; Amended Certification of Compliance and Determination That the States of Vermont and West Virginia Meet Federal Falconry Standards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to add the States of Vermont and West Virginia to the list of States whose falconry laws have been determined by the Director to meet or exceed Federal falconry standards. As a result, we propose the States of Vermont and West Virginia be participants in the cooperative Federal/State permit application program and falconry allowed to be practiced in those States. The list of States that meet Federal falconry standards, including Vermont and West Virginia, is being published in this proposed rule for public review as well. The Service wishes to amend the regulations on the States' compliance in order to clarify the administrative procedure that States follow in order to be in compliance with Federal falconry standards.

DATES: Comments may be submitted on or before September 17, 1998 at the location noted below under the heading **ADDRESSES**.

ADDRESSES: Copies of the environmental assessment (EA), and the State falconry rules for Vermont and West Virginia are available by writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 634 ARLSQ, Washington, DC 20240. Comments may also be forwarded to this same address. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, telephone 703/358–1714.

SUPPLEMENTARY INFORMATION: Regulations in 50 CFR part 21 provide for review and approval of State falconry laws by the Service. A list of States whose falconry laws are approved by the Service is found in 50 CFR 21.29(k). Falconry legally occurs in those States. As provided in 50 CFR 21.29 (a) and (c), the Director has reviewed certified copies of the falconry regulations adopted by the States of Vermont and West Virginia and has determined that they meet or exceed Federal falconry standards. Federal falconry standards contained in 50 CFR 21.29 (d) through (i) include permit requirements, classes of permits, examination procedures, facilities and equipment standards, raptor marking, and raptor taking restrictions. Both Vermont and West Virginia regulations also meet or exceed all restrictions or conditions found in 50 CFR 21.29(j), which include requirements on the number, species, acquisition, possession of feathers, and marking of raptors. Therefore, the Service is proposing that the States of Vermont and West Virginia be listed under part 21.20(k) as States which meet Federal falconry standards. The proposed listing would eliminate the current restriction that prohibits falconry within the States of Vermont and West Virginia.

The Service proposes to amend the regulatory language in 50 CFR 21.29 (a) and (c) to clarify the Service's procedures in approving State regulations for compliance with Federal falconry standards. This approval is contingent upon the respective State's submission of its laws and regulations to the Director for review and a further finding that such laws and regulations meet or exceed Federal falconry standards.

The Service is publishing for public review the list of States that have met the Federal falconry standards, including the States of Vermont and West Virginia. The Service believes that publishing this list in its entirety will eliminate any confusion concerning which States have approval for falconry and further indicate which States participate in a joint Federal/State permit system.

The Service also is revising the text in 50 CFR 21.29 (j)(2) to be gender neutral.

Need for Rulemaking

The need for changes to 50 CFR part 21 arose from the expressed desire of Vermont and West Virginia to institute a falconry program for the benefit of citizens interested in the sport of falconry. Accordingly, the States have promulgated regulations that meet or exceed Federal requirements protecting migratory birds. The changes to 50 CFR 21.29 are necessary to further the national interest for a Federal falconry standard and to allow, by inclusion within the listing of authorized falconry States, the States of Vermont and West Virginia to practice falconry.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1508), the Service prepared an Environmental Assessment (EA) in July 1988 to support establishment of simpler, less restrictive regulations governing the use of most raptors. This EA is available to the public at the location indicated under the **ADDRESSES** caption. Based on review and evaluation of the proposed rule to amend 50 CFR 21.29(k) by adding Vermont and West Virginia to the list of States whose falconry laws meet or exceed Federal falconry standards, the Service has determined that the issuance of the proposed rule would not be a major Federal action that would significantly affect the quality of the human environment and thereby is categorically excluded from NEPA documentation under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531, *et seq.*), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' [and] shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *'' The Service's Section 7 review has determined that this action is not likely to adversely affect listed raptors. A copy of this determination is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

This rule was not subject to the Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior has determined that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic impacts of falconry on small business entities were analyzed in detail and a Small Entity Flexibility Analysis (Analysis), under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), was issued by the Service in 1996 (copies available upon request from the Office of Migratory Bird Management). The Analysis documented that there is not a significant economic impact on a substantial number of small entities. This rule has no potential takings implications for private property as defined in Executive Order 12630. The only effect of this rule on the constituent community will be to allow falconers in the States of Vermont and West Virginia to apply for falconry permits. It is estimated that no more than 25 people would apply for falconry permits in both Vermont and West Virginia combined. This rule does contain information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S. 3501 *et seq.* The information collection is covered by an existing OMB approval for licenses/permit applications, number 1018–0022. For further permitting approval see 50 CFR part 21.4.

Unfunded Mandates Act Implications

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform—Executive Order 12988

The Service, in promulgating this rule, determines that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 and that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Government-to-Government Relationship With Tribes

There are no Federally-recognized Indian tribes in the States of Vermont or West Virginia and the proposed revisions to the existing regulations are of a purely administrative nature affecting no tribal trust resources. The Service, therefore, has determined that there are no effects on Federally-recognized Indian tribes in this proposed rulemaking.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, the Service proposes to amend Part 21, subchapter B, Chapter 29 of Title 50 of the Code of Federal Regulations as follows:

PART 21—MIGRATORY BIRD PERMITS

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

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend § 21.29 by revising paragraphs (a), (c), (j)(2) and (k) as follows:

§ 21.29 Federal falconry standards.

(a) *General.* No person may take, possess, transport, sell, purchase, barter, or offer to sell, purchase, or barter any raptor for falconry purposes in any State which does not allow the practice of Falconry or in any State which has not submitted a copy of its laws and regulations governing the practice of falconry to the Director, who determines that the State's laws and regulations meet or exceed Federal standards established in this section: Except, a Federal falconry permittee may possess and transport for falconry purposes otherwise lawfully possessed raptors through States which do not allow the practice of falconry or meet Federal falconry standards so long as the raptors remain in transit in interstate commerce. The States that are in compliance with Federal falconry standards are listed in paragraph (k) of this section.

* * * * *

(c) *Certification of compliance.* Any State that wishes to allow the practice of falconry must submit a copy of its laws and regulations governing the practice of falconry to the Director. If the Director determines that the State's laws and regulations meet or exceed the Federal standards established by this section, the Service will publish a notice in the **Federal Register** and the State will be listed in paragraph (k) of this section. The Service will consider any State that was listed in paragraph (k) of this section prior to September 14, 1989, to be in compliance with Federal standards.

* * * * *

(j) *Other restrictions.*

(2) A person who possesses raptors before the enactment of these regulations, in excess of the number allowed under their permit, shall be allowed to retain the extra raptors. All such birds shall be identified with markers supplied by the Service and no replacement can occur, nor may any additional raptor be obtained, until the number in possession is at least one less than the total number authorized by the class of permit held by the permittee.

* * * * *

(k) *States meeting Federal falconry standards.* In accordance with this section, the Director has determined that the following States meet or exceed the minimum Federal standards for regulating the taking, possession, and transportation of raptors for the purpose of falconry as set forth herein.

*Alabama
*Alaska
*Arizona
*Arkansas
*California
*Colorado
*Florida
*Georgia
*Idaho
*Illinois
*Indiana
*Iowa
*Kansas
*Kentucky
*Louisiana
*Maine
*Maryland
*Massachusetts
*Michigan
*Minnesota
*Mississippi
*Missouri
*Montana
*Nebraska
*Nevada
*New Hampshire
*New Jersey
*North Dakota
*New York
*New Mexico
*North Carolina
*Ohio
*Oklahoma
*Oregon
*Pennsylvania
*Rhode Island
*South Carolina
*South Dakota
*Tennessee
*Texas
*Utah
*Vermont
*Virginia
*Washington
*West Virginia
*Wisconsin
*Wyoming

Note: States which are participants in a joint Federal/State permit system are designated by an asterisk.

Dated: August 7, 1998.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–22159 Filed 8–17–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 081098B]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 1-day meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held August 27, 1998 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street (Route 1 North), Peabody, MA 01960; telephone (978) 535–4600. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (781) 231–0422.

SUPPLEMENTARY INFORMATION: The Council will discuss, and may recommend, emergency measures to protect the Gulf of Maine cod stock and will also develop guidance and set priorities for the Council's Multispecies Monitoring Committee (MSMC). The MSMC evaluates the effectiveness of the Northeast Multispecies Fishery Management Plan (FMP) and recommends management options for Gulf of Maine cod and other species as part of an annual review and plan adjustment process.

The Council will continue work on any outstanding issues related to finalizing Amendment 9 to the FMP, including square and diamond mesh configuration rules for the Stellwagen Bank and Jeffreys Ledge Regulated Mesh Areas. Further regulation of recreational catches during times of serious commercial restrictions or in closed areas, modification of or additional closed areas, or a ''bycatch-only'' designation for Gulf of Maine cod may also be discussed if time allows.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

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

Dated: August 12, 1998.

Gary C. Matlock,

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

[FR Doc. 98–22168 Filed 8–13–98; 1:09 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 159

Tuesday, August 18, 1998

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 Safety and Inspection Service

[Docket No. 98–037N]

Risk Assessment for E. coli 0157:H7 in Beef and Ground Beef

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; request for comments and public meeting notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) plans to conduct a farm-to-table risk assessment for *E. coli* 0157:H7 in beef with a focus on ground beef. Contingent on an analysis of available epidemiological data concerning outbreaks of *E. coli* 0157:H7 associated with whole cuts of beef (e.g. roast beef), the scope of the risk assessment will be confined to ground beef products. This notice also announces a public meeting to be held October 28, 1998 and solicits from the public scientific information and data that would be relevant to conducting the risk assessment.

FOR FURTHER INFORMATION CONTACT: To register for the October 28 meeting, contact Ms. Traci Phebus at (202) 501–7138 or FAX (202) 501–7642. For further information about the risk assessment or to arrange for a presentation of technical materials at the public meeting, contact Mark Powell, U.S. Department of Agriculture, Food Safety and Inspection Service, Office of Public Health and Science, Epidemiology and Risk Assessment Division, Room 3718—Franklin Court, 1400 Independence Avenue, SW., Washington, DC 20250–3700. Telephone: (202) 501–7391, FAX (202) 501–6982, E-mail: mark.powell@usda.gov. Persons wishing to present technical data at the public meeting are asked to bring 100 copies of their data for distribution to participants in the meeting and to submit one original and two copies of written comments to the FSIS Docket Clerk, Docket #98–037N, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. Participants who require a sign language interpreter or other special accommodations should contact Ms. Phebus at the above numbers by October 19, 1998.

SUPPLEMENTARY INFORMATION: The purpose of this notice is 3-fold: (1) To give public notice of FSIS' intent to conduct the risk assessment, (2) to solicit from the public scientific information and data that would be relevant to conducting the risk assessment, and (3) to announce a public meeting to be held October 28, 1998 from 9:00 a.m. to 5:00 p.m. at the National Rural Electric Cooperative Association, 4301 Wilson Blvd., Arlington, VA 22203–1860, telephone (703) 907–5500 at which the risk assessment team will present and receive comments on the scientific evidence available for input to the risk assessment model.

The goals of the assessment are as follows:

1. To quantitatively model, with attendant uncertainty, human illnesses caused by E. coli 0157:H7 in beef in the United States and to compare these results with national estimates of illnesses from surveillance (e.g. FoodNet).
2. To identify the occurrence and levels of the pathogen at points along the farm-to-table continuum and the contribution of these points to the number of human illnesses (sensitivity analyses).
3. To quantify the effects of various mitigation strategies on the number of human illnesses.
4. To identify future research needs.
5. To document methods and evidence for future assessments.
6. To document changes in the risk assessment model and its inputs.
7. To effectively communicate the results to all interested parties—government, consumer groups, industry, the scientific community and the general public.

The purpose of the October 28 public meeting is to solicit comment and input regarding the scope of the risk assessment, the analytical framework to be used in conducting the risk assessment, the scientific evidence acquired by the risk assessment team to date, and the existing data gaps identified by the risk assessment team. No results from the risk assessment are expected to be available for this meeting. Major topics of discussion are expected to include the strength and limitations of the acquired data, critical gaps in the acquired data, and the availability and utility of other relevant sources of data and scientific information.

Persons unable to attend the meeting may submit comments to the above addresses. Transcripts of this meeting will be available in the FSIS Docket Room.

Done in Washington, DC on: August 11, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–22180 Filed 8–17–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bull Lake Estates Access; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Correction to Revised Notice of Intent To Prepare An Environmental Impact Statement (Revised notice of intent was published December 17, 1996, FR Doc. 96–31915; original notice of intent was published February 3, 1995, 60 FR 6692).

SUMMARY: This correction gives notice of changes to revised notice of intent published in the **Federal Register** on December 17, 1996, (FR Doc. 96–31915) for the Bull Lake Estates Access project. This document corrects the revised notice as follows: The DEIS is expected to be filed with the EPA and available for public review in October of 1998. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. The final EIS is scheduled to be completed in January, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Natale, EIS Team Leader, or Jeanne Higgins, Acting Environmental Coordinator, Three Rivers Ranger District (406) 295–4693.

Dated: August 10, 1998.

Robert L. Schrenk,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 98–22108 Filed 8–17–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 7:00 p.m. on September 11, 1998, at the Bally's Park Place, Park Place and the Boardwalk, Atlantic City, New Jersey 08401. The purpose of the meeting is to review the Committee's report on employment opportunity for Asian Americans in New Jersey State government employment, and plan future projects. The Committee will reconvene on September 12, 1998, at 9:30 a.m. and adjourn at 12:30 p.m. at yesterday's location, Bally's Park Place. The purpose of the meeting is to hold a briefing session with civil rights and advocacy groups, local government officials, and unscheduled audience comments.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–22166 Filed 8–17–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on September 28, 1998, at the Temple Rodef Shalom, 2100 Westmoreland Street, Falls Church, Virginia 22043. The purpose of the meeting is to review the Committee's report on the justice system disparities for African American males, and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–22165 Filed 8–17–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census 2000/Puerto Rico

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 October 19, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Decennial Communications, Decennial Management Division, Bureau of the Census, Room 2002, Suitland Federal Center #2, Washington, DC 20233–0001. Their telephone number is (301) 457–3947.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Constitution mandates that a census of the Nation's population and housing be taken every 10 years. Title 13 of the U.S. Code specifies that in addition to the 50 states and the District of Columbia, the census also should include Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. The Census Bureau's goal in Census 2000 is to take the most accurate and cost-effective census possible. The importance of an accurate decennial census cannot be overstated. Puerto Rico census data are used to redraw legislative district boundaries to ensure that political representation is distributed accurately and to determine funding allocations for the distribution of Federal and Puerto Rico funds each year. Census data tell us what we know about Puerto Rico; they are the definitive benchmark for virtually all demographic information used by the Federal, Puerto Rico and local governments, policy makers, educators, journalists, and community and nonprofit organizations.

From Census 2000, the Census Bureau will produce population totals by race, Hispanic origin, and age for census blocks and higher geographic levels for legislative redistricting in Puerto Rico. The Census Bureau also will be collecting a wealth of demographic, social, economic, and housing characteristics from the population. This information is required to implement programs and enforce Federal laws and, as noted above, plays an important role in the distribution of Federal and Puerto Rico funds each year and serves as a benchmark for many different purposes.

In the process of developing our data collection forms, the Census Bureau has tried to reduce respondent burden in three ways: (1) Including only those questions that are explicitly required in Federal law or whose use is strongly implied by the data requirements in the law—both the short form and the long form have fewer questions than their 1990 counterparts, (2) Working through the decade to develop forms that are easy to understand and fill out, and (3) asking most questions of only a sample of approximately 1 in 6 households in Puerto Rico.

II. Method of Collection

In Census 2000, the Census Bureau will make every effort to account for all people living in the United States, Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana

Islands as well as Americans overseas (and their dependents) who are working for the U.S. Government. In Puerto Rico, enumerators will deliver a questionnaire to each housing unit, to be returned in a postage-paid envelope. Housing units will receive an advance letter before questionnaire delivery and a reminder card following questionnaire delivery. Enumerators also will visit and collect information from households that did not return a questionnaire by mail or report their census information by other means, such as by telephone—this operation is called nonresponse follow-up. The Census Bureau also will conduct a reinterview of a small portion of respondents during nonresponse follow-up to ensure the quality of work in this operation.

The Census Bureau plans to take the following additional steps to improve response to the census:

- Build partnerships with Puerto Rico and local governments and with community groups to alert the Census Bureau to problems and advise the Bureau of opportunities to publicize Census 2000 and the best ways to communicate the message.
- Motivate individuals to respond (by explaining the benefits and mandatory nature of the census) and make Census 2000 forms attractive, easy to understand, and simple to fill out. Private sector designers have worked with the Census Bureau to simplify the forms and implement the user-friendly features shown to increase response during testing and research conducted by the Census Bureau.
- Placing unaddressed ''Be Counted'' forms in locations such as community centers and Walk-In Questionnaire Assistance Centers for use by people who believe they have not been counted in the census. The Census Bureau intends to make these forms available in Spanish and English in Puerto Rico.
- Employing new methods to find and enumerate people, such as enumerating persons who use services at shelters, soup kitchens, and other facilities and placing unaddressed ''Be Counted'' forms in publicly accessible locations for pick up and completion by people who believe that they have not been counted in the census.
- Providing telephone questionnaire assistance.

The Census Bureau intends to employ statistical sampling to check the quality of the work. An independent quality check—called the Integrated Coverage Measurement survey—will use the information gathered from a second, independent operation to improve the accuracy of the census. The Integrated Coverage Measurement survey will be submitted separately for OMB review.

III. Data

OMB Number: Not available.

Form Numbers:

Update/Leave Short Forms: D–1(UL) PR, D–1(UL) PR(S), D–1A(UL) PR, D–1A(UL) PR(S)

Update/Leave Long Forms: D–2(UL) PR, D–2(UL) PR(S), D–2A(UL) PR, D–2A(UL) PR(S)

Enumerator Short Forms: D–1(E) PR, D–1(E) PR(S), D–1(E)SUPP-PR, D–1(E)SUPP-PR(S)

Enumerator Long Forms: D–2(E) PR, D–2(E) PR(S), D–2(E)SUPP-PR, D–2(E)SUPP-PR(S)

Household Followup: D–1(HF) PR, D–1(HF) PR(S), D–2(HF) PR, D–2(HF) PR(S)

Be Counted Forms: D–10 PR, D–10 PR(S)

Individual Census Questionnaires: D–15A PR, D–15A PR(S), D–15B PR, D–15B PR(S)

Individual Census Reports: D–20A PR, D–20A PR(S), D–20B PR, D–20B PR(S)

Military Census Report: D–21 PR

Shipboard Census Report: D–23 PR

Letters/Cards/Notices:

Advance Letter: D–5(UL) PR (Spanish/English),

Reminder Postcard: D–9(UL) PR (Spanish/English),

Initial Cover Letter—short: D–16A(L) PR, D–16A(L) PR(S)

Initial Cover Letter—long: D–16B(L) PR, D–16B(L) PR(S)

Flyer—Whole Household Usual Home Elsewhere: D–11 PR, D–11 PR(S)

Household Followup Letter—short: D–19A(L) PR, D–19A(L) PR(S)

Household Followup Letter—long: D–19B(L) PR, D–19B(L) PR(S)

Notice of Visit: D–26 PR, D–26 PR(S)

Privacy Act Notice: D–31 PR (Spanish/English)

Reinterview: D–806 PR, D–806 PR(S)

Type of Review: Regular Submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,400,000 households (approx.) (Short Form: 83%; Long form: 17%); Reinterview: 15,820 households.

Estimated Time Per Response:

Short Form: 13 minutes
Long Form: 48 minutes
Reinterview: 6 minutes

Estimated Total Annual Burden:

Short Form: 251,767 hours
Long Form: 190,400 hours
Reinterview: 1,582 hours
Total: 443,749 hours

Estimated Total Annual Cost: The only cost to the respondent is their time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 141 and 193. Title 13 U.S.C. Section 191 directs the inclusion of Puerto Rico within the geographic scope of the census.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information; 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; the comments will become a matter of public record.

Dated: August 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–22145 Filed 8–17–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Services Center Product Evaluation Forms and Coastal Training Institute Evaluation Forms

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 19, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and

Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nina Petrovich, SC Sea Grant Coastal Program Coordinator, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston SC 29405. Phone (843) 740–1203, Email: *npetrovich@csc.noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Coastal Services Center (CSC) will be requesting general Office of Management Budget (OMB) clearance for the use of product and training services evaluation forms. CSC produces an estimated 10 CD-ROMs and 4 newsletters annually; for all of these products CSC plans to include product evaluation forms. In addition, the Coastal Training Institute coordinates an average of 10 workshops, conferences and/or training courses annually. In an effort to comply with the 1993 Executive Order entitled Setting Customer Service Standards and CSC's annual performance standards, these evaluation forms will allow the Center to: (excerpted from the Executive Order)

- Determine the quality of services provided to our customers.
- Determine customers' level of satisfaction with existing services.
- Provide customers with choices in both the sources of services and the means of delivery.
- Make information, services, and complaint systems easily accessible, and
- Provide a means by which to address customer complaints.

All customer product evaluation forms are voluntary, distributed in conjunction with a specific product, and are accessible via the CSC home page. The annual burden of hours for product evaluations is calculated using an individual response time of 20 minutes. The official clearance request will include an expanded list of questions to address all product types. Each time a CSC product has been completed, specific questions will be chosen as appropriate from the expanded list and tailored to create that product's evaluation form.

The Coastal Training Institute's evaluations are distributed strictly to conference attendees. Response is voluntary and the forms are usually completed on site. The annual burden of hours is based on an individual response time of 20 minutes. The official clearance request will include an expanded list of questions to address all training sessions. Each time a training session has been completed, specific questions will be chosen as appropriate from the expanded list and tailored to create that session's evaluation form.

II. Method of Collection

Written evaluation forms are distributed to all attendees of workshops or training sessions and are completed on site. Product evaluation forms will be distributed with the products.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government (coastal managers from the following programs or agencies: Coastal Zone Management Programs, National Estuarine Research Reserve Sites, National Marine Sanctuaries, Sea Grant Institutions, Natural Resource Management Agencies, and local governments officials and planning boards from coastal communities).

Estimated Number of Respondents: For training services—350; for product evaluation—2,200.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 117 for training services, 733 for product evaluations.

Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–22144 Filed 8–17–98; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Survey of Intent and Capacity to Process Fish and Shellfish.

Agency Form Number(s): None assigned.

OMB Approval Number: 0648–0235.

Type of Request: Extension of a currently approved collection.

Burden: 10 hours.

Number of Respondents: 54.

Avg. Hours Per Response: 15 minutes for the Atlantic mackerel, squid, and butterfish survey; 5 minutes for the Atlantic surf clam and ocean quahog survey.

Needs and Uses: Domestic processors and joint venture operators involved in either the Surf Clam/Ocean Quahog fishery or the Atlantic Mackerel, Squid, and Butterfish fishery are surveyed to determine their intent and capacity to process these species. NOAA is required by law to determine the intent and capacity to harvest and process the allowed level of catch. If the U.S. industry will not fully utilize the allowable harvest, suitable levels for joint ventures or direct foreign fishing may be established.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: August 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer,

[FR Doc. 98–22143 Filed 8–17–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application to Shuck Surf Clams/Ocean Quahogs at Sea.

Agency Form Number(s): None assigned.

OMB Approval Number: 0648–0240.

Type of Request: Extension of a currently approved collection.

Burden: 2 hours.

Number of Respondents: 2 (multiple responses).

Avg. Hours Per Response: 5 minutes.

Needs and Uses: Vessel owners who wish to shuck their surf clam/ocean quahog catch while at sea must apply for a permit to do so. The National Marine Fisheries Service (NMFS) requires a permit so that it can identify vessels seeking to do so and to place a NMFS-approved observer aboard those vessels. An observer is necessary because the shucking of catch at sea makes it difficult to track the catch against harvest quotas.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: August 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–22146 Filed 8–17–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Surf Clam/Ocean Quahog Transfer Log.

Agency Form Number(s): None assigned.

OMB Approval Number: 0648–0238.

Type of Request: Extension of a currently approved collection.

Burden: 52 hours.

Number of Respondents: 206 (multiple responses).

Avg. Hours Per Response: 5 minutes.

Needs and Uses: Persons holding Individual Transferable Quotas (ITQs) in the surf clam/ocean quahog fishery are annually issued an allowed quota for harvest. Individual allocations are transferable to other fishermen, but the ITQ holder must register such a transfer in advance with the National Marine Fisheries Service. The information registered is used for enforcement purposes.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: August 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–22147 Filed 8–17–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Hearing on the Draft Environmental Impact Statement and Draft Management Plan for the Proposed Grand Bay National Estuarine Research Reserve in Mississippi

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Public Hearing Notice.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public hearing for the purpose of receiving comments on the Draft Environmental Impact Statement and Draft Management Plan (DEIS/DMP) prepared on the proposed designation of the Grand Bay National Estuarine Research Reserve in Mississippi. The DEIS/DMP addresses research, monitoring, education and resource protection needs for the proposed reserve.

The Sanctuaries and Reserves Division will hold a public hearing at 6:00 p.m. on September 2, 1998, at the East Jackson Community Center, 9313 Old Stage Road, Pascagoula, Mississippi 39581.

The views of interested persons and organizations on the adequacy of the DEIS/DMP are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the hearing when the number of speakers can be

determined. All comments received at the hearing will be considered in the preparation of the Final Environmental Impact Statement (FEIS) and Final Management Plan.

The comment period for the DEIS/DMP will end on September 7, 1998. All written comments received by this deadline will be considered in the preparation of the FEIS.

FOR FURTHER INFORMATION CONTACT: Mr. R. Randall Schneider (301) 713–3132, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM2, Silver Spring, MD 20910. Copies of the Draft Environmental Impact Statement/Draft Management Plan are available upon request to the Sanctuaries and Reserves Division.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: August 12, 1998.

Evelyn J. Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–22191 Filed 8–17–98; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980805207–8210–02]

RIN 0648–ZA47

General Grant Administration Terms and Conditions of the Coastal Ocean Program

AGENCY: Coastal Ocean Program, National Oceanic and Atmopheric Administration, Commerce.

ACTION: Notice for Financial Assistance for Project Grants and Cooperative Agreements.

SUMMARY: It is the intent of the National Ocean Service (NOS), NOAA's Coastal Ocean Program (COP) to provide direct financial assistance in the form of Grants and Cooperative Agreements under its own program for the management of coastal ecosystems. Prior COP financial assistance was provided to non-profit organizations and educational institutions through joint participation in a Sea Grant omnibus vehicle.

This notice does not solicit proposals; but rather introduces and describes the general grant administration terms and conditions of the COP program. It is the intent of COP to issue supplemental Announcements of Opportunities (AOs) to request proposals on specific projects throughout the year on an as-needed basis commencing with FY1999. Any Announcements of Funding Opportunities will be issued through the **Federal Register**, the COP Home Page, mass mailings and COP's e-mail list. Those announcements will provide specific program descriptions; criteria for proposal submission; technical evaluation of proposals and other details affecting that Announcement of Opportunity.

Proposals solicited through supplemental notices will be part of a unique federal-academic partnership designed to provide predictive capability for managing coastal ecosystems. COP supports research on critical issues which exist in the Nation's estuaries, coastal waters and the Great Lakes; and translates its findings into accessible information for coastal managers, planners, lawmakers and the public. Historically, COP's projects are multi-disciplinary, large in scale and long in duration (usually three to five years). Multi-year funding will be funded incrementally on an annual basis. Therefore, each annual award shall require a Statement of Work that is clearly severable and can be easily separated into annual increments of meaningful work which represent solid accomplishments if prospective funding is not made available.

DATES: Supplemental notices will be issued through the **Federal Register** and will provide critical information and dates specific for that each AO.

ADDRESSES: Coastal Ocean Program Office, National Oceanic and Atmospheric Administration, 1315 East West Highway, Room 9700, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Leslie McDonald, COP Grants Office, (301) 713–3338/x137.

SUPPLEMENTARY INFORMATION:

(a) Program Authority(s): 33 U.S.C. 1121; 33 U.S.C. 883a et seq; 33 U.S.C. 1442; 16 U.S.C. 1456c.

(b) Catalog of Federal Domestic Assistance (CFDA): 11. 478 Coastal Ocean Program.

(c) Program Description: The National Oceanic and Atmospheric Administration's (NOAA) Coastal Ocean Program (COP) provides predictive capability for managing coastal ecosystems through sponsorship of research. COP seeks to deliver the highest quality science in a timely manner for important coastal decisions. It supports research on critical issues which exist in the Nation's estuaries, coastal waters, and Great Lakes and translates its findings into accessible information for coastal managers, planners, lawmakers, and the public.

Coastal Ecosystem Oceanography

COP supports the conservation and management of marine ecosystems through sponsorship of improved ecological and oceanographic predictions for resource management. Studies focus on: (1) Identifying critical processes that control replenishment of fishery resources; (2) Determining critical habitat process that influence fishery ecosystems, including harmful algal blooms; and (3) Quantifying species interactions so models can be used in management decisions. Current efforts support fisheries studies dealing with Bering Sea pollack, cod and haddock on Georges Bank, and salmon in the Pacific Northwest. COP also leads an interagency research program on the ecology and oceanography of harmful algal blooms which are increasing in intensity and impact in coastal waters.

Cumulative Coastal Impacts

COP sponsors improvements to the scientific basis for managing coastal ecosystems through a series of regional watershed projects on the causes and impacts of multiple stresses on coastal land and marine ecosystems. Studies focus on: (1) Developing indicators of physical, chemical, and biological stress; (2) predicting impacts of multiple stresses on living marine resources; (3) valuing natural resources in ecological and economical terms; and (4) predicting the outcomes of management strategies. Current efforts support coastal and natural resource managers dealing with multiple stressors in the Chesapeake Bay, Florida Bay and the Florida Keys, the Great Lakes and southeast coastal ecosystems.

Coastal Forecasting/Natural Hazards

COP sponsors research to improve our ability to measure, understand and predict physical coastal ocean phenomena that impact the public, the economy and coastal resources. These forecasts are important to those living along the Nation's coasts, to the businesses and industries located there, and to myriad coastal resources at risk. In recent years, COP has sponsored and delivered new forecast capabilities to the operational parts of NOAA, including the satellite-based Coast/Watch program, a Great Lakes Forecast System, a prototype Coastal Ocean Forecast System and improved storm surge and tsunami inundation predictions.

Benefits of the COP

Continued population pressures on the Nation's coastal areas and on-going changes in the environment will continue to stress our coastal waters, bays and estuaries, and the Great Lakes. While the need for data and information to address today's problems is pressing, COP has also focused on developing information for longer-range management and policy decisions at larger and more complex scales than are traditional. COP research will help the U.S. respond to the major challenges of the next century and to balance the needs of economic growth with those of conserving the environment by: (1) Developing ecosystem-level scientific projects that are multi-disciplinary, long in duration, and evaluate the impact of multiple stressors on the ecological functions; (2) sponsoring development and transfer of predictive information to resource managers that will help conserve and restore important marine resources; (3) protecting lives and property as well as providing for sound, coastal development by sponsoring improved coastal forecasting capabilities and (4) transitioning successful research to NOAA operations.

(d) Funding Availability—Typically, annual funding for each Announcement of Opportunity is approximately $1,000,000. Each COP project generally consists of several coordinated investigations with separate awards, ranging from $5,000 to $200,000. Actual funding levels will depend upon the final budget appropriations for the fiscal year. Announcements of Opportunity (AO) will be released with specific applicable dollar amounts. Financial History of COP Grants: FY97 $10.00M; FY98 est. $8.5M; FY99 est. $8.5M. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this notice.

If an application for a financial assistance award is selected for funding, COP has no obligation to provide any additional prospective funding in connection with that award in subsequent years. There are no matching fund requirements. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce. Publication of this notice does not obligate Commerce to any specific award or to obligate any part of the entire amount of funds available.

(e) Matching Requirements: None.

(f) Type of Funding Instrument: Project Grants and Cooperative Agreements.

(g) Eligibility Criteria: To be detailed in Announcements of Funding Opportunities.

(h) Award Period: Typically, COP's projects are usually long in duration, multi-disciplinary, averaging one to five years and will be stated in Announcements of Funding Opportunities for each specific project. Multi-year funding will be funded incrementally on an annual basis. Therefore, each annual award shall require a Statement of Work that is clearly severable and can be easily separated into annual increments of meaningful work which represent solid accomplishments if prospective funding is not made available.

(i) Indirect Costs: If Indirect costs are proposed, the following statement applies: The total dollar amount of the indirect costs proposed in an application under any Announcement of Opportunity must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

(j) Application Forms and Kit: As stated in supplemental notices. When applying for financial assistance under a published Announcement of Opportunity, applicants will be able to obtain a NOAA/COP application kit from the COP office listed under the heading **ADDRESSES** section of this notice, or directly from the NOAA/COP web site. The web site is: http://www.cop.noaa.gov/cop-home.html. At time of submission, the applicant shall follow the guidelines presented in the funding announcement. Applications not adhering to those stated guidelines may be returned to the applicant without further review.

(k) Project Funding Priorities: To be detailed in COP Announcements of Funding Opportunities. However, priority consideration will be given to proposals that promote balanced coverage of the science goals and avoid duplication of completed or ongoing work and geographic areas.

(l) Evaluation Criteria: To be detailed in COP Announcements of Funding. Criterion will provide an adequate basis for review of an applicant's capabilities and performance under the award.

(m) Selection Procedures: To be detailed in COP Announcements of Funding Opportunities. All proposals submitted will be evaluated and ranked in accordance with the assigned weights of evaluation criteria stated for that AO. Any additional factors considered by the selecting official in making a selection will be published in that AO. COP project grants and cooperative agreements will be awarded on a competitive basis.

(n) Other Requirements:

(1) Federal Policies and Procedures: Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations and procedures applicable to Federal financial assistance awards.

(2) Past Performance: Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

(3) Preaward Activities: If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of Department of Commerce to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

(4) No Obligation for Future Funding: If an application is selected for funding, DOC/NOAA has no obligation to provide any additional future funding in connection with that award. Amendment of an award to increase funding or, unless the award specifically provides to the contrary, to extend the period of performance is at the total discretion of DOC/NOAA.

(5) Delinquent Federal Debts: No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(6) Name Check Review: All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(7) Debarment, Suspension, Drug-Free Workplace, and Lobbying Provisions: All applicants must comply with the requirements of 15 CFR part 26, ''Government-wide Debarment and Suspension (nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)'' and 15 CFR part 28, ''New Restrictions on Lobbying,'' including the submission of required forms and obtaining

certifications from lower tier applicants/bidders.

(8) False Statements: A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(9) Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(10) This notice was determined to be not significant for purposes of Executive Order 12866.

Dated: August 12, 1998.

Captain Evelyn J. Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–22188 Filed 8–17–98; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0023]

Submission for OMB Review; Comment Request Entitled Balance of Payments Program Certificate

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.

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 Balance of Payments Program Certificate. A request for public comments was published at 63 FR 29976, June 2, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Balance of Payments Program, unless specifically exempted by statute or regulation, the Government gives preferences to the acquisition of domestic end products or services, provided that the cost of the domestic items is reasonable. The Balance of Payments Program differs from the Buy American Act in that it applies to acquisitions for use outside the United States.

The contracting officer uses the information to identify which end products or services are domestic, and which are of foreign origin. In order to be considered domestic, the cost of its components mined, produced, or manufactured in the United States must exceed 50 percent of the cost of all its components. Services are considered domestic if 25 percent or less of their total cost are attributable to performance occurring outside the United States. The contracting officer determines reasonableness of cost by applying an evaluation factor of 50 percent. If this procedure results in a tie, the domestic offer shall be considered successful.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.167* 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, *1,243;* responses per respondent, *5;* total annual responses, *6,215;* preparation hours per response, *.167;* and total response burden hours, 1,038.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0023, Balance of Payments Program Certificate, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22066 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0021]

Submission for OMB Review; Comment Request Entitled Clean Air and Water Certification

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.

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 Clean Air and Water Certification. A request for public comments was published at 63 FR 31449, June 9, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to improve environmental quality. Accordingly, Executive agencies must conduct their acquisition activities in a manner that will result in effective enforcement of the Clean Air Act (42 U.S.C. 7401, *et seq.*) and the Clean Water Act (33 U.S.C. 1251, *et seq.*). The information required by the Clean Air and Water Certification is used to determine a contractor's compliance with these laws. A determination of noncompliance by the contracting officer requires notifying the agency head or designee who, in turn, notifies the Environmental Protection Agency's

(EPA) Administrator, or a designee, in writing. Government contracting offices use the information to determine a firm's eligibility for award of a contract and to provide information to the EPA.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.01666* 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, *83,400;* responses per respondent, *20;* total annual responses, *1,668,000;* preparation hours per response, *.01666;* and total response burden hours, *27,800*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS),1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0021, Clean Air and Water Certification, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22067 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0022]

Submission of OMB Review; Comment Request Entitled Customs and Duties

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.

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 Customs and Duties. A request for public comments was published at 63 FR 29977, June 2, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. These exemptions are used whenever the anticipated savings outweigh the administrative costs associated with processing required documentation. When a Government contractor purchases foreign supplies, it must notify the contracting officer to determine whether the supplies should be duty-free. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

The contracting officer analyzes the information submitted by the contractor to determine whether or not supplies should enter the country duty-free. The information, the contracting officer's determination, and the U.S. Customs forms are placed in the contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* 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, *1,330*; responses per respondent, *10*; total annual responses, *13,300*; preparation hours per response, *.5*; and total response burden hours, *6,650*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0022, Customs and Duties, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22068 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0036]

Submission for OMB Review; Comment Request Entitled Information Regarding Previous Contracts

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.

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 Information Regarding Previous Contracts. A request for public comments was published at 63 FR 31450, June 9, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA, (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the same item or class of items is being acquired by more than one agency, the exchange and coordination of pertinent information, particularly cost and pricing data, is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial

issues. For this reason, the contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, must request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components.

This information is particularly beneficial during the period of acquisition planning, presolicitation, evaluation, and preaward survey. The information is used to determine a firm's responsibility.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* 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, *2,000*; responses per respondent, *10*; total annual responses, *20,000*; preparation hours per response, *.25*; and total response burden hours, *5,000*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0036, Information Regarding Previous Contracts, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22069 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0037]

Submission for OMB Review; Clearance Request Entitled Presolicitation Notice and Response, Standard Form 1417

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.

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 Presolicitation Notice and Response, Standard Form 1417. A request for public comments was published at 63 FR 31451, June 9, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time, and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice response is used to determine the number of solicitation documents needed and to assure that interested offerors receive the solicitation documents. The responses are placed in the contract file and referred to when solicitation documents are ready for mailing. After mailing, the responses remain in the contract file and become a matter of record.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per completion, 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, *5,310;* responses per respondent, *8*; total annual responses, *42,480*; preparation hours per response, *.167*; and total response burden hours, *7,094*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS),1800 F Street, NW Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0037, Presolicitation Notice and Response, Standard Form 1417, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22070 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0045]

Submission for OMB Review; Comment Request Entitled Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections

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.

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 Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections. A request for public comments was published at 63 FR 31964, June 11, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

These regulations implement the statutory requirements of the Miller Act (40 U.S.C. 270a–270e), which requires performance and payment bonds for any construction contract exceeding $100,000, unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. In addition, the regulations implement the note to 40 U.S.C. 270a, entitled ''Alternatives to Payment Bonds Provided by the Federal Acquisition Regulation,'' which requires alternative payment protection for construction contracts that exceed $25,000 but do not exceed $100,000. Although not required by statute, under certain circumstances the FAR permits the Government to require bonds on other than construction contracts.

This information collection extension also incorporates the information collection requirements currently approved under 9000–0119.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .42 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, 11,304; responses per respondent, 5; total annual responses, 56,520; preparation hours per response, .42; and total response burden hours, 23,738.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0045, Bid, Performance, and Payment Bonds, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22071 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0001]

Submission for OMB Review; Comment Request Entitled Standard Form 28, Affidavit of Individual Surety

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.

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 Standard Form 28, Affidavit of Individual Surety. A request for public comments was published at 63 FR 29976, June 2, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

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, 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0001, Standard Form 28, Affidavit of Individual Surety, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Affidavit of Individual Surety (Standard Form (SF) 28) is used by all executive agencies, including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds. In order to qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other formats exist for the collection of this information.

The information on SF 28 is used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.4* 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, *500*; responses per respondent, *1.43*; total annual responses, *715*; preparation hours per response, *.4*; and total response burden hours, *286*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0001, Standard Form 28, Affidavit of Individual Surety, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22072 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0025]

Submission for OMB Review; Comment Request Entitled Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate

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.

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 Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate. A request for public comments was published at 63 FR 29977, June 2, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Trade Agreements Act of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation not to supply an eligible product without regard to the restrictions of the Buy American or the Balance of Payments program. Offerors identify excluded end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic end products. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a designated country of the Act.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* 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, *1,140*; responses per respondent, *10*; total annual responses, *11,400*; preparation hours per response, *.167*; and total response burden hours, *1,904*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0025, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22073 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0027]

Submission for OMB Review; Comment Request Entitled Value Engineering Requirements

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.

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 Value Engineering Requirements. A request for public comments was published at 63 FR 31449, June 9, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA, (202) 501–3755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Value engineering is the technique by which contractors: (1) Voluntarily suggest methods for performing more economically and share in any resulting savings; or (2) are required to establish a program to identify and submit to the Government methods for performing more economically. These recommendations are submitted to the Government as value engineering change proposals (VECP's) and they must include specific information. This information is needed to enable the Government to evaluate the VECP and, if accepted, to arrange for an equitable sharing plan.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* 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, *400;* responses per respondent, *4;* total annual responses, *1,600;* preparation hours per response, *30;* and total response burden hours, *48,000.*

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0027, Value Engineering Requirements, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22074 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0029]

Submission for OMB Review; Comment Request for Extraordinary Contractual Action Requests

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.

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 Extraordinary Contractual Action Requests. A request for public comments was published at 63 FR 31450, June 9, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

This request covers the collection of information as a first step under Public Law 85–804, as amended by Public Law 93–155 and Executive Order 10789 dated November 14, 1958, that allows contracts to be entered into, amended, or modified in order to facilitate national defense. In order for a firm to be granted relief under the Act, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract.

The information is used by the Government to determine if relief can be granted under the Act and to determine the appropriate type and amount of relief.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *16* hours per completion, 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, *100;* responses per respondent, 1; total annual responses, *100;* preparation hours per response, *16;* and total response burden hours, 1,600.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0029, Extraordinary Contractual Action Requests, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22075 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0078]

Submission of OMB Review; Comment Request Entitled Make-or-Buy Program

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.

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 Make-or-Buy Program. A request for public comments was published at 63 FR 31451, June 9, 1998. No comments were received.

DATES: Comments may be submitted September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Price, performance, and/or implementation of socio-economic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, Section 15.407–2, Make-or-Buy Programs, of the FAR—

(i) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, *i.e.*, a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(ii) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(iii) Prescribes the contract clause at FAR 52.215–9, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 8 hours per termination, 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, *150*; responses per respondent, *3*; total annual responses, *450*; preparation hours per response, *8*; and total response burden hours, *3,600*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0078, Make-or-Buy Program, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22076 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0020]

Submission for OMB Review; Comment Request Entitled Qualification Requirements

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.

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 Qualification Requirements. A request for public comments was published at 63 FR 29187, May 28, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503 and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

10 U.S.C. 2319 and 41 U.S.C. 253c prescribe policies and procedures which are to be followed by Federal agencies before they may establish any prequalification requirement with which a prospective contractor must comply before his offer will even be considered by the agency for a contract award. Three basic requirements are prescribed.

First, the agency must examine the need for establishing the prequalification requirement, given its adverse impact on free and open competition. Having established that a need for a prequalification requirement exists, the agency must prepare a written justification which explains that need.

Second, the agency must specify the standards which a prospective contractor, or its product or service, must satisfy in order to be qualified. The agency is directed to limit such standards to those essential to ''meet the purposes necessitating the establishment of the prequalification requirement.''

Third, the executive agency imposing the prequalification requirement must promptly provide a prospective contractor with the opportunity to demonstrate its ability to meet the standards the agency has specified for qualification.

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1, Qualification Requirements, is included in the solicitation. The offeror must identify the offeror, manufacturer, source, product or service, as appropriate, that has been prequalified and test number as evidence that the qualification requirement has been met. Alternatively, an offeror not meeting the qualification requirement may be considered for award upon the submission of evidence that the qualification requirement has been satisfied.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.17* 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, *2,700*; responses per respondent, *10*; total annual responses, *27,000*; preparation hours per response, *.17*; and total response burden hours, *4,590*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0020, Qualification Requirements, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22077 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0097]

Submission for OMB Review; Comment Request Entitled Information Reporting to the Internal Revenue Service (IRS), (Taxpayer Identification Number)

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.

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 Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number). A request for public comments was published at 63 FR 31759, June 10, 1998. No comments were received.

DATES: Comments may be submitted September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Federal Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

Subpart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the provision at 52.204–3, Taxpayer Identification, implement statutory and regulatory requirements pertaining to taxpayer identification and reporting.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *6* 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, *250,000*; responses per respondent, *12*; total annual responses, *3,000,000*; preparation hours per response, *.10*; and total response burden hours, *300,000*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No.

9000–0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number), in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22078 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0024]

Submission for OMB Review; Comment Request Entitled Buy American Certificate

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.

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 Buy American Certificate. A request for public comments was published at 63 FR 29978, June 2, 1998. No comments were received.

DATES: Comments may be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Buy American Act requires that only domestic end products be acquired for public use unless specifically authorized by statute or regulation, provided that the cost of the domestic products is reasonable.

The Buy American Certificate provides the contracting office with the information necessary to identify which products offered are domestic end products and which are of foreign origin. Components of unknown origin are considered to have been supplied from outside the United States.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 10 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, *2,663;* responses per respondent, *20;* total annual responses, *53,260;* preparation hours per response, *.167;* and total response burden hours, *8,894*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0024, Buy American Certificate, in all correspondence.

Dated: August 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–22079 Filed 8–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision for the Final Supplemental Environmental Impact Statement (FSEIS) for Final Site Selection and Authorization for Implementation of the Proposed G. V. (Sonny) Montgomery Range, Camp Shelby Training Site, Camp Shelby, Mississippi

AGENCIES: National Guard Bureau, Department of the Army, DoD; Forest Service, Department of Agriculture.

ACTION: Notice of availability.

SUMMARY: The Record of Decision (ROD) was signed on July 29, 1998. The decision made in the ROD was to implement the proposed action and a series of mitigation measures to minimize the environmental impacts of this action. The proposed action consists of three components: (1) Range operation and control area; (2) the downrange area; and (3) the vehicle holding and maintenance area.

ADDRESSES: For a copy of the ROD, write to Colonel Tim Powell, Public Affairs Office, Mississippi Army National Guard, PO Box 5027, Jackson, Mississippi 39296–5027.

FOR FURTHER INFORMATION CONTACT: Colonel Tim Powell at (601) 973–6271, facsimile extension 6176.

SUPPLEMENTARY INFORMATION: The range operation and control area is the center of responsibility for overall control and coordination of movement and training exercises within the complex and is also the administrative center for the range complex. Range support facilities in this area may include the control tower, general instruction buildings, personnel and storage buildings, target maintenance building, latrines, covered mess, covered bleachers, and lysterbag holder. Also, an ammunition loading/unloading dock for armor munitions and an ammunition breakdown shelter for infantry (Huntsville Multiple Purpose Range Complex-Heavy Design Information Guide).

The range area consists of three 4,500-meter by 300-meter lanes, each separated by a 50-meter buffer zone and a 1- to 2-acre vehicle holding and maintenance area that contains a 100-square-meter hardstand.

The proposed G.V. (Sonny) Montgomery Range supports collective training at the platoon and lower levels. Units using the proposed range complex will include tanks, infantry/cavalry fighting vehicles and attack helicopters. This advanced training develops collective skills at the small unit level. It requires sections and platoons to employ moving and stationary target published.

Copies of the ROD will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal, state, regional, and local agencies, interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy by request.

Dated: August 12, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I,L&E).

[FR Doc. 98–22106 Filed 8–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Programmatic Environmental Impact Statement for the Mission and Master Plan, Fort Bliss, Texas and New Mexico

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: This announces the availability of the Draft Programmatic Environmental Impact Statement (DPEIS). The DPEIS assesses the potential environmental impacts of the approval of revisions to components of the Fort Bliss Real Property Master Plan and adoption of the Integrated Natural Resources Management Plan, Integrated Cultural Resources Management Plan, and the Training Area Development Concept, as well as modifies the general land use plan to increase the availability of controlled access field training sites in the Fort Bliss Training Complex.

DATES: The public comment period for the DPEIS will end 45 days after publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain a copy of the DPEIS, contact Vicki Hamilton, U.S. Army Air Defense Artillery Center and Fort Bliss, Directorate of the Environment, ATTN: AZC-DOE-C (PEIS), Building 624 North, Pleasanton Road, Fort Bliss, TX 79916–6812.

FOR FURTHER INFORMATION CONTACT: Vicki Hamilton at (915) 568–2774, or e-mail PEIS@emh10.bliss.army.mil.

SUPPLEMENTARY INFORMATION: The alternatives to no action (continuation of current mission, land use and management) considered in this DPEIS are:

a. *Alternative 1:* Incorporates the current missions assigned to Fort Bliss as described in the no action alternative. Alternative 1 is to adopt recent updates to components of the Fort Bliss Real Property Master Plan (the Long-range Component, Short-range Component, and informal modifications to the Mobilization Component). In addition, the Integrated Natural Resources Management Plan, the Integrated Cultural Resource Management Plan and the supplement to the Long-range component with a definitive land use plan for the Fort Bliss Training Complex presented in Chapter 3.0 (Current Conditions) of the Training Area Development Concept would be adopted. Adoption of these plans would authorize the steps leading to program and appropriate project implementation as described in the DPEIS.

b. *Alternative 2:* Adopts the general land use plan for increasing the availability of controlled access field training sites on the Fort Bliss Training Complex in addition to actions in Alternative 1. If adopted programmatically, evaluation of proposed specific sites will be accomplished in a separate National Environmental Policy Act (NEPA) document(s) that may be tiered off of the Final PEIS that follows this DPEIS.

c. *Alternative 3:* Adopts the general land use plan for conceptual uses of the Fort Bliss Training Complex presented in Chapter 4.0 (Future Development Concept) of the Training Area Development Concept in addition to actions in Alternatives 1 and 2. If approved programmatically, evaluation of specific projects proposed in the future will be accomplished under the NEPA. The document includes analyses of the environmental consequences each alternative may have on land use, infrastructure, airspace, earth resources, air quality, water resources, biological resources, cultural resources, noise, safety, hazardous materials and items of special concern, socioeconomics, and environmental justice. The findings indicate that potential environmental impacts from each alternative may include changes to land use, increased soil erosion, slight impacts to biological and cultural resources, and cumulative impacts to water resources. Improved management practices are anticipated under Alternatives 1, 2 and 3. The level of land use may increase under Alternatives 2 and 3.

A public meeting for the purpose of receiving comments on this DPEIS will be in El Paso, Texas; and Las Cruces and Alamogordo, New Mexico. Additional detail will follow in the media, or contact the Fort Bliss Public Affairs Office at (915) 568–4505. Public comments received on the DPEIS will be addressed in the Final PEIS and considered by the Army in its Record of Decision.

The revised Long-range Component of the Fort Bliss Real Property master Plan, the Integrated Natural Resources Management Plan, the Integrated Cultural Resource Management Plan, and the Training Area Development Concept are available for review in the following libraries: (1) El Paso Public Library main Library, 501 North Oregon Street, El Paso, TX 79901, (2) Irving Schwartz Branch, El Paso Public Library, 1865 Dean Martin Drive, El Paso, TX 79936; (3) Westside Branch, El Paso Public Library, 125 Belvidere Street, El Paso, TX 79912; (4) Library, Dell City, TX 79837; (5) University of Texas at El Paso, Library, 500 West University Avenue, El Paso, TX 79968; (6) Branigan Memorial Library, 200 E Picacho Avenue, Las Cruces, NM 88001; (7) Library, 920 Oregon, Alamogordo, NM 88310; (8) New Mexico State University Branson Library, Frenger at Williams, Las Cruces, NM 88003; (9) New Mexico State University, Roswell, Library, 52 University Boulevard, Roswell, NM 88202–6000; (10) Library, 20 Curlew Place, Cloudcraft, NM 88317–9998.

Dated: August 12, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 98–22107 Filed 8–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement for Changes to Utilization of Yuma Proving Ground, Arizona

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: This notice of availability announces the public release of the Draft Environmental Impact Statement (EIS) for Yuma Proving Ground (YPG). The Draft EIS is programmatic in nature and discloses impacts associated with direct, indirect, and cumulative effects of the proposed action under a range of alternatives. New missions and programs require land use changes and construction of new facilities and military ranges. Examples of changes to YPG's mission that may result in this action include: combat systems testing, troop training, and private sector use of facilities. Activities to support this action include modernization of outdated facilities, improvements to infrastructure, installation of utilities, and land use changes. An environmental assessment prepared to evaluate the effect of the Installation Master Plan determined that significant effects were likely to result from these changes.

DATES: Written public comments received within 45 days of the date of publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**.

ADDRESSES: To receive a copy of this Draft EIS, or to submit comments, contact: Directorate of Environmental Sciences, STEYP–ES–C (ATTN: Mr.

Junior D. Kerns), Yuma Proving Ground, AZ 85365.

FOR FURTHER INFORMATION CONTACT: Mr. Junior D. Kerns at (520) 328–2148.

SUPPLEMENTARY INFORMATION: Resources discussed in the draft are climate, air, water, geology and soils, biology, cultural resources, socioeconomics, land use, noise, hazardous materials/waste management, radiation, health and safety, aesthetic values, utilities, and transportation. Situated in southwestern Arizona, the installation is a desert evaluation and test center with premier facilities for testing military materiel.

The proposed action is the conversion of YPG from a traditional Army test installation to a diversified, multipurpose test range. The multipurpose test installation will integrate training, privatization, and other mission-compatible uses with research, development, test, and evaluation activities indicated in the Installation Master Plan and other applicable planning documents. This proposed action supports the defense mission of the United States to maintain a prepared and technologically advanced military.

Five alternatives are considered: (1) Maintain baseline activity levels (no action), (2) decreased military mission, (3) increased military mission, (4) modified nonmilitary mission, and (5) diversified mission. Impacts of each alternative are disclosed in accordance with the National Environmental Policy Act. The Army will develop a preferred alternative after consideration of impacts described in the Draft EIS and public comment.

Comments may also be submitted via phone at (800) 330–1348.

Dated: August 13, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I,L&E).

[FR Doc. 98–22187 Filed 8–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–712–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

August 12, 1998.

Take notice that on August 6, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–712–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations (18 CFR 157.205, 157.212) under the Natural Gas Act (NGA) for authorization to modify an existing gas measurement station for use as a delivery point in Jefferson County, Texas, under FTG's blanket certification issued in Docket No. CP82–553–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT states that the measurement station was authorized by the Commission under budget-type certification authorization in Docket No. CP79–302 and placed in service as a receipt point in 1981. FGT now proposes to modify the facilities so that they can be used for deliveries to Midcon Texas Pipeline Operator, Inc. (Midcon). FGT asserts that no customers are presently receiving gas at this measurement station and FGT does not anticipate any future use of the facilities to receive gas into its system.

It is stated that the facilities will be used to deliver up to 100,000 MMBtu equivalent of natural gas on a peak day and 36,500,000 MMBtu equivalent on an annual basis to Midcon. It is explained that the end-use of the gas would be commercial, industrial and residential. It is stated that FGT's FERC Gas Tariff does not prohibit additional delivery points. It is explained that the volume of gas delivered to Midcon will be within existing authorized levels of service and that the proposal will not have any adverse impact on FGT's peak day and annual deliveries. It is asserted that FGT has sufficient capacity to continue all services without detriment or disadvantage to FGT's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22114 Filed 8–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–374–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

August 12, 1998.

Take notice that on August 7, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective September 7, 1998.

Fifth Revised Volume No. 1

Thirteenth Revised Sheet No. 29
Fifth Revised Sheet No. 1908
Second Revised Sheet No. 102
Second Revised Sheet No. 2001
First Revised Sheet No. 201
First Revised Sheet No. 2005
Fourth Revised Sheet No. 202
Second Revised Sheet No. 2801
Second Revised Sheet No. 300
Third Revised Sheet No. 3602
Second Revised Sheet No. 302
Fourth Revised Sheet No. 3610
First Revised Sheet No. 303
Fourth Revised Sheet No. 4100
Third Revised Sheet No. 304
Fourth Revised Sheet No. 4101
First Revised Sheet No. 718
Fifth Revised Sheet No. 4200
Fifth Revised Sheet No. 802
Fifth Revised Sheet No. 4201
Sixth Revised Sheet No. 805
Fourth Revised Sheet No. 4300
Sixth Revised Sheet No. 806
Second Revised Sheet No. 4301
Seventh Revised Sheet No. 807
Third Revised Sheet No. 4401
Fourth Revised Sheet No. 1408
Third Revised Sheet No. 4501
Sixth Revised Sheet No. 1409
Third Revised Sheet No. 4700
Tenth Revised Sheet No. 1412
Second Revised Sheet No. 4701
Fourth Revised Sheet No. 1500
First Revised Sheet No. 4760
Sixth Revised Sheet No. 1501
First Revised Sheet No. 4761
Third Revised Sheet No. 1806
Second Revised Sheet No. 4805
Third Revised Sheet No. 1901
Third Revised Sheet No. 4901
Second Revised Sheet No. 4902

The above referenced sheets are being filed to reflect minor clerical corrections to Koch's Gas Tariff.

In accordance with Section 154.209 of the Commission's Regulations, copies of

this filing have been served upon Koch's customers, state commissions and other interested parties. In addition, copies of the instant filing are available during regular business hours for public inspection in Koch's offices in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22119 Filed 8–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–340–001]

Mississippi River Transmission Corporation; Notice of Compliance Filing

August 12, 1998.

Take notice that on August 7, 1998, Mississippi River Transmission Corporation (MRT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed a revision to its initial filing of July 2, 1998, in compliance with FERC Order 587–G to incorporate by reference GISB Standards 1.2. Pursuant to the Commission's letter order of July 23, 1998, MRT filed revised tariff sheet, Substitute Fifth Revised Tariff Sheet No. 80, as part of its FERC Gas Tariff, Third Revised Volume No. 1.

On July 23, 1998, the FERC issued an order accepting MRT's compliance filing with the condition that it file a revised tariff sheet reflecting the incorporation of GISB Standard 4.3.5 and the elimination of the obsolete Standard 4.3.4, effective August 1, 1998.

With the acceptance of MRT's tariff filing on July 23, 1998, and in compliance with said order, MRT placed its tariff sheet into effect August 1, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section1 54.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22117 Filed 8–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–714–000]

Northern Natural Gas Company; Notice of Application

August 12, 1998.

Take notice that on August 7, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, requesting authority for Northern to abandon, by sale to Black Marlin Pipeline Company (Black Marlin), certain non-contiguous pipeline facilities, with appurtenances, known as the High Island Block 199 Lateral (HI Block 199 facilities), and the services rendered thereby, all located in Offshore Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that the HI Block 199 facilities are noncontiguous to its traditional transmission pipeline system and are no longer needed by Northern as its role in the marketplace has changed from a merchant of natural gas to that of a transporter. Northern relates that the HI Block 199 facilities are located on the Outer Continental Shelf (OCS) and are subject to Sections 5(e) and 5(f) of the OCS Lands Act (OCLSA). Northern states that it proposes to transfer its HI Block 199 facilities to Black Marlin which will integrate the subject facilities into its interstate pipeline system and will provide open access transportation service to shippers requesting service on these facilities pursuant to the terms and conditions of its FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 2, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition 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 petition 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 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 certificate is required by the public convenience and necessity. If a petition for leave 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 provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22115 Filed 8–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–306–003]

TCP Gathering Company; Notice of Tariff Filing

August 12, 1998.

Take notice that on August 6, 1998, TCP Gathering Co. (TCP) tendered for filing to become a part of TCP's FERC

Gas Tariff, Original Volume No. 1, the following revised tariff sheet(s) to be effective August 1, 1998:

Substitute Second Revised Sheet No. 103A

TCP is making this filing pursuant to the Commission's Letter Order dated July 27, 1998 in Docket Nos. RP98–306–000, 001 and 002.

TCP states that copies of the filing were served upon all affected firm customers of TCP and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22116 Filed 8–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–344–002]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 12, 1998.

Take notice on August 7, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Substitute Fifth Revised Sheet No. 349 to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of such tariff sheet is August 1, 1998.

Transco states that the purpose of the instant filing is to comply with the Commission's order issued July 24, 1998 in the referenced docket. The July 24, 1998 order addressed Transco's submission of tariff sheets to incorporate Version 1.2 of the Gas Industry Standards Board (GISB) standards into its tariff and required Transco to file revised tariff sheets to rectify certain exceptions enumerated in the July 24, 1998 order.

Transco is serving copies of the instant filing to customers, State Commissions and other interested parties. In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22118 Filed 8–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Notice of Proposed Extension of the Firm Electric Service Rate Order No. WAPA–82

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Extension of Firm Electric Service Rate.

SUMMARY: This action is a proposal to extend the existing Loveland Area Projects (LAP) firm electric service rate, Rate Order No. WAPA–51, through January 31, 2001. The existing firm electric service rate will expire January 31, 1999. This notice of proposed extension of a rate is issued pursuant to 10 CFR Part 903.23(a)(1). In accordance with 10 CFR Part 903.23(a)(2) Western will not have a consultation and comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 490–7442, or e-mail (dpayton@wapa.gov).

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in firm electric service rate adjustments at 10 CFR Part 903, Western's LAP firm electric service rate was submitted to FERC for confirmation and approval on January 10, 1994. On July 14, 1994, in Docket No. EF94–5181–000 at 68 FERC ¶ 62,040, FERC issued an order confirming, approving, and placing into effect on a final basis the firm electric service rate for the LAP. The LAP consists of the Fryingpan-Arkansas Project and the Pick-Sloan Missouri Basin Program, Western Division. The rate, Rate Order No. WAPA–51, was approved for a 5-year period beginning February 1, 1994, and ending January 31, 1999.

On January 31, 1999, the LAP firm electric service rate will expire. This makes it necessary to extend the current rate pursuant to 10 CFR Part 903. Upon its approval, Rate Order No. WAPA–51 will be extended under Rate Order No. WAPA–82.

Western proposes to extend the existing rate of $2.85/kilowattmonth for capacity and the rate of 10.85 mills/killowatthour for energy which are sufficient to recover project expenses (including interest) and capital requirements through January 31, 2001. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost evaluation period have made this possible. For the Pick-Sloan Missouri Basin Program, the ratesetting study projected the deficit to peak at $178 million in Fiscal Year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid in FY 1997. The Fryingpan-Arkansas Project recorded its first principal payment of $2.8 million on the investment in FY 1996. In FY 1997, the principal payment for this project was $2.9 million. No principal payments were projected during this time period in Docket No. EF94–5181–000. The total revenue requirement of $44.3 million is sufficient to cover the expenses and

capital requirements through January 31, 2001.

All documents made or kept by Western for developing the proposed extension of the firm electric service rate will be made available for inspection and copying at the Rocky Mountain Customer Service Region, located at 5555 East Crossroads Boulevard, Loveland, Colorado.

Thirty days after publication of this notice I will submit Rate Order No. WAPA–82 to the Deputy Secretary for approval through January 31, 2001.

Dated: August 6, 1998.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 98–22185 Filed 8–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program-Eastern Division—Notice of Proposed Extension of the Firm Power Service and Firm Peaking Power Service Rates Order No. WAPA–83

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Extension of Firm Power Service and Firm Peaking Power Service Rates.

SUMMARY: This action is a proposal to extend the existing Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED) firm power service and firm peaking power service rates, Rate Order No. WAPA–60, through January 31, 2001. The existing firm power service and firm peaking power service rates will expire January 31, 1999. This notice of proposed extension of rates is issued pursuant to 10 CFR 903.23(a)(1). In accordance with 10 CFR Part 903.23(a)(2) Western will not have a consultation and comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Rates Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7388, or e-mail (riehl@wapa.gov).

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in firm power service rate adjustments at 10 CFR Part 903, Western's P–SMBP–ED firm power service and firm peaking power service rates were submitted to FERC for confirmation and approval on January 20, 1994. On July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, FERC issued an order confirming, approving, and placing into effect on a final basis the firm power service and the firm peaking power service rates for the P–SMBP–ED. The rates, Rate Order No. WAPA–60, were approved for a 5-year period beginning February 1, 1994, and ending January 31, 1999.

On January 31, 1999, the P–SMBP–ED firm power service and firm peaking power service rates will expire. This makes it necessary to extend the current rates pursuant to 10 CFR Part 903. Upon its approval, Rate Order No. WAPA–60 will be extended under Rate Order No. WAPA–83.

Western proposes to extend the existing rate of $3.20/kilowattmonth for capacity and the rate of 8.32 mills/kilowatthour for energy which are sufficient to recover project expenses (including interest) and capital requirements through January 31, 2001.

Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost evaluation period have made this possible. For the Pick-Sloan Missouri Basin Program, the ratesetting study projected the deficit to peak at $178 million in Fiscal Year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid in FY 1997. The total revenue requirement of $135.2 million is sufficient to cover the expenses and capital requirements through January 31, 2001.

All documents made or kept by Western for developing the proposed extension of the firm power service and firm peaking power service rates will be made available for inspection and copying at the Upper Great Plains Customer Service Region, located at 2900 4th Avenue North, Billings, Montana.

Thirty days after publication of this notice Rate Order No. WAPA–83 will be submitted to the Deputy Secretary for approval through January 31, 2001.

Dated: August 6, 1998.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 98–22184 Filed 8–17–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6147–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; 1999 Drinking Water Infrastructure Needs Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 1999 Drinking Water Infrastructure Needs Survey (EPA ICR No. 1708.02). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 17, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1708.02.

SUPPLEMENTARY INFORMATION:

Title: 1999 Drinking Water Infrastructure Needs Survey (EPA ICR No. 1708.02). This is a new collection of information.

Abstract: The purpose of this information collection is to identify the current and future infrastructure needs of community and nonprofit noncommunity public water systems for the 20-year period from January 1999 through December 2018. The collection will be conducted by EPA's Office of Ground Water and Drinking Water (OGWDW) in order to comply with Sections 1452(h) and 1452(i)(4) of the Safe Drinking Water Act (SDWA) (Public Law 104–182).

The collection will involve two methods. A questionnaire will be used to collect information from large and medium community water systems. For small systems and nonprofit noncommunity water systems, data will

be collected through a site visit by the EPA contractor. Questionnaires and site visit reports will be reviewed by State Needs Survey Coordinators before submission to EPA.

The data from the questionnaires and the site visits will provide EPA with a basis for estimating the drinking water infrastructure needs of community water systems for the 20-year period, January 1999 through December 2018. Furthermore, under section 1452(a)(1)(D) of SDWA, the results of the needs survey must be used as the basis for allocating Drinking Water State Revolving Loan Fund capitalization grant funds among the States. Responses to the collection of information are voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on May 27, 1998 (63 FR 29007); one comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average per response: 1998=4.4 hours; 1999=13.2 hours; 2000=0 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/operators of community water systems, State Environmental Water Quality Agencies, and State Departments of Health.

Estimated Number of Respondents: 5,120.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 15,044 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1708.02 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: August 13, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–22203 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6146–6]

Request for Nominations of Candidates for the National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 9 (a) and (b) of the National Environmental Education Act of 1990 (Pub. L. 101–619) mandates a National Environmental Education Advisory Council. The Advisory Council provides advice, consults with, and makes recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters relating to the activities, functions, and policies of EPA under the Act. EPA is requesting nominations of candidates for membership on the Council. The Act requires that the Council be comprised of eleven (11) members appointed by the Administrator of EPA, after consultation with the Secretary of U.S. Department of Education. Members represent a balance of perspectives, professional qualifications, and experience. The Act specifies that members must represent the following:

- Primary and secondary education (one of whom shall be a classroom teacher)—two members.
- Colleges and universities—two members.
- Not-for-profit organizations involved in environmental education—two members.
- State departments of education and natural resources—two members.
- Business and industry—two members.
- Senior Americans—one member.

Members are chosen to represent the various geographic regions of the country, and the Council shall have minority representation. The professional backgrounds of Council members include scientific, policy, and other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period, which runs from November to November of each calender year. Members are expected to participate in up to two (2) meetings per year and bi-monthly or more conference calls per year. Members of the Council shall receive compensation and allowances, including travel expenses, at a rate fixed by the Administrator. There are currently two (2) vacancies on the Advisory Council that must be filled. These include the following:

- Not-for-profit organization—one vacancy (Nov. 1998–Nov. 2000)
- Senior Americans—one vacancy (Nov. 1998–Nov. 2000).

EPA particularly seeks candidates with demonstrated experience and/or knowledge in any of the following environmental education issue areas:

- Integrating environmental education into state and local education reform and improvement;
- State, national and tribal level environmental education;
- Cross-sector partnerships; leveraging resources for environmental education;
- Professional development for teachers and other education professionals;
- Targeting under-represented audiences, including low-income and multi-cultural audiences, senior citizens, and other adults.

Additional considerations:

The Council is also looking for individuals who demonstrate the following:

- Strong leadership skills.
- Analytical ability.
- Ability to stand apart and evaluate programs in an unbiased fashion.
- Team players.
- Conviction to follow-through and to meet deadlines.
- Ability to review items on short notice.

DATES: Nominations of candidates to fill the existing vacancies on the Council must be submitted no later than October

1, 1998. Any interested person or organization may submit nominations of qualified persons. The nominations must include the following:

- Name/address/phone of nominating individual.
- 1–2 page resume of nominated candidate.
- Two (2) letters of support for the nominee.
- One (1) page statement of ''How the candidate is qualified.'' This must not exceed one (1) page and may be written by either the nominator or nominee.
- One (1) page statement by the nominee on his/her personal perspective on environmental education. This must not exceed one (1) page.

ADDRESSES: Submit nominations to Ginger Keho, Advisory Council Coordinator, Office of Environmental Education, Office of Communications, Education and Media Relations (1704), U.S. EPA, 401 M Street, S.W.,Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ginger Keho at the above address, or call (202) 260–4129. E-mail address: keho.ginger@epamail.epa.gov

SUPPLEMENTARY INFORMATION: The Council provides the Administrator with advice and recommendations on EPA implementation of the National Environmental Education Act. In general, the Act is designed to increase public understanding of environmental issues and problems, and to improve the training of environmental education professionals. EPA will achieve these goals, in part, by awarding grants and/or establishing partnerships with other Federal agencies, state and local education and natural resource agencies, not-for-profit organizations, universities, and the private sector to encourage and support environmental education and training programs. The Council is also responsible for preparing a national biennial report to Congress that will describe and assess the extent and quality of environmental education, discuss major obstacles to improving environmental education, and identify the skill, education, and training needs for environmental professionals.

Diane H. Esanu,

Acting Associate Administrator, Office of Communications, Education and Public Affairs.

[FR Doc. 98–22197 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6146–9]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Clean Air Act section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. These accidental release prevention requirements build on the chemical safety work begun by the Emergency Planning and Community Right-to-Know Act (EPCRA) which sets forth requirements for industry, State and local governments. On June 20, 1996, EPA published the final rule for risk management programs to address prevention of accidental releases.

An estimated 66,000 facilities are subject to this regulation based on the quantity of regulated substances they have on-site. Facilities that are subject will be required to implement a risk management program at their facility, and submit a summary of this information to a central location specified by EPA. This information will be helpful to State and local government entities responsible for chemical emergency preparedness and prevention. It will also be useful to environmental and community organizations, and the public in understanding the chemical risks in their communities. In addition, we hope the availability of this information will stimulate a dialogue between industry and the public to improve accident prevention and emergency response practices.

The Accident Prevention Subcommittee was created in September 1996 to advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on these chemical accident prevention issues, specifically, section 112(r) of the Clean Air Act.

DATES: The Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public meeting on September 9, 1998 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Hall of States (Room 383) located at 444 North Capitol St., NW, Washington D.C., near Union Station. Members of the public are welcome to attend in person.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting, should contact Karen Shanahan, Designated Federal Official, U.S. EPA (5104), 401 M. St., SW, Washington DC 20460, via the Internet at: shanahan.karen@epamail.epa.gov, by telephone at (202) 260–2711 or FAX at (202) 260–1686.

SUPPLEMENTARY INFORMATION:

Agenda

Opening Remarks—Jim Makris (8:30–9:00)

RMP Implementation Workgroup Update (9:00-9:30)

Evaluation of Chemical Accident Prevention (9:45-10:45)

Other Business (10:45 -11:45)

Comments from the public (11:45–12:00)

Update on Security Issue (1:30—4:00)

Comments from the public (4:00–4:30)

Members of the public who wish to make a brief oral presentation in person in Washington DC to the Subcommittee at the September 9, meeting, must contact Karen Shanahan in writing (by letter, fax, or email—see previously stated information) no later than September 2, 1997, in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee up through the date of the meeting. Please address such material to Karen Shanahan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than thirty minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Additional information on the Accident Prevention Subcommittee is available on the Internet at: http://www.epa.gov/swercepp/acc-pre.html.

If you would like to automatically receive future information on the Accident Prevention Subcommittee and its Workgroups by email, you can subscribe to the EPA-RMP Listserve by sending the following message to listserver@unixmail.rtpnc.epa.gov:

SUBSCRIBE EPA-RMP <Your firstname> <Your lastname>

Example: SUBSCRIBE EPA-RMP John Smith

Karen Shanahan,

Designated Federal Official.

[FR Doc. 98–22195 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6146–8]

Industrial Combustion Coordinated Rulemaking Federal Advisory Committee Notice of Upcoming Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Industrial Combustion Coordinated Rulemaking (ICCR) Federal Advisory Committee notice of upcoming meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c), EPA gave notice of the establishment of the ICCR Federal Advisory Committee (hereafter referred to as the ICCR Coordinating Committee) in the **Federal Register** on August 2, 1996 (61 FR 40413).

The public can follow the progress of the ICCR through attendance at meetings (which will be announced in advance) and by accessing the Technology Transfer Network (TTN), which serves as the primary means of disseminating information about the ICCR.

DATES: The next meeting of the ICCR Coordinating Committee is scheduled for September 16–17, 1998. Also, most of the ICCR Work Groups—which report to the Coordinating Committee—have meetings scheduled in August and/or September, 1998. The dates of these Work Group meetings are summarized below and further information on the dates of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The Coordinating Committee meeting on September 16–17, 1998 will be held at the Durham Marriott, 201 Foster Street, Durham, North Carolina. The telephone number for the Durham Marriott is (919) 683–6664. The locations of the Work Group meetings are summarized below and further information on the locations of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT**).

Inspection of Documents: Docket. Minutes of the meetings, as well as other relevant materials, will be available for public inspection at the U.S. EPA Air and Radiation Docket and Information Center, Docket No. A–96–17. The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Fred Porter or Sims Roy, U.S. Environmental Protection Agency, Emission Standards Division, Combustion Group, (MD–13), Research Triangle Park, North Carolina 27711, telephone numbers (919) 541–5251 and 541–5263, respectively.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network (TTN)

The TTN is one of the EPA's electronic bulletin boards. The TTN can be accessed through the Internet at:

WWW: http://www.epa.gov/ttn/iccr

FTP: mountain.epa.gov

When accessing the WWW site, select Technical Sites which brings up the Directory of TTN Sites, then select ICCR—Industrial Combustion Coordinated Rulemaking from the Directory of TNN Sites.

Access to the TTN through FTP is a streamlined approach for downloading files, but is only useful, if the desired filenames are known.

If more information on the TTN is needed, call the help desk at (919) 541–5384.

Meetings of the ICCR Coordinating Committee and Work Groups are open to the public. All Coordinating Committee meetings will be announced in the **Federal Register** and on the TTN. Work Group meetings will be announced on the TTN and in the **Federal Register**, when possible.

The next meeting of the Coordinating Committee will be held September 16–17, 1998 at the Durham Marriott, 201 Foster Street, Durham, North Carolina from about 8:00 a.m. to about 6:00 p.m. The agenda for this meeting will include reports from the Work Groups on their testing needs and prioritization issues, discussion of data gathering efforts and a discussion of guidance from the Coordinating Committee to the EPA. An opportunity will be provided for the public to offer comments and address the Coordinating Committee.

The Work Groups have currently scheduled the following meetings:

Work Group	Date	Location
Incinerators	September 2–3,1998	RTP, NC
	September 15, 1998	RTP, NC.
IC Engines	September 1, 1998	RTP, NC
	September 15, 1998	RTP, NC.
Boilers	August 18–19, 1998	Atlanta, GA
	September 15, 1998	RTP, NC.
Stationary Combustion Turbines	August 26–27, 1998	Chicago, IL
	September 15, 1998	RTP, NC.
Process Heaters	September 15, 1998	RTP, NC.

The agendas for these meetings include review and revision of the ICCR databases, data and information gathering efforts, possible emission testing, and potential subcategorization. An opportunity will be provided at each meeting for the public to offer comments and address the Work Group.

Individuals interested in Coordinated Committee meetings, Work Group meetings, or any aspect of the ICCR for that matter, should access the TTN for information.

Two copies of the ICCR Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request to the Docket (ask for item #I–B–1). The purpose of the ICCR Coordinating Committee is to provide

recommendations to EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The Coordinating Committee will attempt to develop recommendations for national emission standards for hazardous air pollutants (NESHAP) implementing section 112 and solid waste combustion regulations implementing section 129 of the Act, and may review and make recommendations for revising and developing new source performance standards (NSPS) under section 111 of the Act. The recommendations will cover boilers, process heaters, industrial/commercial and other incinerators, stationary internal combustion engines, and stationary combustion turbines.

Lists of Coordinating Committee and Work Group members are available from the TTN for the purpose of giving the public the opportunity to contact members to discuss concerns or information they would like to bring forward during the ICCR process.

The Charter for the ICCR Coordinating Committee expires in September, 1998. After much discussion and consideration, the EPA decided not to renew the Charter for the Committee. As a result, the Work Group meetings in August and September, 1998, and the Coordinating Committee meeting on September 16–17, 1998, will be the last meetings of the Work Groups and the last meeting of the Committee.

Dated: August 10, 1998.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 98–22201 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6146–5]

Massachusetts Marine Sanitation Device Standard; Notice of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On June 26, 1998, a document was published that the State of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for coastal regions of the town of Harwich, State of Massachusetts. The petition was filed pursuant to section 312(f)(3) of Public Law 92–500, as amended by Public laws 95–217 and 100–4, for the purpose of declaring these waters a ''No Discharge Area'' (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Massachusetts certified that there are two facilities to service the town of Harwich, MA. A stationary shore side pumpout facility at the Saquatucket Municipal Marina has a 60 gallon per cycle capacity with discharge to a 2,500 gallon tight tank. This facility provides access for vessels with 6 feet draft at mean low water. This facility is available daily from May 1 through November 15, weather permitting and open during daylight hours. Harbormaster personnel will be available to demonstrate the self-service system Tuesday through Sunday, from 9 a.m. to 3 p.m. The Harwich Harbormaster's office number is (508) 430–7532. The second facility is a pumpout boat typically docked at Saquatucket Municipal Marina, unless the private marinas request it for a short period of time. This pumpout boat will come to individual boats by appointment, which can be made by calling the Harwich Harbormaster on channel VHF 68 or calling the office at (508) 430–7532. The pumpout boat will be available May 1 through November 15, and service is normally available Tuesday through Sunday, 9 a.m to 3 p.m., weather permitting.

In addition to these pumpout facilities, there is a town comfort station located on the Allen harbor town boat ramp parking area, and the Saquatucket Municipal Marina has on-shore bathroom and shower facilities available 24 hours a day. There are also private facilities at the Allen Harbor Yacht Club.

The waste from stationary shore side pumpout facility at the Saquatucket Municipal Marina and the pumpout boat is collected and stored in a Department of Environmental Protection approved, 2,500 gallon tigh tank. This tank is fitted with alarms that activate in time to ensure waste removal long before the capacity is reached. The town of Harwich has an annual agreement with a licensed waste hauler to pump-out, on demand by the Harbormaster, and then transport the septage to the Town of Yarmouth's Sewage Treatment Facility. The Town of Harwich has a contract with the Town of Yarmouth for the use of the Yarmouth-Dennis Septage Treatment Facility.

There are approximately 753 boats either moored or docked within Herring Creek, Allens Harbor, Wychmere Harbor and Saquatucket Harbor and are primarily ''parking lot'' harbors where the majority of boats are under 27 feet. Of these 735 boats there are 35 commercial fishing vessels, and an estimated transient population of 68 vessels.

The resources of the Herring Creek, Allens Harbor, Wychmere Harbor and Saquatucket harbor are recreational and commercial. Wychmere Harbor is the site of the town's commercial aquaculture operations. The beaches are located on the contiguous boundary with Nantucket Sound.

Therefore, based on an examination of the petition and its supporting information, which included site visits by EPA New England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the areas covered under this determination which include the major harbors and contiguous beaches between and including Allen, Wychmere and Saquatucket harbors and to the Herring River. The latitudes and longitude defining the boundaries are Town line of Dennis 70°07′03″, 41°39′16″, Herring River 70°06′33″, 41°40′08″, Allens Harbor 70°05′22″, 41°40′04″, Wychmere Harbor 70°03′56″, 41°40′04″, Saquatucket Harbor 70°03′31″, 41°40′09″, Town line of Chatham 70°02′17″, 41° 39′58″, and the water boundaries are 70°02′55″, 41°39′52″, −70°04′38″, 41°39′46″, −70°06′00″, 41°39′35″. This determination is made pursuant to section 312 (f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–22198 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–6147–1]

Water Quality Criteria

Notice of Ambient Water Quality Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of updated recommended aquatic life criteria for ammonia in freshwater, and request for comments.

SUMMARY: Pursuant to Section 304(a)(1) of the Clean Water Act, the Environmental Protection Agency (EPA) announces the publication and availability of a document 1998 Update of Ambient Water Criteria for Ammonia, and requests comment on this document. The document contains EPA's recommended ammonia criteria for the protection of freshwater aquatic life. These criteria are EPA's recommendations for States, Territories, and authorized Tribes to use as guidance in adopting water quality standards. Such standards may form the basis for establishing enforceable, water quality-based controls. These water quality criteria are not regulations, and do not impose legally-binding requirements on EPA, States, Territories, Tribes or the public. States, Territories and authorized Tribes on a case-by-case basis retain the discretion to adopt water quality standards that differ from these recommendations where appropriate. Although EPA is requesting comment on this document, these criteria constitute the Agency's current recommended Section 304(a)(1) criteria, and will continue to serve as such until EPA publishes a revision. Based on its assessment of public comments and other available information, EPA will either publish a revision to the guidance or will publish a notice indicating its decision not to revise.

OBTAINING THE DOCUMENT: Copies of the complete document, titled 1998 Update of Ambient Water Quality Criteria for Ammonia, may be obtained from EPA's Water Resource Center by phone at 202–260–7786, or by e-mail to waterpubs@epamail.epa.gov, or by web browser at www.epa.gov/ostwater/rescnter.html, or by conventional mail to EPA Water Resource Center, RC–4100, 401 M Street SW, Washington, DC 20460. Alternatively, consult www.epa.gov/OST/pubs for download availability.

EXAMINING THE ADMINISTRATIVE RECORD: The Administrative Record supporting this guidance document is available under docket number W–98–20 at the Water Docket, Room EB–57, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 on work days between 9 a.m. and 4 p.m. For access to docket materials call (202) 260–3027 to schedule an appointment. The record contains complementary material on current related work not included in the update document, as well as supplementary historical materials. A reasonable fee will be charged for photocopies.

SUBMITTING COMMENTS: An original and two copies of written comments should be submitted by October 2, 1998, and addressed to W–98–20, Ammonia Criteria Comment Clerk; Water Docket (MC–4101), U.S. EPA, 401 M Street SW, Washington, DC 20460. Comments may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, or 6.1 formats to OW-Docket@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background on Program

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) authorizes EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation. These criteria serve as guidance to States, Territories, and authorized Tribes in developing water quality standards under Section 303(c) of the CWA, and ultimately provide a basis for controlling discharges or releases of pollutants. In this notice EPA is announcing the publication and availability of the Agency's most recent calculation of water quality criteria for ammonia.

Ambient water quality criteria developed under Section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and effects on aquatic life, human health, and the environment. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water.

Background on Development of this Criteria Document

In 1985, EPA published *Ambient Water Quality Criteria for Ammonia—1984*, which contained criteria concentrations for protection of freshwater aquatic life. The Criterion Maximum Concentration or CMC, which applied to short (acute) exposure, and the Criterion Continuous Concentration or CCC, which applied to longer (chronic) exposure, varied with temperature, pH, and with the type of fishery involved. On July 30, 1992, EPA revised its recommended value for the CCC through a memorandum ''Revised Tables for . . . Freshwater Ammonia Concentrations.''

In late 1996 EPA undertook a review and revision of the CCC for ammonia, in response to public interest in the criterion. EPA produced a draft on June 5, 1997. EPA obtained a peer review, *Peer Review Report for EPA's Addendum to Ambient Water Quality Criteria Document for Ammonia*, dated October 9, 1997. After considering and responding to the peer review comments, EPA is in this notice publishing revised criteria recommendations, superseding all previous freshwater ammonia criteria. EPA will consider public comments on the material of this notice in determining the need for further revisions.

The document announced in this notice pertains only to fresh waters. It does not change or supersede the EPA criterion for ammonia in salt water, published in *Ambient Water Quality Criteria for Ammonia (Saltwater)—1989*.

EPA aquatic life criteria consist of acute and chronic criteria concentrations, applicable averaging periods, and allowable excursion frequencies. The document announced in this notice revises (a) the pH and temperature relationship of the CMC (acute criterion) based on re-evaluation of the data in the 1984/1985 criteria document, (b) the CCC (chronic criterion), including its pH and temperature relationship, based on new data in addition to what was available for the 1984/1985 document, and (c) the averaging period applicable to the CCC. The revisions do not address, and are not intended to modify (d) the averaging period applicable to the CMC, or (e) the recommended frequencies for excursions of the CMC or CCC.

Ammonia Criteria Concentrations

In natural waters ammonia exists in two forms, un-ionized NH3, and ionized NH_4^+, with equilibrium controlled by temperature and pH. Whereas the 1984/1985 criteria were derived based on un-ionized ammonia, which required a relationship with temperature, the criteria published today are expressed only as total (un-ionized plus ionized) ammonia, the toxicity of which does not appear empirically to vary with temperature. Consequently, while the criteria published today vary with pH, they do not vary with temperature.

Based on differences in species acute sensitivity, different CMC values were derived for waters where salmonids (e.g., trout and salmon) are present and waters where salmonids are not present. Such distinctions in species chronic sensitivity were not apparent, however. Consequently the CCC does not vary with the type of fish present. The criteria concentrations are shown in Table 1. For brevity, only a few example pH values are shown here. Refer to the criteria document for the computational formula and for other example pH values between 6.5 and 9.0.

TABLE 1.—CMC AND CCC (MG N/L) AT A FEW EXAMPLE PH VALUES.

pH	CMC (salmonids present)	CMC (salmonids absent)	CCC
6.5	32.5	48.8	3.48
7.0	24.0	36.1	3.08
7.5	13.3	19.9	2.28
8.0	5.60	8.40	1.27
8.5	2.13	3.20	0.57
9.0	0.88	1.32	0.25

Whereas the 1984/1985 and 1992 total ammonia criteria were expressed in milligrams ammonia per liter (ammonia molecular weight 17.0306 daltons), the currently proposed criteria are expressed in milligrams ammonia nitrogen per liter (nitrogen molecular weight 14.0067 daltons). This change was suggested by criteria users. To compare the 1984/1985 and 1992 criteria to the currently proposed criteria, multiply the 1984/1985 or 1992 total ammonia values by 0.822.

Averaging Period

The ambient concentration, averaged over a period of 30 days, should not exceed the CCC. The ambient concentration, averaged over four days, should not exceed a concentration two times greater than the CCC.

The averaging period applicable to the CMC, one hour, was not addressed in this criteria update effort, and thus remains unchanged from 1984/1985.

Cold-Season Application

Because the costs of biological treatment of ammonia increase substantially as the water temperature drops, establishing the cold-season ammonia concentrations necessary for protecting aquatic life uses is of particular importance. Two factors affect the appropriateness of the above CCC during cold seasons. First, with respect to chronic toxicity of ammonia to fish, the most sensitive life stages are early life stages, which in many, but not all water bodies, do not occur in during the cold season. Second, for the most sensitive invertebrates, the toxicity of ammonia appears to decrease with decreasing temperature. For this reason, EPA has concluded that under some circumstances the cold-season CCC could be relaxed somewhat, although setting the appropriate criteria value involves uncertainties.

In light of the evidence available, EPA recommends the following risk management policies with regard to cold-season ammonia criteria:

- While the cold-season ammonia criterion may in some cases be different than the criterion applicable to other seasons, all periods of the year should be covered by some ammonia criterion.
- If a state, territory, or authorized Tribe can make a finding, for a site or ecoregion, that identifies a time of year when no sensitive life stages of any fish species are ordinarily present in numbers affecting the sustainability of populations, the criterion applicable to that time of year may be set up to 3-fold higher than the criterion applicable to the remainder of the year. Baseline and subsequent biological monitoring in accordance with currently available EPA guidance should be conducted to assure that the integrity of the aquatic community being protected is maintained when these higher cold-season concentrations are allowed.
- Alternatively, if a state, territory, or authorized Tribe can demonstrate, based on rigorous baseline and subsequent instream biological monitoring, that particular eco-regions can fully support beneficial fisheries uses, defined by appropriate biological measures, under the cold-season concentration regimes occurring at monitored sites in the eco-region, then the cold-season criterion may be set more than 3-fold higher than the applicable criterion to accord with the results of such analysis. In judging the adequacy of the instream biological monitoring, EPA would rely on its May 1996 guidance ''Biological Criteria, Technical Guidance for Streams and Small Rivers'' (EPA 822–B–96–001) or later updates when they become available.

Endangered or Threatened Species

Because the criteria are generally designed to protect 95 percent of all fish and aquatic invertebrate taxa, there remains a small possibility that the criteria will not protect all listed endangered or threatened species. Consequently, EPA recommends the following:

In adopting ammonia criteria for specific water bodies, States and Tribes may need to develop site-specific modifications of the criteria to protect listed endangered or threatened species, where sufficient data exist indicating that endangered or threatened species are more sensitive to a pollutant than the species upon which the criteria are based. Such modifications may be accomplished using either of the following two procedures: (1) If the CMC is greater than 0.5 times the Species Mean Acute Value for a listed threatened or endangered species, or a surrogate for such species, obtained from flow-through, measured-concentration tests, then the CMC should be reset equal to 0.5 times that Species Mean Acute Value. (The empirical factor 0.5 converts from a 50 percent lethality concentration to a minimal-lethality concentration.) If CCC is greater than the Species Mean Chronic Value of a listed threatened or endangered species or surrogate, then the CCC should be reset to that Species Mean Chronic Value. (2) The site-specific criteria may be calculated using the recalculation procedure for site-specific modifications described in Chapter 3 of the U.S. EPA Water Quality Standards Handbook, Second Edition—Revised (1994).

Issues for Public Comment

Because the ammonia CCC is so much lower than the CMC, the CCC is expected to be the basis for water quality-based controls much more often than is the ammonia CMC. EPA is therefore particularly interested in public comment addressing the scientific basis for the CCC. For comments addressing the CMC or its associated averaging period, EPA would find it helpful if the commenter would explain how the comment issue would affect water quality-based controls.

While welcoming all comments, EPA especially solicits additional data on the

chronic toxicity of ammonia to aquatic life, comments on the interpretation of data on ammonia-sensitive species such as fingernail clam, rainbow trout, bluegill, and Hyalella, field data relevant to effects and effect concentrations of ammonia under summer and winter conditions, and comments on the cold-season policy presented above.

Based on public comments and any other new information available, EPA will decide whether revision of the criteria is necessary. EPA will subsequently publish a notice indicating either its revised criteria recommendations, or its decision not to revise.

Dated: August 3, 1998.

J. Charles Fox,

Acting Assistant Administrator for Water.

[FR Doc. 98–22202 Filed 8–17–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) submitted to OMB for Review and Approval

August 10, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (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 estimate; (c) ways to enhance the quality, utility, 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 information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 17, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0287.

Title: Section 78.69 Cable Relay Station Records.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 1,800.

Estimated Time Per Response: 26 hours.

Frequency of Response: Mandatory recordkeeping requirement.

Total Annual Burden: 46,800 hours.

Cost to Respondents: $9,000 (Photocopying and stationery costs).

Needs and Uses: Section 78.69 requires that licensees of cable CARS stations maintain various records, including but not limited to records pertaining to transmissions, unscheduled interruptions to transmissions, maintenance, observations, inspections and repairs. Station records are required to be maintained for a period of not less than two years. The records kept pursuant to § 78.69 provide for a history of station operations and are reviewed by Commission staff during field investigations to ensure that proper operation of the stations is being conducted.

OMB Approval Number: 3060–0419.

Title: Sections 76.94, 76.95, 76.155, 76.156, 76.157 and 76.159 Syndicated Exclusivity and Network Non-Duplication Rights.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 5,392 (1,141 commercial television stations + 4,251 cable television stations).

Estimated Time Per Response: 0.5 - 2.0 hours.

Frequency of Response: Mandatory; On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 178,640 hours.

Cost to Respondents: $192,132 (Notification and disclosure requirements).

Needs and Uses: Sections 76.94(a) and 76.155(a) require television stations and program distributors to notify cable television system operators of non-duplication protection and exclusivity rights being sought. The notification shall include (1) the name and address of the party requesting non-duplication protection/exclusivity rights and the television broadcast station holding the non-duplication right; (2) the name of the program or series for which protection is sought; and (3) the dates on which protection is to begin and end.

Section 76.94(b) requires broadcasters entering into contracts providing for network non-duplication protection to notify cable systems within 60 days of the signing of such a contract. If they are unable to provide notices as provided for in § 74.94(a), they must provide modified notices that contain the name of the network which has extended non-duplication protection, the time periods by time of day and by network for each day of the week that the broadcaster will be broadcasting programs from that network, and the duration and extent of the protection.

Section 76.94(d) requires broadcasters to provide the following information to cable television systems under the following circumstances: (1) In the event the protection specified in the notices described in paragraphs (a) or (b) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to paragraph (b) of this section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished ''as soon as possible'' under this section shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means. (2) In the event the protection specified in the modified notices described in paragraph (b) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

Section 76.155(d) requires that in the event the exclusivity specified in paragraph (a) of this section has been

limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system operator of the occurrence of the relevant contingency. Notice to be furnished ''as soon as possible'' under this section shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

Sections 76.94(e)(2) and 76.155(c)(2) states that if a cable television system asks a television station for information about its program schedule, the television station shall answer the request.

Sections 76.94(f) and 76.157 require a distributor or broadcaster exercising exclusivity to provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed. Providing copies of relevant portions of the contracts is assumed to be accomplished in the notification process set forth in §§ 76.94 and 76.155.

Section 76.159 (requirements for invocation of protection) requires broadcasters to obtain amended contracts when existing contracts have ambiguous language. We assume all broadcasters that have enforceable syndicated rights in their contracts have by now amended their existing contracts. Any contracts entered into after August 18, 1988, would contain the required language set forth in this section.

Section 76.95(a) states that network non-duplication provisions of §§ 76.92 through 76.94 shall not apply to cable systems serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

Section 76.156(b) states that the provisions of §§ 76.151 through 76.155 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

The purpose of the various notification and disclosure requirements accounted for in this collection is to protect broadcasters who purchase the exclusive rights to transmit syndicated programming in their recognized market areas. The Commission's syndicated exclusivity rules permit, but not require, broadcasters and program distributors to obtain the same enforceable exclusive distribution rights for syndicated programming that all other video programming distributors possess.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–22160 Filed 8–17–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

[Docket No. 98–14]

Shipping Restrictions, Requirements and Practices of the People's Republic of China

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission has concerns about laws, rules, and policies of the Government of the People's Republic of China that appear to have an adverse impact on U.S. shipping, and which may merit Commission attention under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988. The Commission is seeking information on a number of Chinese practices and restrictions and their effects on U.S. oceanborne trade from interested parties, including shippers, transportation intermediaries, vessel operators and others in the shipping industry.

DATES: Comments due on or before October 2, 1998.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001 (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

In recent months, a number of sources have expressed concerns to the Federal Maritime Commission (''FMC'' or ''Commission'') about laws, rules, and policies of the Government of the People's Republic of China that appear to have an adverse impact on U.S. oceanborne commerce. The Commission has initiated this proceeding to compile a record on these matters in order to determine if further Commission action under section 19 of the Merchant Marine Act, 1920 (''section 19'') or the Foreign Shipping Practices Act of 1988 (''FSPA'') is warranted.[1] This Notice of Inquiry, directed at shippers, transportation intermediaries, vessel operators and other interested parties, inquires about the particular issues and restrictions they face in China, and the effects of those restrictions on their business operations.

Executive Branch Agencies' Assessment

On July 22, 1998, John E. Graykowski, Acting Maritime Administrator, U.S. Department of Transportation, wrote to Commission Chairman Creel on behalf of the Departments of Transportation, State, and Commerce, to provide the Commission with a description of the maritime relationship between the United States and China. The Executive Branch agencies first described in broad terms the apparent policy differences that underlie many of the particular points of contention in U.S.-Sino maritime relations:

The focal point for non-Chinese companies interested in maritime trade with China and

[1] Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. sec. 876, authorizes the Commission, inter alia, to: make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade * * * which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; * * *.

The Foreign Shipping Practices Act of 1988, 46 U.S.C. app. sec. 1710a, authorizes the Commission to investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime related services in a foreign country result in the existence of conditions that (1) adversely affect the operations of United States carriers in the United States oceanborne trade; and (2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States. If the Commission determines that such adverse conditions exist, it may take actions including limitations on sailings, suspension of tariffs, suspension of agreements, or fees not to exceed $1,000,000 per voyage.

accustomed to operating in a free market is the apparent Chinese policy of seeking to control the trade rather than allow market forces to operate. In practice, this policy has been characterized by increasing restrictions imposed unilaterally by the Chinese government on foreign carriers' operations. Efforts to expand the scope of their business operations required extended intergovernmental negotiations. * * * An important aspect of this policy is a general lack of transparency. We believe U.S. carriers in the China trade, as global intermodal transportation companies, feel acutely the effects of Chinese restrictions. In addition, the limitation, restriction or prevention of efficient shipping and intermodal services by foreign companies negatively affects users of shipping services as well.

In recent years, the Executive Branch agencies have met repeatedly with their Chinese counterparts, led by the Ministry of Communications (''MOC''), ''to persuade them to remove the restrictions that U.S. carriers face in the China trade and, in so doing, to achieve operating conditions for them in China that are equivalent to the open, market-oriented treatment enjoyed by Chinese carriers in the United States.'' The Acting Maritime Administrator attached to this letter a copy of the Agreed Minutes of the most recent negotiating rounds, in Beijing, June, 25–28, 1997, and in Washington, December 3–11, 1997. The talks covered ten main areas: access by U.S. carriers to Chinese ports on 24-hour approval; Shanghai Shipping Exchange; Chinese multimodal regulation; shipping between Hong Kong, China, and mainland China; shipping across the Taiwan Strait; limitations on carriers' branch offices in China; exclusion of foreign carriers from vessel agency operations in China; the Port of Tianjin/Sea-Land joint venture to operate a marine terminal; the Controlled Carrier Act (section 9 of the Shipping Act of 1984); and COSCO's efforts to lease a marine terminal at a former U.S. Navy facility in Long Beach, California.

The Executive Branch agencies also reported on an unwritten agreement the U.S. and Chinese delegation came to in December, 1997. This agreement reportedly had three parts:

- The Maritime Administration and the U.S. carriers would support in writing a China Ocean Shipping (Group) Company, Inc. (''COSCO'') petition to the Commission for permission to match competitors' rates on 24 hours' notice (as opposed to the statutory 30-day period for controlled carriers);
- The MOC would approve American President Lines, Ltd. and Sea-Land Service, Inc.'s pending port access requests and would act expeditiously (i.e., within 10 days) on their future requests; and
- The MOC would approve Sea-Land's joint venture with the Port of Tianjin.

Although the Commission granted the relief sought by COSCO,[2] the Executive Branch agencies reported, MOC has not yet given the necessary approval for the Sea-Land terminal venture in Tianjin. The agencies said that some U.S. carrier applications now have been approved, some have not yet been acted upon, and at least one has been rejected.

The Executive Branch agencies noted new Chinese regulations prescribing penalties for operators of unapproved liner services, including fines and confiscation of revenues and business licenses. They also observed that ''access by foreign vessels to ostensibly open ports in China is now solely at the discretion of MOC,'' and ''a variety of normal commercial activities, including, for example, rate-setting and use of intermodal through bills of lading, are subject to monitoring, approval or denial by MOC.''

Other Recent Communications Regarding China Maritime Policy

The Commission received a letter, dated June 24, 1998, from Owen G. Glenn, Chairman of Direct Container Line, an U.S.-based non-vessel-operating common carrier (''NVOCC''), raising the issue of Chinese restrictions on foreign NVOCCs. Mr. Glenn took note of the Commission's efforts in support of Direct's successful attempts to enter the Korean market,[3] and the Commission's support for Executive Branch agencies' efforts to open the Brazilian market to U.S. NVOCCs, and asked what action the Commission might consider taking with regard to current Chinese restrictions.

FMC Chairman Creel also received a letter, dated June 16, 1998, from Senator Ernest F. Hollings, expressing his concern for the deterioration of the U.S.-China maritime relationship and the limitations imposed by MOC on U.S. carriers in the Chinese trade. Specifically, the Senator observed that U.S. carriers are subject to a cumbersome approval process for routine vessel and itinerary changes, restrictions on number and location of their branch offices in China, limits on their intermodal services to inland customers in China, and a complete prohibition on their operation of vessel agency services. Senator Hollings reminded the Chairman that COSCO, now one of the largest and most successful carriers in the U.S. trades, does not face these same restrictions in the United States.

The Senator further recounted the making of the unwritten ''Gentlemen's Agreement'' between U.S. and Chinese negotiators in December 1997, and the U.S. side's actions to honor that agreement. The Chinese, he noted, had still failed to act on their agreement to approve vessel registration applications and U.S. carrier port access, and to approve a U.S. carrier's port operating joint venture. Senator Hollings urged the Commission to investigate these matters and act to encourage China to remove restrictions on U.S. carriers so they may compete freely and openly in China.

The Commission also has been approached on a number of occasions by U.S.-flag vessel operators, who have complained informally about the matters raised by the Executive Branch agencies, and underscored their desire for improvements.

COSCO's Recent Statements

COSCO issued a public statement addressing the criticism of Chinese shipping policies by U.S. officials. The thrust of COSCO's position is that it is subject to the same restrictions as U.S. carriers in China, and that it is subject to discriminatory treatment under the controlled carrier provisions of the Shipping Act. COSCO stated, in part:[4]

Earlier this year, talks were held in both the United States and China to try to reciprocally lessen regulations for Chinese carriers in the U.S. and for U.S. carriers in China. The spirit and intent of these talks were to enhance and encourage a more free and open trade environment for the two

[2] By Final Order dated March 27, 1998, in Petition No. P1–98, the Commission granted COSCO an exemption from the statutory waiting period for rate changes for a controlled carrier under the Controlled Carrier Act. COSCO's petition was supported in writing by U.S. carriers Sea-Land Service, Inc. and American President Lines, Ltd., MARAD, and a number of shippers. The Commission granted COSCO's request for an exemption from the 30-day delay in tariff effectiveness on the basis that such an exemption met the four criteria in section 16 of the 1984 Act. Despite COSCO's representations in that proceeding that the expedited filing was important to their ability to compete, it has not once used the authority granted it in the exemption.

[3] See Docket No. 92–42, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade*, 26 S.R.R. 591. In response to a Petition (No. P2–92) filed by Direct Container Line, the Commission issued a Final Rule on November 13, 1992, under section 19(1)(b) of the Merchant Marine Act, 1920. The Commission found that the Korean Maritime Transportation Business Act created conditions which, inter alia, precluded or tended to preclude non-Korean NVOCCs and freight forwarders from competing in the U.S./Korean trade, and denied NVOCCs and freight forwarders owned and operated by non-Korean nationals equal access to cargo moving from Korea to the United States.

[4] ''COSCO's Response and Clarifications to Allegations Made by the Honorable Senators: E. Hollings, C. Thomas, J. Helms, G. Smith and J. Breaux,'' www.cosco-usa.com/ie4/news/sale.htm.

important trading partners. Recent comments made would lead public opinion to believe that Chinese flag carriers receive complete freedom to operate without any restrictions in the U.S. while U.S. carriers are severely restricted in China. These statements are inaccurate, as Chinese flag carriers operate under controlled carrier restrictions in the United States. Although U.S. flag carriers may be facing some restrictions in China, these restrictions are universally applied and do not single out certain carriers. Pursuant to the memorandum of U.S.-Sino Maritime discussions signed in June of 1996, U.S. flag carriers were granted important trade concessions not available to other countries. Additional concessions were granted to the U.S. carriers recently including permission to establish 6 additional shipping routes in China.

Earlier this year, Chinese carriers were granted a limited exemption from the controlled carrier restrictions by allowing them to meet a filed rate of a competing ocean shipping line on one day's notice. While we saw this as a good first step, most of the progress that was made with this exemption would be negated if the current deregulation bill S–414 is passed. COSCO will lose its flexibility in tariff pricing if the current deregulation bill is passed. We will be deprived our current right to file rates in China/Hong Kong-US bilateral trade on one day's notice, thus making COSCO's competitiveness reduced dramatically. The intent of the talks between the two nations were to reduce restrictions on both sides, granting Chinese shipping lines matching ability on the cross trades while introducing new regulations on the bilateral trades contradicts the intent of the discussions.

Discussion and Request for Comments

The Commission, in order to determine whether any of a number of Chinese laws, rules, regulations, policies or practices merit further Commission action under section 19 or the Foreign Shipping Practices Act, is collecting information on the following specific areas at this time.

1. NVOCC and Freight Forwarder Operations

As noted by Direct Container Line, U.S. NVOCCs and ocean freight forwarders appear to face serious restrictions in obtaining the necessary licenses and permissions to do business in China. Indeed, it appears that wholly foreign-owned NVOCCs such as Direct Container Line are barred from engaging in a number of commercial activities, such as offering through transportation as an NVOCC. Other types of services appear to be permitted, but only if a foreign firm enters a joint venture with a Chinese entity. The Commission is seeking to establish a clear record of what types of services U.S. NVOCCs or forwarders are permitted to perform in China, what activities are prohibited, and what requirements or prerequisites are imposed. We note that Chinese forwarders and NVOCCs, in contrast, face no nationality-based restrictions doing business in this country.

Therefore, it would be useful for the Commission to receive comments describing, in detail, what types of transportation intermediary activities are permitted, what are prohibited, and in what instances are joint ventures or similar arrangements required. What conditions, requirements or restrictions are placed on ocean transportation intermediary activities (e.g., arranging inland or ocean transportation, preparing documentation and issuing bills of lading, consolidation, warehousing, cargo agency, logistics services, etc.)? What types of licenses are required, and what restrictions are placed on their issuance? Who issues the necessary licenses and permissions, and what are the legal standards and procedures for granting them? Also, what commercial partners are available in China for joint ventures, and under what commercial conditions?

Individual companies' accounts of their efforts, successful or otherwise, to establish operations in China, and their dealings with Chinese authorities, would be useful. Any supporting documentation would be welcomed.

The Commission also seeks to determine the effects on shippers of any such restrictions; that is, do restrictions on foreign transportation intermediaries have any adverse effects on shippers' ability to secure efficient and economical intermodal transportation services in U.S. oceanborne commerce?

2. Port Access and Licensing of Liner Services

The Commission has concerns about apparent Chinese restrictions on port access or the licensing of liner services. Despite the fact that the U.S.-China bilateral agreement authorizes vessel calls on 24 hours' notice for national flag vessels, it appears that MOC requires foreign carriers to obtain licenses or pre-approvals to offer liner services at Chinese ports. It appears that this licensing procedure can take up to 90 days or more. Details of the approval process are not apparent; it is unclear whether permissions are granted by service string, by port, by company or consortium, or by vessel. Moreover, it is not clear what the criteria are by which requests can be withheld or denied, and what, if any, appeal rights carriers enjoy.

By separate order, the Commission has requested more information on these matters from U.S. and Chinese shipping lines. However, the Commission would welcome comments from any other carrier, shipper, or other party that could shed light on these practices and their effects on U.S.-China oceanborne trade.

3. Carrier Branch Offices and Multimodal Transport Operations

U.S. carriers appear to face a number of restrictions in operating branch offices in China. Chinese authorities have denied carrier requests to increase the number of branch offices in China. The addition of branch offices for foreign carriers apparently has required direct government-to-government appeals and negotiations; such impediments certainly do not exist for Chinese lines. For the branch offices that do exist, it appears that there may be serious restrictions on their operations, both in terms of the geographic area they may serve and the scope of services they may offer. A number of these may be the same as, or similar to, the restrictions faced by NVOCCs and forwarders in China, as described above. Apparently, there are certain narrowly prescribed business areas in which U.S. carriers are allowed to operate; however, it is unclear just what those areas are.

We are particularly concerned about restrictions that may limit carriers' ability to offer multimodal transportation services. It is our understanding that new regulations over such services have been proposed, and carriers wishing to offer them are required, or may soon be required, to seek central government permission. The Commission requires more information on such restrictions on carriers' branch office or multimodal operations.

Chinese authorities have advocated a ''most-favored-nation'' approach to shipping regulation. Under such an approach, the subject country treats all foreign business concerns operating therein the same in terms of rights and restrictions. It would appear, however, that the most-favored-nation approach advocated by Chinese authorities bestows on Chinese shipping lines an extraordinary commercial advantage; they (unlike their competitors) can reap the benefits of the important and expanding Chinese market with a more extensive and unrestricted network of branch offices and multimodal operations, while taking advantage of the relative lack of restrictions on offices, marketing, and inland transport in the United States.[5]

[5] Indeed, it is no defense under section 19 and the FSPA to suggest that U.S. companies are treated no worse than other foreign firms. Under section 19,

Continued

The Commission would welcome comments from any carrier, shipper, or other party on the details or effects of these issues.

4. Vessel Agency Services

The Commission would also benefit from comments on the apparent Chinese restriction on foreign firms offering vessel agency services. It appears that China requires U.S. carriers to deal with PENAVICO (a subsidiary of COSCO) or China Marine Service (a subsidiary of China National Foreign Trade Transportation (Group) Corporation (''Sinotrans'')). The fact that ''[f]oreign shipping companies may select freely any shipping agencies for services, provided that these agencies are entitled to perform their services for foreign vessels,'' as the Chinese delegation remarked, appears to be of little consequence if only Chinese government-owned vessel agency services have such approval. Similarly, our concerns are not allayed by the Chinese assertions in bilateral maritime discussions that Chinese vessel agency companies are ''entirely independent from their parent companies,'' as Chinese carriers face no similar restrictions in the United States.

It would be beneficial to determine exactly what the legal bases are for the exclusion of U.S. carriers from this market in China; what specific services are at issue; what the commercial impact of the restrictions may be; and whether Chinese carriers perform such services for themselves in this country.

Now Therefore, it is Ordered, that this Notice of Inquiry be published in the **Federal Register**.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–22112 Filed 8–17–98; 8:45 am]

BILLING CODE 6730–01–P

the Commission is directed to address conditions unfavorable to shipping in the foreign trade; that all non-Chinese carriers in the trade are subject to the same unfavorable conditions would appear to augment rather than lessen the effect of those conditions. Under the FSPA, the Commission is specifically directed to compare the treatment of U.S. carriers in a foreign country to the treatment of that country's carriers in the U.S., not to the treatment of other foreign lines abroad.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will 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 September 11, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The George Family Partnership, Ltd., Bonifay, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Bonifay Holding Company, Bonifay, Florida, and thereby indirectly acquire The Bank of Bonifay, Bonifay, Florida.

2. South Alabama Bancorporation, Inc., Mobile, Alabama; to acquire 100 percent of the voting shares of Commercial National Bank of Demopolis, Demopolis, Alabama.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Sterling Bancshares, Inc., Houston, Texas, and Sterling Bancorporation, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Hometown Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Clear Lake National Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, August 13, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–22218 Filed 8–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, August 24, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 14, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–22344 Filed 8–14–98; 3:34 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FTC has forwarded the Information Collection Request (ICR) abstracted below, involving a survey of rent-to-own customers, to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

The FTC published a **Federal Register** notice soliciting comments from the public concerning the information collection requirements of the survey and providing the information required by 5 CFR 1320.5(a)(1)(iv). *See* 63 FR

25044 (May 6, 1998). Three organizations submitted comments that address concerns about the need for and the methodology of conducting the proposed survey. The Supporting Statement submitted to OMB discusses these comments in detail. The Supporting Statement and other documentation, including copies of the survey questionnaire, are available from the Bureau of Economics at the address provided below. This is another opportunity for the public to submit comments.

DATES: Comments on the proposed study must be submitted on or before September 17, 1998.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses: Edward Clarke, Senior Economist, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Further information, comments, and requests for the proposed collection of information (supporting statement and questionnaire) should be directed to James M. Lacko, Deputy Assistant Director, Division of Consumer Protection, Bureau of Economics, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3387. E-mail: JLacko@FTC.gov.

SUPPLEMENTARY INFORMATION: The FTC proposes to survey rent-to-own customers in order to evaluate their experiences with rent-to-own transactions. The FTC will use this information to gain an understanding of the rent-to-own industry and consumer experiences with the industry, to assess potential consumer protection problems in the industry, and to inform possible future FTC policy. The FTC will collect this information on a voluntary basis and the identities of respondents will remain confidential.

The FTC proposes to contract with a survey firm to identify 300 to 500 rent-to-own consumers and to obtain briefly information about their experience with the rent-to-own industry. A screening process will identify rent-to-own survey respondents from a preexisting random digit dialing survey. Given the low (roughly 2%) incidence rate of rent-to-own customers within the general population, the FTC estimates that approximately 20,000 people will be screened in order to obtain a sample of 300 to 500 customers.

The FTC will pretest the survey questionnaire on no more than 50 respondents to ensure that all questions are easily understood. The pretest will take approximately 10 minutes for each respondent, for a total of 8 hours. The final survey will involve 300–500 respondents, again for approximately 10 minutes each, for a total of 83 hours. Because a response from an individual will take no more than 10 minutes and will be voluntary, the cost burden per respondent will be negligible.

Pre-test questionnaire: Approximately 10 minutes × 50 people = 8 hours.

Screening: One initial question within a random survey of 20,000 people (other topics are also submitted from third party entities). Approximately 30 seconds × 20,000 people = 167 hours.

Questionnaire response: Approximately 300–500 consumers × 10 minutes = 83 hours.

Total burden hours: Approximately 260.

Cost to Respondents: Negligible.

Debra A. Valentine,

General Counsel.

[FR Doc. 98–22155 Filed 8–17–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–26]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c) (2) (A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice. Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Projects

1. Evaluation of The National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, Internet site—New—The proposed research is to assure that intended audiences find the information on the Internet site developed by the National Center for HIV, STD and TB Prevention (NCHSTP), Division of HIV/AIDS Prevention (DHAP) easy to access, clear, informative and useful. Specifically, the research will examine whether the information is presented in an appropriate technological format and whether it meets the needs of ''visitors'' to the Internet site. Information on the site focuses on HIV prevention, care, and epidemiology. The site is designed to serve the general public, persons at risk for HIV infection, persons with HIV/AIDS, and health professionals.

The information generated from this research will enable DHAP to provide information on this Internet site that meets the needs, wants and preferences of the target audiences identified above. Additionally, the center is committed to developing a standardized process for including such audience testing in subsequent materials development projects. The proposed process will contribute to the foundation for establishing a standardized process for such assessment. The cost of the respondent is $3,360

Respondents	Number Of respondents	Number Of responses Per respondent	Average burden per response (in hrs)	Total burden (in hrs)
Visitors to NCHSTP/DHAP Internet site	2400	10.1	240	

Respondents	Number Of respondents	Number Of responses Per respondent	Average burden per response (in hrs)	Total burden (in hrs)
Total				240

Dated: August 12, 1998.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–22128 Filed 8–17–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee: Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Breast and Cervical Cancer Early Detection and Control Advisory Committee.

Times and Dates: 9 a.m.–4:30 p.m., September 15, 1998.9 a.m.–12 noon, September 16, 1998.

Place: The Georgian Terrace Hotel, 659 Peachtree Street, Atlanta, Georgia 30308, telephone 770/394–5000.

Status: Open to the public, limited only by the space available.

Purpose: The Breast and Cervical Cancer Early Detection and Control Advisory Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director of CDC, regarding the early detection and control of breast and cervical cancer and to evaluate the Department's current breast and cervical cancer early detection and control activities.

Matters to be Discussed: The discussion will focus on case management issues in the National Breast and Cervical Cancer Early Detection Program.

Persons wishing to make oral presentations at the meeting should contact Ms. Rebecca Wolf, 770/488–3012, or Ms. Carlinda Nelson, 770/488–4237, by 4 p.m., September 1, 1998. Presentations will be limited to five minutes. Requests should contain the name of the presenter, and an outline of the presentation should be given to Ms. Nelson prior to the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Rebecca B. Wolf, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC 4770 Buford Highway, NE, M/S K–64, Atlanta, Georgia 30341–3724, telephone 770/488–3012.

Dated: August 12, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–22131 Filed 8–17–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.–4 p.m., September 9, 1998.

Place: The Washington Court, 525 New Jersey Avenue, NW, Washington, DC 20001–1527.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

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Purpose: The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs.Specifically, the Board shall provide guidance on theInstitute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH; National Occupational Research Agenda (NORA) Update; NORA Injury Team Activities Report; NIOSH Mining Research; Development of NIOSH Recommended Exposure Limits; Update on EIS and Other Fellowship Activities; Asphalt Initiative; and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dr. Bryan D. Hardin, Executive Secretary, NIOSH, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333. Telephone 404/639–3773, Fax 404/639–2170, e-mail bdh1@cdc.gov.

Dated: August 12, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–22130 Filed 8–17–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Low Income Home Energy Assistance Program (LIHEAP) Carryover and Reallotment Report.

OMB No.: 0970–0106.

Description: The LIHEAP statute and regulations require LIHEAP grantees to report certain information to HHS concerning funds forward and funds subject to reallotment. The 1994 reauthorization of the LIHEAP statute, the Human Service Amendments of 1994 (Public Law 103–252), requires that the carryover and reallotment report for one fiscal year be submitted to HHS by the grantee before the Allotment for the next fiscal year may be awarded.

Respondents: State, Local or Tribal Governments.

Instrument	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
C&R Rpt	177	1	3	531

Estimated Total Annual Burden: 531.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: August 12, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–22156 Filed 8–17–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Announcement of Office of Management and Budget (OMB) Control Numbers for Agency Information Collections Approved Under the Paperwork Reduction Act of 1995

AGENCY: Health Care Financing Administration, HHS.

This notice announces and displays OMB control numbers for Health Care Financing Administration (HCFA) information collections that have been approved by OMB.

Under OMB's regulations implementing the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501, each agency that proposes to collect information must submit its proposal for OMB review and approval in accordance with 5 CFR Part 1320. Once OMB has approved an agency's proposed collection of information and issues a control number, the agency must display the control number.

OMB regulations provide for alternative methods of displaying OMB control numbers. In the case of collections of information published in regulations, display is to be ''provided in a manner that is reasonably calculated to inform the public.'' To meet this requirement an agency may display such information in the **Federal Register** by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information.

To comply with this requirement HCFA has chosen to publish this notice announcing OMB approval of the collections of information published in regulations. As stated above, this notice announces and displays the assigned OMB control numbers for HCFA's information collections that have been approved by OMB.

42 CFR	OMB control Nos
403.210	0938–0640
405.262	0938–0267
405.374	0938–0270
405.427	0938–0155
405.465, 405.481	0938–0301
405.711	0938–0045
405.807	0938–0033
405.821	0938–0034
405.1701–.1726	0938–0273
405.2100–.2171	0938–0386
405.2110, 405.2112	0938–0657, & 0658
405.2133	0938–0046, 0447, & 0448
405.2135–.2171	0938–0360
406.7	0938–0251
406.13	0938–0080
406.15	0938–0501
406.28	0938–0025
407.10, 407.11	0938–0245
407.18	0938–0679
407.27	0938–0025
407.40	0938–0035
408.6	0938–0041
409.40–.50	0938–0357
410.1	0938–0679
410.32	0938–0685
410.33	0938–0721
410.36	0938–0357
410.38	0938–0534
410.40	0938–0042
410.71	0938–0685
410.170	0938–0357
411.4–.15	0938–0357
411.15	0938–0224
411.20–411.206	0938–0565
411.370–411.389	0938–0714
411.404, 411.406	0938–0465
411.408	0938–0566
412.20–.32	0938–0358
412.40–.62	0938–0359
412.44, 412.46	0938–0445
412.92	0938–0477
412.105	0938–0456
412.106	0938–0691
412.116	0938–0269
412.256	0938–0573
413.13	0938–0463
413.16	0938–0583
413.17	0938–0202, & 0685
413.20	0938–0202
413.20	0938–0236
413.20, 413.24	0938–0022, 0037, 0050, 0102, 0107, 0301, 0463, & 0511
413.56	0938–0463
413.64	0938–0269
413.157	0938–0463
413.170	0938–0296
413.198	0938–0236
414.40	0938–0008
414.330	0938–0372
416.43	0938–0506
416.47	0938–0266, & 0506
417.124	0938–0472
417.126	0938–0469, 0701, & 0732
417.143	0938–0470
417.162	0938–0469
417.408	0938–0470
417.436	0938–0610
417.470	0938–0701, & 0732
417.478	0938–0469
417.479, 417.500	0938–0700
417.801	0938–0610
418.1–418.405	0938–0313
418.22, 418.24, 418.28, 418.30, 418.56, 418.58, 418.70, 418.83, 418.96, 418.100.	0938–0302
420.200–.206	0938–0086
421.100	0938–0357
421.310, 421.312	0938–0723
422.370–422.378	0938–0722
422.430	0938–0390
424.5	0938–0534
424.20	0938–0454
424.22	0938–0357, & 0489
424.32	0938–0008
424.57	0938–0685, & 0717
424.73, 424.80	0938–0685
424.123	0938–0484
424.124	0938–0042
426.102–426.104	0938–0526
430.10	0938–0673
430.10–.20	0938–0193
430.12	0938–0610
430.20	0938–0610
430.30	0938–0101
431.1–431.865	0938–0062
431.17	0938–0467
431.110	0938–0390
431.107	0938–0610
431.306	0938–0502
431.630	0938–0445
431.800	0938–0094, & 0300
431.802–.822	0938–0246
431.814	0938–0146, & 0147
431.820	0938–0144
431.865	0938–0094, & 0246

42 CFR	OMB control Nos
433.68, 433.74	0938–0618
433.110–.131	0938–0487
433.110, 433.112–433.114, 433.116, 433.117, 433.119, 433.121, 433.122, 433.127, 433.130, 433.131.	0938–0247
433.138	0938–0502
433.139	0938–0502
434.27	0938–0572
434.28	0938–0610
434.44, 434.67, 434.70	0938–0700
435.1–435.1011	0938–0062
435.217, 435.726, 435.735	0938–0449
435.940–.965	0938–0467
440.1–.270	0938–0062
440.10	0938–0449
440.30	0938–0685
440.167	0938–0193
440.180	0938–0272
441.60	0938–0354
441.250–.300	0938–0481
441.300–.305	0938–0272
441.302	0938–0449
442.1–.119	0938–0062, & 0379
442.10–.119	0938–0355
447.31	0938–0287
447.53	0938–0429
447.253	0938–0523
447.272	0938–0618
447.280	0938–0624
447.500–.542	0938–0676
447.550	0938–0676
455.100–.106	0938–0086
456.650–.657	0938–0061, & 0282
456.654	0938–0445
456.700, 456.705, 456.709, 456.711, 456.712.	0938–0659
466.71, 466.73, 466.74, 466.78, 466.80, 466.94.	0938–0445
473.18, 473.34, 473.36, 473.42.	0938–0443
476.104, 476.105, 476.116, 476.134.	0938–0426
482.1–.66	0938–0380
482.2–.57	0938–0382
482.12, 482.22	0938–0328
482.27	0938–0328, & 0698
482.41	0938–0242
482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60–.62.	0938–0328, & 0378
482.66	0938–0328, & 0624
483.10	0938–0610
483.70	0938–0242
483.400–.480	0938–0062
483.470	0938–0242
484.1–.52	0938–0365
484.10	0938–0610
484.12	0938–0685
484.18	0938–0357
484.48	0938–0519
484.52	0938–0687
485.56, 485.58, 485.60, 485.64, 485.66.	0938–0267
485.701–.729	0938–0273, & 0065
485.709, 485.711, 485.717, 485.719, 485.721, 487.723, 485.725, 485.727, 485.729.	0938–0336
486.100–.110	0938–0338
486.150–.163	0938–0071, & 0258
486.155, 486.161, 486.163	0938–0336
486.301–.325	0938–0512, & 0688
488.1–.28	0938–0355
488.4	0938–0690
488.18	0938–0391, & 0667
488.26	0938–0379, & 0391
488.28	0938–0391
488.60	0938–0360
489.20	0938–0214, & 0667
489.21	0938–0357
489.24	0938–0667
489.27	0938–0692
489.40–.41	0938–0383
489.102	0938–0610
491.1–.11	0938–0074
491.9	0938–0334
493.1–2001	0938–0151, 0170, 0544, 0581, 0599, 0612, 0650, & 0653
493.501, 493.506, 493.513, 493.515.	0938–0686
493.1840	0938–0655
498.40–.95	0938–0486, & 0567
1003.100, 1003.101, 1003.103	0938–0700
1004.40, 1004.50, 1004.60, 1004.70.	0938–0444

45 CFR	OMB control Nos.
96.70 – .74	0938–0481
146.111, .115, .117	0938–0703
146.136	0938–0719
146.150, .152, .160, .180	0938–0703
148.120, .122, .124, .128	0938–0702

Dated: August 11, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–22125 Filed 8–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: August 31, 1998.

Time: 3:00 PM to 4:30 PM.

Agenda: Progress Review Groups on Breast Cancer and Prostate Cancer.

Place: National Institutes of Health, Building 31, Conference Room 8, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Susan J. Waldrop, Executive Secretary, National Institutes of Health, National Cancer Institute, Office of Science of Science Policy, Bethesda, MD 20892, 301/496–1458.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycles.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22140 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel OHSU Children's Cancer Group.

Date: August 17, 1998.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Deborah R Jaffe, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Bethesda, MD 20892, (301) 496–7221.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.393, Cancer Cause and Prevention Research; 93.392, Cancer Construction; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22141 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Clinical and Treatment Subcommittee.

Date: October 29–30, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Elsie Taylor, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, PHS, HHS, Bethesda, MD 20892–7003.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22132 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: August 23–24, 1998.

Time: 7:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Donatello, 501 Post Street, San Francisco, CA 94102.

Contact Person: Norman Chang, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Fedearl Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.939, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22137 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel From Egg To Embryo.

Date: August 16–17, 1998.

Time: 7:30 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Pasadena, 150 South Robles Avenue, Pasadena, CA 91101.

Contact Person: Scott F. Anders, Acting Director, Division of Scientific Review National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22138 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel NIDA's Science Meetings Logistical Support.

Date: August 13, 1998.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: Parklawn Bldg., 3rd Floor, Conference B, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, 10–42, Rockville, MD 20857, (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22142 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclousre of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: September 24–25, 1998.

Open: September 24, 1998, 9:00 a.m. to 4:00 p.m.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: September 24, 1998, 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: September 25, 1998, 9:00 a.m. to 12:00 p.m.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Donald A. Lindberg, Director, National Library of Medicine, National Institutes of Health, PHS, 8600 Rockeville Pike, Bethesda, MD 20894.

(Catalog of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22135 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: August 21, 1998.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharee Pepper, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 11, 1998.

Laverne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22136 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee.
Date: September 14–15, 1998.
Time: 8:30 a.m. to 1:00 p.m.
Agenda: Recent Experiments and Experiences in Streamlining the Peer Review Process.
Place: NIH, Rockledge II, Conference Room 9112, Bethesda, MD 20892.
Contact Person: Samuel Joseloff, PHD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7768, Bethesda, MD 20892, (301) 435–0691.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93,333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22139 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552(b)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.
Date: September 17, 1998.
Open: 8:30 a.m. to 11:30 a.m.
Agenda: Department of Rehabilitation Medicine—Oral Presentations.
Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: 12:15 p.m. to 5:00 p.m..
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.
Contact Person: Laura Cearnal, Special Assistant to the Deputy Director for Clinical Care, NIH Clinical Center, Office of the Director, Building 10, Room 2C146, Bethesda, MD 20892, 301/435–8454.

Dated: August 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22133 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.
Date: September 14, 1998.
Time: 9:00 a.m. to 12:00 p.m.
Agenda: Report of the Finance Working Group, Operational Reviews, Strategic Plan Discussion—Centralized vs. Decentralized Services, and Year 2000 Compliance.
Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.
Contact Person: Maggi Stakem, Office of the Director, National Institutes of Health, Warren Grant Magnuson Clinical Center, Building 10, Room 2C146, 9000 Rockville Pike, Bethesda, MD 20892, 301/496–4114.

Dated: August 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22134 Filed 8–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–30]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: September 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the

information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 11, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Lease Requirements, 24 CFR Part 966–4.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0006.

Description of the need for the information and its proposed use: Public Housing Agencies (PHAs) are being required to keep records for implementation of Federal regulations at 24 CFR 966.4 governing dwelling leases in public housing. The information is retained by the PHAs that manage public housing and is used for operating proposes.

Form Number: None.

Respondents: State, Local or Tribal Governments and Individuals or Households.

Frequency of Submission: One-Time Submission

Reporting Burden:

	Number of respondents		Frequency of response		Hours per response		Burden hours
Recordkeeping	3300	×	1	×	48	=	158,400

Total estimated burden hours: 158,400.

Status: Reinstatment with changes.

Contact: Pat Arnando, HUD, (202) 708–0744; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–22157 Filed 8–13–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4380–N–03; FR–4384–N–02]

Announcement of OMB Approval Numbers for the FY 1998 Notice of Funding Availability for the HUD Colonias Initiative (HCI) and the FY 1998 NOFA for Title VI Loan Guarantee Capacity Building Grants

AGENCY: Offices of the Assistant Secretary for Community Planning and Development and the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval numbers.

SUMMARY: The purpose of this notice is to announce the OMB approval numbers for the collections of information pertaining to: (1) the Fiscal Year 1998 Notice of Funding Availability (NOFA) for the HUD Colonias Initiative (HCI), which was published in the **Federal Register** on July 15, 1998, and subsequently amended on August 7, 1998; and (2) the Fiscal Year 1998 NOFA for Title VI Loan Guarantee Capacity-Building Grants, which was published in the **Federal Register** on July 23, 1998.

FOR FURTHER INFORMATION CONTACT: *For the HCI NOFA:* Yvette Aidara, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7184, Washington, DC 20410; telephone (202) 708–1322 (this is not a toll-free number).

For the Title VI NOFA: Karen Garner-Wing, Director, Office of Loan Guarantee, Department of Housing and Urban Development, 1999 Broadway—Suite 3390, Box 90, Denver, CO 80202–3390; telephone (303) 675–1600 (this is not a toll free number).

Persons with speech or hearing-impairments may access these telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collections pertaining to: (1) the Fiscal Year 1998 Notice of Funding Availability (NOFA) for the HUD Colonias Initiative (HCI), which was published in the **Federal Register** on July 15, 1998 (63 FR 38252), and subsequently amended on August 7, 1998 (63 FR 42550); and (2) the Fiscal Year 1998 NOFA for Title VI Loan Guarantee Capacity-Building Grants, which was published in the **Federal Register** on July 23, 1998 (63 FR 39685).

The OMB approval number for the HCI NOFA information collection is: 2506–0167, which expires on January 31, 1999.

The OMB approval number for the Title VI NOFA information collection is: 2577–0224, which expires on February 28, 1999.

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.

Dated: August 12, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–22094 Filed 8–17–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–030–1430–01]

Notice of Intent To Prepare a Land Use Plan Amendment, Notice of Exchange Proposal

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to prepare a land use plan amendment and Notice of exchange proposal.

SUMMARY: Notice of Intent to Prepare a Plan Amendment for the Pocatello Resource Management Plan (RMP), approved January, 1987, and Notice of Land Exchange Proposal.

Pursuant to the regulations found at 43 CFR part 1600, the Pocatello Field Office and Idaho Falls Field Office of the Bureau of Land Management propose to amend the Pocatello Resource Management Plan in order to consider a land exchange proposal involving lands in Caribou County and Fremont County, Idaho. Currently, the Pocatello RMP designates the public lands in Caribou County proposed for exchange as ''retention'' lands. The

amendment would change this designation from ''retention'' status to ''transfer'' status in order for BLM to consider the exchange proposal. The land exchange would be processed pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended, and the regulations found at 43 CFR 2200.

SUPPLEMENTARY INFORMATION: The plan amendment is needed to allow the BLM to consider a land exchange proposal submitted by Hartman Ranch LLC, Jerry R. Taft Family Limited Partnership, and John Taft Corporation. The proposal involves exchanging 1,040 acres of public land located in the vicinity of Buck Mountain in Caribou County for approximately 444.7 acres of privately-owned land located on the southwest shore of Henrys Lake in Fremont County. These lands are described as follows:

Offered Private Lands:

T. 15 N., R. 43 E., Boise Meridian
Portion of sections 18 & 19 (described by metes & bounds)

Selected Public Lands:

T. 9 S., R. 46 E., Boise Meridian
Sec. 3: SW¼NW¼, W½SW¼,
Sec. 4: S½,
Sec. 9: N½N½, SE¼NE¼, NE¼SE¼, S½SE¼,
Sec. 10: NW¼NW¼, NE¼SE¼, S½NE¼,
Sec. 22: E½NE¼, NE¼SE¼.

Subject to valid existing rights, the public land identified above has been segregated from appropriation under the public land laws and mineral laws for a period of five years beginning March 4, 1997.

The following resources will be considered in preparation of the land use plan amendment: lands, wildlife, recreation, wilderness, range, minerals, cultural resources, watershed/soils, threatened/endangered species, and hazardous materials. Staff specialists representing each resource will make up the planning team. Planning criteria to be considered will be the same as discussed in the original RMP document (page 39). Tentative planning issues include: (1) the proposed change in land ownership; (2) impacts on county tax revenues. The public is invited to submit other issues. This action is not expected to be controversial.

Comments regarding the proposed plan amendment and land exchange must be received within 45 days of publication of this notice in the **Federal Register**.

ADDRESSES: Written comments should be sent to Joe Kraayenbrink, Area Manager, Medicine Lodge Resource Area, 1405 Hollipark Drive, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Bruce Bash, Realty Specialist, at the above address or telephone (208) 524–7521.

No public meetings are scheduled. Current land use planning documents are available at the Idaho Falls Field Office. Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday except holidays.

Dated: August 4, 1998.

Joe Kraayenbrink,

Area Manager, Medicine Lodge Resource Area.

[FR Doc. 98–22167 Filed 8–17–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on a proposal to revise the previously approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that 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 Office of Management and Budget (OMB) control number.

DATES: Submit written comments by October 19, 1998.

ADDRESSES: Direct all written comments to the Rules Processing Team, Minerals Management Service, Mail Stop 4024, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the proposed collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: Form MMS–131, Performance Measures for OCS Operators.

OMB Control Number: 1010–0112.

Abstract: The Outer Continental Shelf Lands Act (OCSLA), at 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources on the Outer Continental Shelf (OCS); make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition.

In a collaborative effort with representatives of 17 oil and gas companies, representatives of five trade associations (American Petroleum Institute, Offshore Operators Committee, International Petroleum Association of America, International Association of Drilling Contractors, and National Ocean Industries Association), and the Coast Guard, we developed a set of performance measures intended to (1) determine if OCS safety and environmental performance is improving over time through the implementation of the Safety and Environmental Management Program (SEMP) on the OCS, (2) provide an industry average and range for various quantitative measures against which companies can compare themselves, (3) give us assurance that an operator's safety and environmental performance is improving, and (4) provide comparison data on which companies with good performance can base their requests for MMS approval of alternative approaches to compliance with its regulatory objectives. Like the implementation of SEMP, participation in the performance measures effort is voluntary.

However, the quality of the information that we garner from analysis of the data depends on the widespread support of this effort.

Based upon our experience this first year, and the comments and suggestions from respondents, we propose to revise Form MMS–131 to remove certain data elements that require OCS operators to perform calculations that we can easily do. The only proposed substantive revision is to revise the form to clarify that respondents report all permit violations under a National Pollutant Discharge Elimination System permit issued by the Environmental Protection Agency. This data element was previously, and erroneously, restricted to permit exceedences. Exceedences are a subcategory of non-compliances but information for both categories is obtained from the same source—the operator's monthly Discharge Monitoring Report.

The data elements on the revised form are:

(a) Separated by Production Operations; Drilling and Workover Operations (including Allied Services); and Construction Operations:

- Number of company employee recordable accidents,
- Number of contract employee recordable accidents,
- Number of company employee lost time accidents,
- Number of contract employee lost time accidents,
- Company employee hours worked,
- Contract employee hours worked,

(b) By totals:

- Number of Environmental Protection Agency (EPA) National Pollution Discharge Elimination System (NPDES) reported non-compliances,
- Oil spills <1 bbl by number and volume.

We use the information collected to work with industry representatives to identify ''pacesetter'' companies and ask them to make presentations at periodic best practice sharing workshops. We can better focus regulatory and research programs on areas where the performance measures indicate that operators are having difficulty meeting our expectations. We are more effective in leveraging resources by redirecting research efforts, promoting appropriate regulatory initiatives, and shifting inspection program emphasis. The performance measures also give us a verifiable gauge against which to judge the reasonableness of company requests for our approval of alternative approaches to comply with our regulatory objectives. They also provide a starting point for the dialog in the annual performance review meetings between company management and us.

Company management use the information to understand how the offshore operators are doing as a group and where their own company ranks. It provides information for them to know on what areas to focus their continuous improvement efforts. This should lead to more cost-effective prevention actions. Offshore operators and organizations use the information as a credible data source to demonstrate to those outside the industry how the industry and individual companies are performing.

If respondents submit confidential or proprietary information, we will protect such information in accordance with the Freedom of Information Act; 30 CFR 250.118, Data and information to be made available to the public; and 30 CFR Part 252, OCS Oil and Gas Information Program. No items of a sensitive nature are involved. The requirement to respond is voluntary.

Frequency: Annual basis in the first quarter of the calendar year.

Estimated Number and Description of Respondents: 100 Federal OCS oil and gas or sulphur lessees and operators.

Estimated Reporting and Recordkeeping ''Hour''Burden: 8–16 burden hours per response. The previous estimate was 28 hours per response; however, we expected this to decrease after respondents became more familiar with the performance measures. Several companies informally indicated that the burden was not significant for the first report and would be even less now that they are set up to report the information. In parenthesis are the estimates reported to us by two major companies (4 and 10 hours), two small companies (1 and 4 hours), and 1 very small operator (unsure but possibly several days) that we contacted.

Estimated Reporting and Recordkeeping ''Cost'' Burden: We have identified no cost burdens on respondents for providing this information.

Comments: We will summarize written responses to this notice and address them in our submission for OMB approval. All comments are public record. In calculating the burden, we may have assumed that respondents maintain much of the information collected in the normal course of their activities, and we considered that to be usual and customary business practice.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual cost burden to respondents as a direct result of this collection of information. The MMS needs your comments on this item. Your response should split the cost estimate into two components: (a) total capital and startup cost component; and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Do not include in your estimates equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: August 10, 1998.

William S. Cook,

Acting Chief, Engineering and Operations Division.

[FR Doc. 98–22163 Filed 8–17–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Draft Environmental Impact Statement, Gettysburg National Military Park, PA

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft Environmental Impact Statement and General Management Plan for Gettysburg National Military Park.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Gettysburg National Military Park, Pennsylvania.

DATES: The DEIS/GMP will remain available for public review through October 15, 1998. Public meetings will be held in Gettysburg, Pennsylvania during August, September or October, 1998. The exact dates and locations of the public meetings will be announced in press releases to regional newspapers.

ADDRESSES: Comments on the DEIS/GMP should be sent to the Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania, 17325. Public reading copies of the DEIS/GMP will be

available for review at the following locations:

- Office of the Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. (717) 334–1124 ext. 1452.
- Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, DC 20240. (202) 208–6843.
- Chesapeake Systems Office, National Park Service, Park Planning, Natural Resources and Special Projects Office, U.S. Customs House, 200 Chestnut Street, Philadelphia, PA 19106–2878. (215) 597–1669.

SUPPLEMENTARY INFORMATION: The DEIS/GMP describes four alternatives for the management of Gettysburg National Military Park, the environment that would be affected by the management prescriptions, and the environmental consequences of implementing those actions. Alternative A continues the existing management direction of the park. Alternative B proposes rehabilitation of large-scale landscape patterns on the 1863 battlefield and in the Soldiers' National Cemetery, the development of a new visitor center, enhanced interpretation and resource management. Alternative C, the proposed plan, proposes the rehabilitation of features significant to the Battle of Gettysburg and to the Soldiers' National Cemetery, a new visitor center, enhanced and expanded interpretation, and enhanced resource management. Alternative D proposes restoration of the 1863 battlefield, the Soldiers' National Cemetery and the commemorative areas of the park, a new visitor center, interpretation using the historic tablets, markers and monuments of the park and enhanced resource management.

The DESI/GMP evaluates the environmental consequences of the proposed action and the other alternatives on: the historic landscapes of the park; collections and archives; buildings and structures; threatened, endangered and sensitive species; other species; socioeconomics; traffic, parking and transit; and park operations.

All review comments received on the DEIS will become part of the public record.

FOR FURTHER INFORMATION CONTACT: Superintendent, Gettysburg NMP, at the above address and telephone number.

Dated: August 10, 1998.

John A. Latschar,

Superintendent, Gettysburg NMP.

[FR Doc. 98–22120 Filed 8–17–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Approval of Record of Decision Final Environmental Impact Statement for the Santa Rosa Island Resources Management Plan for Improving Water Quality and Conserving Rare Species and Their Habitats, Channel Islands National Park, Santa Barbara County, California

Introduction: Pursuant to the National Environmental Policy Act of 1969, Public Law 91–190, and the regulations promulgated by the Council of Environmental Quality at 40 CFR Part 1500, the Department of Interior, National Park Service (NPS) has prepared and approved a Record of Decision (Decision) on the abbreviated Final Environmental Impact Statement for the Resources Management Plan for Improvement of Water Quality and Conservation of Rare Species and Their Habitats on Santa Rosa Island (Final EIS/RMP). This Notice of the Decision is a summary statement of the nature of public comment during the ''no-action'' period, what alternatives were considered, and what alternative was selected. The complete Decision may be obtained from the Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001.

Decision: The NPS will implement the actions described as the Proposed Action, Alternative F, in the Final EIS/RMP issued in May, 1998. The Draft EIS/RMP was issued in February, 1998. The actions selected to be implemented are summarized as follows.

Selected Action: Alternative F, Negotiated Settlement, was selected to improve water quality and riparian habitat, and to conserve rare plants and their habitats. There will be rapid removal of cattle by the end of 1998 (except for 12 head in Lobo Pasture). There will be phased removal of elk and deer by the end of 2011 (although removal may be earlier if necessary to achieve selected recovery goals; and after initial reductions an adaptive management program may be implemented). Other actions to be implemented include road management to reduce impacts to streams, and development of a comprehensive alien plant management plan to reduce impacts on native plants. Monitoring programs for rare species, water quality, and riparian recovery will be developed by the park. Visitor access to Santa Rosa Island will be increased beyond current levels.

Alternatives Considered: Five alternatives to the selected action were considered and evaluated in the Draft and Final EIS/RMP. These were: Alternative A (No Action), Alternative B (Minimal Action), Alternative C (Targeted Action), Alternative D (Revised Conservation Strategy), and Alternative E (Immediate Removal of Ungulates). These are summarized in the Decision and analyzed in detail in the Final EIS/RMP.

Basis for Decision and Finding: In choosing an action from those identified and analyzed in the Final EIS/RMP, the NPS sought to select an alternative that would: meet the goals and objectives of the plan; comply with applicable laws, regulations and policies regarding management of grazing, water quality and rare species; and minimally impinge upon park operations necessary to fulfill stewardship obligations while protecting core interests of the negotiating parties. The detailed rationale for selecting Alternative F is set forth in the Decision.

Public Comments: During the public comment period for the Draft EIS/RMP, the park received 9 comments. The substantive responses focused on: (1) adequacy of adaptive management for protecting and restoring plants and habitat; (2) management use of fire; (3) conflicts between deer and elk management activities and visitor use; and (4) entry by visitors into buildings and areas traditionally used by Vail and Vickers. All comments were carefully considered and aided in preparation of the Final EIS/RMP.

In contrast, no comments were received during the 30-day ''no action'' period for the Final EIS/RMP.

Conclusion: The above briefly summarizes factors considered in selecting Alternative F, Negotiated Settlement, for implementation. The actions contained in this alternative will be incorporated into a new Special Use Permit for the hunting operation. This new permit will become effective, and actions encompassed under Alternative F will be implemented, as soon as possible. As noted above, copies of the approved Decision may be obtained from the Superintendent, Channel Islands National Park, address as noted above or via telephone at (805) 658–5776.

Dated: August 3, 1998.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 98–22123 Filed 8–17–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Hampton National Historic Site, Intent To Publish an Environmental Impact Statement for a General Management Plan

AGENCY: National Park Service; Interior.

ACTION: Notice of intent to publish environmental impact statement.

SUMMARY: This notice announces the intent to prepare an environmental impact statement in association with a new general management plan for the park. A public meeting to scope potential issues associated with the park will be held September 15 at 7:00 p.m. at Towson United Methodist Church, 501 Towson Lane, Towson, MD.

FOR FURTHER INFORMATION CONTACT: Superintendent, Hampton National Historic Site, 535 Hampton Lane, Towson, Maryland 21286, (410) 962–0688.

Dated: March 10, 1998.

Deirdre Gibson,

Program Manager, Park Planning Philadelphia System Support Office.

[FR Doc. 98–22122 Filed 8–17–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 8, 1998. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 2, 1998.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Nevada County

McKenzie, Henry, House, 324 E. Main, Prescott, 98001128

Scott County

Forrester, C.E., House, 140 Danville Rd., Waldron, 98001127

COLORADO

Arapahoe County

Maitland Estate, 9 Sunset Dr., Cherry Hills Village, 98001130

Weld County

Windsor Milling and Elevator Co. Building, 301 Main St.,

Windsor, 98001129

FLORIDA

Volusia County

Seabreeze Historic District (Daytona Beach MPS), Roughly bounded by University Blvd., Halifax R., Auditorium Blvd., and N. Atlantic Ave., Daytona Beach, 98001131

ILLINOIS

Cook County

Trustees System Service Building, 201 N. Wells St., Chicago, 98001132

KENTUCKY

Fayette County

Lexington National Cemetery (Civil War Era National Cemeteries MPS), 833 W. Main St., Lexington, 98001135

Jefferson County

Cave Hill National Cemetery (Civil War Era National Cemeteries MPS), 701 Baxter Ave., Louisville, 98001133

Jessamine County

Camp Nelson National Cemetery (Civil War Era National Cemeteries MPS), 6890 Danville Rd., Nicholasville, 98001134

MISSISSIPPI

Harrison County

Biloxi Downtown Historic District, Roughly along Howard Ave., from Reynoir St. to Lameuse St., Biloxi, 98001139

Hinds County

Belhaven Heights Historic District (Boundary Increase), Roughly bounded by Fortification, North, Monroe, and Spengler Sts., Jackson, 98001141

Marion County

Downtown Columbia Historic District (Boundary Increase), 704 and 706 Honey Alley, Columbia, 98001140

MISSOURI

Callaway County

Robnett—Payne House, 601 W. Sixth St., Fulton, 98001136

St. Louis County

Maryland Terrace Historic District, 7001–7419 Maryland Ave., and 7001–7394 Westmoreland Dr., University City, 98001137

NEW HAMPSHIRE

Coos County

Martin Homestead, US 1, 3 mi. N of North Stratford, North Stratford, 98001145

NEW YORK

Cayuga County

Erie Canal Lock 52 Complex, Maiden Ln., Port Byron, 98001146

NORTH CAROLINA

Chatham County

London, Henry Adolphus, House, 440 W. Salisbury St., Pittsboro, 98001143
Moore, Robert Joseph, House, NC 1713, jct. with NC 1711, Bynum, 98001142
Snipes—Fox House, 306 S. Dogwood Ave., Siler City, 98001144

OKLAHOMA

Cotton County

Walters Rock Island Depot, 220 W. Nevada, Walters, 98001147

Tulsa County

Sand Springs Power Plant, 221 S. Main St., Sand Springs, 98001148

VERMONT

Bennington County

Carrigan Lane Historic District, Roughly along Carrigan Ln., from Division St. to Safford St., Bennington, 98001152

Orleans County

Derby House Hotel, Jct. of VT 105 (Main St.) and West St., Derby, 98001150
Jenne, L.P., Block, ct. of VT 105 (Main St.) and West St., Derby, 98001151

Windsor County

Hartford Village Historic District, Roughly along Hartford Main, Summer and Christian Sts., Hartford, 98001153
Marsh, Joseph and Daniel, House, 64 Dewey's Mill Rd., Hartford, 98001149

A MOVE has been requested for the following resource:

NORTH CAROLINA

Forsyth County

Kernersville Depot (Kernersville MPS), 121 Railroad St. Kernersville, 88000133

[FR Doc. 98–22152 Filed 8–17–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Publication of Final Procedures and Guidance for the Siting of Telecommunication Antenna Sites in Units of the National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service (NPS) announces finalization and publication of the guidance and procedures document dealing specifically with the siting of Telecommunication Antenna Sites in units of the NPS. This information was

developed to provide guidance and procedures to all units of the National Park System who deal with requests for establishing Telecommunication Antenna sites in compliance with section 704(c) of the Telecommunications Act of 1996, Pub. L. 104–104. This document will appear as and may be found in Exhibit 6 of Appendix 8 of NPS–53, the NPS Guideline on Special Park Uses which master document is already approved finalized and published.

ADDRESSES: Copies of the guidance document will be made available upon request by writing to National Park Service, Ranger Activities Division, 184 C St. NW, Suite 7408, Washington, DC 20240, or by calling 202–208–4874. The guidance document is also avail-able electronically as a downloadable file at the following web site: //www.nps.gov/refdesk/Dorders/index.htm

FOR FURTHER INFORMATION CONTACT: Dick Young at 757–898–7846, or 757–898–3400, ext. 51.

On Monday, March 2, 1998, the NPS published a notice in the **Federal Register** (63 FR 10243) requesting public comments on the proposed guidance and procedures document for the siting of Telecommunication Antenna Sites in all units of the NPS. The NPS received 10 responses to that notice. Those comments of significance, and the responses to those comments are as follows.

Comment: The NPS should interpret its statutory authorities to recognize that Wireless Telecommunication Facilities (WTF) presumptively can be sited in parks without impermissibly derogating park values and purposes.

Response: Siting of WTF on NPS land may be permissible under the NPS Organic Act, provided that, as specified in the Telecommunications Act, the use is not in direct conflict with the mission of the NPS. The NPS recognizes that a WTF may be sited on NPS land without impermissibly derogating park values and purposes, but declines to establish a presumption to this effect. The NPS does not believe the Telecommunications Act of 1996 establishes such a presumption, or requires the NPS to interpret the term ''derogation'' in the NPS organic act in a more careful and limiting manner. The Telecommunications Act requires the establishment of procedures by which the NPS and other federal agencies may make federal lands available for WTF sites on a fair, reasonable, and nondiscriminatory basis, and states that these procedures ''may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agencies' mission, or the current or planned use of the property, rights-of-way, and easements in question.'' The procedures developed by GSA do not establish this presumption, but rather establish several guiding principles for federal agencies to follow.

Comment: The NPS guidelines should explain more clearly how siting of WTF near existing commercial and maintenance facilities in parks can be excluded categorically from NEPA.

Response: The NPS has provided additional guidance concerning applications for right-of-way permits (including those for WTF sites) and the NEPA process in NPS–53. The NPS disagrees that any of the categorical exclusions in the current NPS NEPA Guidelines (revised June 1998) will apply to all or most proposed WTF sites near existing commercial and maintenance facilities. Each proposal for a WTF site must be analyzed individually to determine whether a categorical exclusion applies. If a categorical exclusion potentially applies, the action must be analyzed further to determine whether an exception to the categorical exclusion applies. Placement of a WTF site near commercial or maintenance facilities does not automatically mean that there will be no visual intrusion or impacts on historic or cultural resources generated from the height of the antenna structures. Moreover, modifications, which may need to be made to accommodate the proposed WTF site, such as additional access or construction, could generate additional disturbance and additional impacts.

Comment: The Comprehensive Assessment should be prepared immediately or be integrated in the Environmental Assessment (EA) prepared on a WTF site permit application, and not be a decisional document.

Response: The NPS agrees that the Comprehensive Assessment should not be a decisional document. It is intended to be a purely optional, information gathering process, for the information and possible use of the park manager. Finally, there is not now nor was there ever a requirement that such a review be completed before an application is considered.

Comment: The guideline should further specify time frames for the right-of-way application acceptance process.

Response: The NPS did not originally have a specified deadline for determining when an application was complete, and feels that the 10 days (first submittal) and 10 days (resubmittal of information for determination of a complete application) recommended by the commenter is appropriate.

Comment: Where a WTF right-of-way permit application is eligible for a categorical exclusion from NEPA the final rule should specify that the entire permit process ought to take no longer than an additional 60 days after the initial determination. The final rule also should create a strong presumption that, for all other WTF right-of-way applications, the entire permitting process should not exceed one year from application submission.

Response: The NPS does not feel it is necessary to set forth time frames for the entire permitting process. Neither the Telecommunications Act nor the implementing GSA procedures speak to the entire permitting process, only to the decision whether to allow a WTF site on federal land. Preliminary decisions on the acceptability of proposed sites should be rendered as soon as possible but no later than 60 days after receipt of an application.

Comment: The guidelines should require expedited review of a WTF permit application where serious public safety concerns are present.

Response: The lack of cellular telecommunications equipment does not constitute a serious public safety concern that would cause us to expedite a review or otherwise give priority consideration to the application. The NPS feels that all applications should receive equal and expedited reviews and that each application presents it's own public safety concerns. In addition the NPS feels that the 60-day Initial Determination time period designated by GSA already constitutes an expedited processing of such applications.

Comment: The guidelines should adopt a presumption in favor of uniform fee schedules for determining fair market value for communication rights-of-way''.

Response: The NPS has historically dealt with determining land and/or facility use fees for utility rights-of-way on a park by park basis and sees no overriding reason to change that practice. We are, however, including reference to the USFS fee schedule for possible use by park managers as a tool to base a comparison on if not actual use.

Comment: Pending WTF permit applications should be grandfathered, regardless of whether they are deemed ''complete''.

Response: The NPS agrees that the final guidelines should not constitute a basis for the NPS to review previous

decisions regarding applications currently under review or received prior to the finalization of these guidelines. Applications that have been received will be judged under the rules and laws in effect at the time they were accepted, and resultant permits issued under the appropriate guidance. However, it is not the intent of these guidelines to create new application information and review requirements, but to provide guidance concerning existing requirements to NPS management for their consideration.

Comment: WTF permit applicants must have reasonable access to parks to prepare complete applications.

Response: The NPS agrees, but reserves the right to impose such conditions as may be needed to protect the resource.

Comment: Right-Of-Way application information requirements must limit requests for and protect proprietary information, especially involving ''propagation maps''.

Response: The NPS agrees that the NPS is obligated to keep confidential certain commercial information and other types of information, which may be provided by an applicant. Our guidelines will be modified to remind park Superintendents of the FOIA rules. In addition, the 15-mile radius will be clarified as a discretionary limit.

Comment: The proposed provisions for Right-Of-Way termination and suspension are unreasonable to the wireless telecommunications industry.

Response: The proposed provisions for termination and suspension of these right-of-way permits continue to be under consideration by the Department and will be addressed when final NPS right-of-way regulations are adopted in 36 CFR Part 14.

Comment: The guidelines should provide an opportunity to discuss and negotiate any problems with an applicant during the application review process.

Response: The NPS agrees that the applicant should have the opportunity to discuss those matters that apply to the application. This would actually be the second of four such possible meetings to be described in the procedures: one prior to application; one during the initial determination period, if needed; one immediately after the acceptance of an application; and the last prior to signing of the permit, again if needed.

Comment: NPS should not require reviews regarding electromagnetic radiation and related communications technology issues.

Response: The NPS is aware of the large volume of research and investigation in place concerning electromagnetic radiation hazard and wireless technology applications. We are also aware of the radiation exposure hazard standards set out by ANSI, and the more recent FCC proposed new standards for rf exposure. Considering all this, the NPS must err on the side of caution in concern for public health and safety by mandating technological review before a WTF site can be approved.

Comment: The transfer of a FCC license is not a basis for termination of the ROW permit.

Response: The permittee agrees, in the ROW permit conditions, that the permit is not transferable without the approval of the NPS. In point of fact, this is not an isolated condition and has occurred with some regularity in other utility rights-of-way as one-company merges or buys out another. The routine procedure is to either convert the existing or issue a new ROW permit to the new company depending on circumstances. We see no reason to treat WTF ROW permits differently.

Comment: The procedures do not clearly require adequate or consistent compliance with the National Environmental Policy Act and other relevant statutes.

Response: The NPS accepts the comment and has revised the procedures accordingly.

Comment: The procedures are silent on wilderness which could infer that all designated or proposed national park system wilderness lands are excluded from the scope of the procedures.

Response: The NPS accepts the comment and has revised the procedures to include a statement in the Guidance section reading: ''Except as specifically provided by law or policy, there will be no permanent road, structure or installation within any study, proposed, or designated wilderness area (see Wilderness Act, 16 U.S.C. 1131). The NPS will not issue any new right-of-way permits or widen or lengthen any existing rights-of-way in designated or proposed wilderness areas. This includes the installation of utilities.''

Comment: Can the NPS write their procedures to include language requiring permittees to allow co-location.

Response: The decision whether or not to allow co-location must pass the same tests as the decision to allow a first antenna. The permit that we issue will have a condition that, if technologically feasible, we will encourage co-location.

Dated: July 29, 1998.

Robert C. Marriott,

Acting Chief, Ranger Activities Division.

[FR Doc. 98–22121 Filed 8–17–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 25, 1998 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–373 and 731–TA–769–775 (Final) (Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan)—briefing and vote.
5. Outstanding action jackets:

1. Document No. EC–98–011: Response to letter concerning Inv. No. 332–325 (The Economic Effects of Significant U.S. Import Restraints)(Action Request 98–14).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: August 13, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–22301 Filed 8–14–98; 1:12 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 1, 1998, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, PO. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 19, 1998.

Dated: August 4, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–22099 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

G. Wayman Blakely, Jr., M.D.; Revocation of Registration

On January 8, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to G. Wayman Blakely, Jr., M.D.[1] notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AB7704871, pursuant to 21 U.S.C. 824(a)(4) and deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f), for reason that his continued registration would be inconsistent with the public interest. The order also notified Dr. Blakely that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received on January 14, 1998. No request for a hearing or any other reply was recceived by the DEA from Dr. Blakely or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing haveing been received, concludes that Dr. Blakely is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administator finds that on July 25, 1994, Los Angeles police officers observed Dr. Blakely participating in what appeared to be a drug transaction. During a subsequent stop of his vehicle, the officers observed crack cocaine. Dr. Blakely was arrested and charged with possession of a controlled substance in violation of California Health and Safety Code, section 11350(a). On August 26, 1994, the charge against Dr. Blakely was diverted and he was placed on probation for 24 months. On or about May 29, 1996, the case against Dr. Blakely was dismissed.

The Acting Deputy Administrator further finds that between May 21, 1990 and August 25, 1994, Dr. Blakely prescribed over 11,000 dosage units of controlled substances to his friend/roommate for no legitimate medical purpose. As a result, Dr. Blakely was charged in the Municipal Court for the County of Los Angeles with 10 counts of the unlawful prescribing of a controlled substance and 5 counts of obtaining a controlled substance by fraud. On May 30, 1995, Dr. Blakely pled *nolo contendere* to three misdeameanor counts. The imposition of sentence was suspended and Dr. Blakely was placed on probation for 36 months, ordered to perform 200 hours of community service within one year, and fined $10,000.

In addition, the Acting Deputy Administrator finds that by a Decision effective February 28, 1997, the Medical Board of California adopted a Stipulated Settlement and Disciplinary Order whereby Dr. Blakely's physician's and surgeon's certificate was revoked. However, the revocation was stayed and Dr. Blakely was placed on probation for seven years, during which time he is prohibited from handling Schedule II controlled substances, except he may prescribe dextroamphetamine and methylphenidate. As to all other controlled substances, Dr. Blakely is limited to prescribing only. He must maintain a log of his prescribing and must abstain from the personal use or possession of any controlled substance unless prescribed by another practitioner for a *bona fide* illness or condition. Additionally, Dr. Blakely must submit to biological fluid testing and must take continuing medical education courses including one in the proper prescribing of controlled substances.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration if he determines that the registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

[1] The Order to Show Cause was actually issued in the name of Waymon G. Blakely, M.D., however evidence before the Acting Deputy Administrator indicates that the name listed on the DEA Certificate of Registration at issue is G. Wayman Blakely, Jr., M.D. The Order to Show Cause was sent to the address listed in DEA's records for Dr. Blakely. Therefore, the Acting Deputy Administrator is confident that notwithstanding the incorrect name on the Order to Show Cause, Dr. Blakely received proper service of the Order to Show Cause.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive, the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied *See Henry J. Schwarz, Jr., M.D.,* 54 FR 16,422 (1989).

Regarding factor one, the Medical Board of California severely restricted Dr. Blakely's ability to handle controlled substances. Dr. Blakely's physician's and surgeon's certificate was revoked, but the revocation was stayed and he was placed on probation until February 2004.

As to factors two and four, Dr. Blakely issued over 400 controlled substance prescriptions for a total of more than 11,000 dosage units to his friend/roommate for no legitimate medical purpose in violation of state law and 21 U.S.C. 841(a)(1) and 21 CFR 1306.04.

Regarding factor three, Dr. Blakely was convicted in May 1995 of three misdemeanor counts involving the improper dispensing of controlled substances.

Finally under factor five, such other conduct which may threaten the public health and safety, the Acting Deputy Administrator considers Dr. Blakely's arrest for the unlawful possession of crack cocaine in 1994.

The Acting Deputy Administrator concludes that Dr. Blakely's continued registration would be inconsistent with the public interest. He diverted over 11,000 dosage units of controlled substances over a four-year period. In addition, he was arrested for possession of crack cocaine. Such conduct demonstrates a severe disregard for the tremendous responsibility that accompanies a DEA registration. Dr. Blakely did not respond to the Order to Show Cause and therefore did not offer any explanation or mitigating evidence regarding his misconduct.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AB7704871, previously issued to G. Wayman Blakely, Jr., M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective September 17, 1998.

Dated: August 11, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–22096 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–23]

Merritt Matthews, M.D.; Continuation of Registration With Restrictions

On February 22, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Merritt Matthews, M.D., (Respondent) of San Diego, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AM0006571, and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), for reason that pursuant to 21 U.S.C. 824(a)(4), his continued registration would be inconsistent with the public interest.

By letter dated March 15, 1996, Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in San Diego, California on January 15–16, 1997, and April 22–24, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On December 3, 1997, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's registration be continued subject to two conditions. On January 23, 1998, the Government filed Exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge, and on February 12, 1998, Respondent submitted a response to the Government's exceptions. On March 9, 1998, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issued his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the opinion of the Administrative Law Judge, and adopts, with one modification, the recommended ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent received his medical degree in 1965 from Howard University. In 1970 Respondent moved to San Diego, California and ultimately joined the Western Medical Group, a multi-specialty practice in a low income area of San Diego. In 1994, Respondent left the Western Medical Group and went to work for a large health maintenance organization (HMO). Respondent is board certified by the American Board of Family Physicians and is a member of the American Academy of Family Physicians. To maintain his certification, Respondent must complete an oral and a written examination every seven years, which covers at least four different areas concerning pharmaceuticals. According to Respondent, the examination process includes a peer review of his patient charts. Respondent was last recertified in 1995.

In 1991, the California Bureau of Narcotic Enforcement and the Bureau of MediCal Fraud initiated an investigation of Respondent after an inmate at a local detention facility indicated that anyone with $100.00 cash could get a controlled substance prescription for Valium or Doriden from Respondent for no legitimate medical reason. As a result of this information, undercover operatives went to Respondent's office to attempt to obtain controlled substance prescriptions for no legitimate medical purpose. Each of the undercover operatives wore a concealed transmitting device. The visits were monitored and recorded by agents located in Respondent's office parking lot.

The first undercover visit occurred on May 7, 1991. The transcript of the visit reveals that the undercover agent told Respondent that she ''was here to get a prescription,'' specifically asking for Valium, a Schedule IV controlled substance. Respondent told the undercover agent that he would give her ''some Valium this time, but no more. And don't come back here for no more Valium.'' The undercover agent indicated that she was not nervous and that nothing was wrong with her, but she needed something to ''help (her) out once and awhile.'' The undercover agent asked for 50 dosage units of Valium, yet Respondent nonetheless wrote her a

prescription for 100 dosage units. Respondent asked the agent a series of medical history questions, and performed a physical examination. Notations in the patient chart for the undercover agent indicate that the agent was there for a check up, and that there were to be ''no more refills.''

An expert, called as a witness by the Government, testified that he evaluated all of the undercover visits conducted during this investigation. In arriving at his conclusions, he reviewed the reports written by the undercover agents, the tape recordings and transcripts of the visits and the patient charts. It was his opinion that this Valium prescription was not issued for a legitimate medical purpose.

Respondent testified that he had diagnosed the undercover agent with anxiety neurosis, however this diagnosis was not noted in the patient chart. Respondent testified that he felt that he had enough information to make the diagnosis and to prescribe a one month supply of Valium. However, Respondent further testified that he told the undercover agent to see someone else because he did not think that he had good rapport with her.

A second undercover agent went to Respondent's office on June 24, 1991, claiming to be new to the area and indicating that she was looking for a doctor in San Diego. Respondent asked a series of medical history questions and performed a physical examination. The undercover agent asked for a refill of a Tylenol with codeine prescription stating that she ''had a doctor (in the Bay area) who, uh, I could get it from, uh, I don't take street drugs or anything like that. I'm in good health, uh, I just take it every once in awhile * * * just to kinda get met through.'' Respondent issued the undercover agent a prescription for 35 dosage units of Tylenol with codeine, a Schedule III controlled substance.

This undercover agent made another visit to Respondent's office on July 9, 1991, however she was refused a refill of the prescription because it had not been a month since her last visit. On August 5, 1991, the undercover agent did receive a prescription from Respondent for 45 Tylenol with codeine. The patient chart for this visit indicated that the agent suffered from menses pain and back pain. The transcript of the visit did not reflect any conversation between Respondent and the undercover agent regarding pain. However, the undercover agent did have a conversation with Respondent's nurse which was not transcribed verbatim. The expert concluded that both of these prescriptions were not issued for a legitimate medical purpose.

On September 27, 1991, a third undercover agent went to Respondent's office claiming to have a doctor in another city and requesting a refill on a Vicodin prescription. Respondent refused to issue this agent a prescription and inquired about any payment made by her to ensure that she had not paid for services he had not provided.

A fourth undercover agent went to Respondent's office on November 21, 1991, claiming to be looking for a new doctor since she was from Cleveland, Ohio. Respondent asked the agent a series of medical history questions and performed a physical examination. The undercover agent specifically asked for a prescription for Vicodin, a Schedule III controlled substance, which she used to get ''back home.'' Respondent informed the agent that MediCal would not cover Vicodin, but that Tylenol with codeine or aspirin with codeine would be covered. The undercover agent indicated that she wanted Tylenol with codeine and Respondent issued her a prescription for 30 dosage units. The expert witness indicated that it was his opinion that there was no legitimate medical reason for the issuance of this prescription.

Respondent testified at the hearing in this matter that he prescribed to this undercover agent based upon a continuity of care determination, and that he did not believe that she was a drug abuser. Physicians testified at the hearing that continuity of care means either a physician taking continuous care of a patient, or a physician continuing a new patient on the care provided by a prior physician. However, Respondent did not identify or contact the undercover agent's previous doctor. Respondent admitted at the hearing that his patient chart for this agent was incomplete since it did not reflect the prescription issued nor the results of the physical examination. Respondent testified that he did not know why he gave the agent a prescription for Tylenol with codeine since there was no indication of pain, however, it may have been for continuity of care and because he believed her.

On December 30, 1991, a fifth undercover agent went to Respondent's office claiming to have moved from Cleveland, Ohio and stating that his girlfriend wanted him to get a check up. Respondent asked the agent a series of medical history questions during which the agent told Respondent that he smoked ''marijuana, now and then, a little bit.'' Respondent testified that it was not uncommon in his practice for patients to admit to smoking marijuana. Respondent performed a physical examination and referred the agent to the laboratory for an electrocardiogram and chest x-ray. The agent asked for and received a prescription for Tylenol, however, he did not receive a prescription for any controlled substance. The undercover agent subsequently telephoned Respondent's office and attempted to obtain a prescription for Tylenol with codeine, but this request was refused.

A sixth undercover agent went to Respondent's office on March 19, 1992. The agent told Respondent that she was feeling tired because she was working and attending school full-time. Respondent asked the agent a series of medical history questions, and performed a physical examination noting that the agent's thyroid was large and the inside of her eyelids were pale. The undercover agent asked Respondent for some ''Prelude'' stating that she had been prescribed it by a doctor ''back east.'' The Respondent indicated that Preludin is a diet pill, but that one of its side effects ''is that it peps you up.'' After giving the agent extensive warnings regarding the addictive nature of the drug, Respondent issued her a prescription for 30 dosage units of Preludin, a Schedule II controlled substance. On March 20, 1992, the agent returned to Respondent's office and told him that Preludin had been discontinued. Respondent had her read excerpts from the *Physicians' Desk Reference* regarding diet pills. He then issued the agent a prescription for 30 dosage units of Desoxyn, a Schedule II controlled substance, with two refills. Thereafter, on March 23, 1992, the undercover agent telephoned Respondent and told him that the Desoxyn prescription was not on a triplicate form as required. Respondent informed the agent that he did not issue triplicate prescriptions. However, he would issue her a prescription for Ionamin, a Schedule IV controlled substance, which she picked up on March 24, 1992. The expert witness concluded that none of these prescriptions were issued for a legitimate medical purpose. In addition, he testified that the refills on the Desoxyn prescription were not proper since Schedule II prescriptions cannot be refilled.

Respondent testified that he saw no problem with his prescribing for this agent, as long as she took the medication as it had been prescribed. Respondent stated that he does not believe that amphetamines are physically addictive.

Finally, a seventh undercover agent went to Respondent's office on April 9,

1992. Ultimately the undercover agent received a prescription for Prelu-II, a Schedule III controlled substance. However, Judge Randall found that ''(t)he actual events of the undercover operation and the transactions between (the undercover agent) and the Respondent and his staff are unclear.'' At the hearing, it was discovered that part of the agency's visit to Respondent's office was not reflected in the tape recording nor the transcript of the visit. Judge Randall ruled that the tape recording was inadmissible due to the possibility of taint to the exhibit, since after the tape had been admitted into evidence, the Government removed if for analysis without her permission or notice to Respondent. In addition, Judge Randall found that the transcript was incomplete since it did not reflect the undercover agent's conversations while in the waiting room for approximately 30 minutes. The agent monitoring the undercover visit testified that she turned the tape recorder off while the undercover agent was in the waiting room.

The Acting Deputy Administrator agrees with Judge Randall's rulings and findings. It is important to know what if anything was discussed while the undercover agent was in the waiting room because there is a discrepancy between the transcript of the visit and the patient chart for the undercover agent. The transcript does not indicate that the undercover agent gave any medical need for the Prelu-II prescription, while the patient chart indicates that the agent stated that she wanted to ''lose weight—modeling.'' In addition, the Acting Deputy Administrator finds that even though the undercover agent testified at the hearing, no testimony was elicited as to what if any reason was given for wanting the prescription. Accordingly, the Acting Deputy Administrator agrees with Judge Randall that a determination cannot be made as to the legitimacy of the prescription issued to this undercover agent.

The United States Attorney's Office was provided with the results of the investigation of Respondent. A determination was made not to bring any charges against Respondent. In addition, no complaints have been filed against Respondent with the California Medical Board.

Two of Respondent's employees at the Western Medical Group testified at the hearing in this matter, indicating that there were a maximum of two employees assisting Respondent at any one time. One of the employees had worked for Respondent for 10 years in various positions performing both administrative and clinical functions. She would screen patients to determine whether they were drug seekers. She testified that if she thought an individual was only seeking drugs, she would either send him/her away or she would warn Respondent about her suspicions. The other employee had worked for Respondent for seven years as of the date of the hearing, first at the Western Medical Group and now at the HMO where Respondent is currently employed. This employee testified that while at the Western Medical Group, she was trained in how to handle drug seeking individuals.

A physician testified on behalf of Respondent who practiced in the same neighborhood as the Western Medical Group. He described his and Respondent's practice as in a community with very low incomes, high crime rates, a lack of physicians, and a serious drug abuse problem among the patient population. The physician testified that he had the opportunity to observe Respondent's prescribing practices since he and Respondent covered for each other in the care of patients. He stated that he had never seen Respondent improperly prescribe controlled substances.

A physician who was part of the Western Medical Group also testified on behalf of Respondent. He testified as to the problem of drug seeking patients in the practice. This physician served on the Board of Medical Quality, a committee that provides quality review of medical services in response to patient complaints. he testified that he would routinely cover Respondent's patients and therefore had the opportunity to review Respondent's patient charts. He stated that he had never seen any inappropriate prescribing or care by Respondent.

Respondent testified at the hearing in this matter regarding the nature of his practice with the Western Medical Group. The practice was located in a low income area. Some of the problems his patients faced were illiteracy, single parent status, domestic violence, and drug abuse.

Respondent testified that since 1994 he has been employed by an HMO. As an employee, he must adhere to the HMO's medical and administrative practices, which include specific requirements for patient charts. In addition, he now has more support staff, his patient load has decreased, and there are fewer walk-in patients than at Western Medical Group.

Pursuant to 21 U.S.C. 832(f) and 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. SEE *Henry J. Schwarz, Jr., M.D.*, 54 FR 16, 422 (1989).

As to factor one, it is undisputed that the California Medical Board (Board) has not only taken no action against Respondent's medical license, but no complaints have ever been filed against Respondent with the Board.

Factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws related to the handling of controlled substances, are relevant to the public interest determination in this proceeding. The Government asserts that the prescriptions issued by Respondent to the undercover agents were not issued for a legitimate medical purpose as required by 21 U.S.C. 829 and 21 CFR 1306.04(a). The Government's expert reviewed the reports, tapes, transcripts, and patient charts of each visit and determined that in his opinion, none of the prescriptions in question were issued for a legitimate medical purpose.

The Respondent asserts that if a finding is made that the prescriptions were not issued for a legitimate medical purpose, he should not be held responsible because he was entrapped by the undercover agents. Respondent does not cite to any Federal court cases or DEA administrative cases to support his position that an entrapment defense is available to him in his proceeding. Conversely, the Government argues that such a defense is not available to Respondent as a matter of law, since this is an administrative adjudication to determine the public interest and not a

punitive proceeding. In support of its position, the Government cites two analogous cases where Federal courts have held that the entrapment defense is not applicable to administrative proceedings. *See Yousef* v. *United States,* 647 F. Supp. 127, 131 (M.D. Fla. 1986; *Tyer* v. *United States,* 645 F. Supp. 1528, 1532 (N.D. Miss. 1986).

The Administrative Law Judge recommended that the Acting Deputy Administrator find that the entrapment defense is not applicable, as a matter of law, to DEA administrative proceedings. The Acting Deputy Administrator recognizes that DEA has allowed the entrapment defense to be raised in proceedings such as these in the past, but has ruled that the defense has failed on a factual basis. *See, e.g., Lowell O. Kirk, M.D.,* 58 FR 15,378 (1993). However, the Acting Deputy Administrator finds the Government's argument compelling. The entrapment defense is not appropriate in DEA administrative proceedings where the protection of the public health and safety is at issue.

In evaluating the circumstances surrounding the issuance of the prescriptions to the undercover agents, the Acting Deputy Administrator agrees with the Administrative Law Judge. The evidence is not as clear cut as the Government argues that all of the prescriptions were issued for no legitimate medical purpose.

As to the first undercover visit on May 7, 1991, Judge Randall found that ''a preponderance of the evidence does not support a conclusion that this prescription was issued without a legitimate medical purpose.'' In support of this conclusion, Judge Randall found it significant that Respondent told the undercover agent not to return, and indicated ''no more refills'' on the agent's chart. Respondent admitted at the hearing that the patient chart did not reflect his diagnosis of anxiety neurosis. However, Judge Randall found ''that the Respondent's testimony concerning his diagnosis and the basis of this diagnosis credible.'' Judge Randall concluded that while ''Respondent was lax in his recordkeeping practices, the preponderance of the evidence in this instance does not support a conclusion that the Respondent lacked a legitimate medical purpose in issuing this prescription in 1991.'' The Acting Deputy Administrator agrees with Judge Randall's conclusion that a finding cannot be made as to the legitimacy of this prescription. However, the Acting Deputy Administrator is troubled by Respondent's lax recordkeeping and by the fact that Respondent issued the undercover agent a prescription for 100 dosage units of Valium even though the agent only asked for 50 dosage units.

Regarding the two Tylenol with codeine prescriptions issued to the second undercover agent, Judge Randall agreed with the Government's expert witness that the first prescription issued on June 24, 1991, by Respondent was for no legitimate medical purpose. The undercover agent did not indicate that she was in any pain, there is no diagnosis in the patient chart for this visit, and Respondent did not testify about his diagnosis. The Acting Deputy Administrator concurs with the conclusion that this prescription was not issued for a legitimate medical purpose. The undercover agent was refused a prescription on his second visit, since it had not been a month since she had received the first prescription. However, on August 5, 1991, Respondent issued the agent another prescription for Tylenol with codeine. The patient chart indicates that the agent suffered from menses pain and back pain, but the transcript of the conversation between Respondent and the undercover agent does not reflect any discussion regarding pain. Judge Randall found that this lack of discussion between Respondent and the agent is not conclusive as to the issue of the legitimacy of the prescription because the conversation between the undercover agent and Respondent's nurse was not transcribed. In addition, the Government did not present the testimony of the undercover agent nor offer any other evidence to refute the chart entries. Consequently, the Acting Deputy Administrator agrees with Judge Randall's conclusion ''that a preponderance of the evidence does not support a finding that this second prescription for Tylenol with codeine to [the second undercover agent] was issued without a legitimate medical purpose.''

It is undisputed that Respondent refused to issue the third undercover agent a controlled substance prescription. But, on November 21, 1991, Respondent did issue the fourth undercover agent a prescription for Tylenol with codeine. Respondent testified that he did not know why he issued this prescription, because there is no notation in the chart that she had presented any pain symptoms. His only explanation was that he had issued the prescription as a part of her continuing care, since the agent had represented that she had received pain medication ''back home.'' Respondent testified that he believed the undercover agent needed the medication and did not believe that she was a drug abuser. However, there is no evidence in the record that Respondent made any attempt to locate the agent's previous physician to verify that the medication was needed or to independently verify the diagnosis of pain. Judge Randall found that Respondent's ''[f]ailure to take such precautions in handling controlled substances shows a serious disregard for the physician's prescribing practice responsibilities necessary in handling controlled substance prescriptions.''

The Government filed an exception to Judge Randall's conclusion regarding this prescription, because Judge Randall did not specifically find that this prescription was issued without a legitimate medical purpose. The Acting Deputy Administrator is unable to conclude that a preponderance of the evidence presented supports a finding that there was no legitimate medical purpose of this prescription. At the very least however, Respondent's issuance of this prescription indicates extremely lax prescribing practices.

It is undisputed that Respondent refused to issue the fifth undercover agent a controlled substance prescription. However, Respondent did issue the sixth undercover agent three controlled substance prescriptions in March 1992, after the agent requested diet pills to give her more energy. Respondent testified that he saw no problem with prescribing diet medication to help the agent stay more alert; that the agent would not have experienced any adverse effects if she had consumed the medication as prescribed; and that he did not believe that amphetamines were physically addictive. Judge Randall concluded and the Acting Deputy Administrator agrees, that these prescriptions were issued without a legitimate medical purpose. In addition, Respondent's authorization of a refill of the Desoxyn prescription was unlawful since Schedule II prescriptions cannot be refilled pursuant to 21 U.S.C. 829 and 21 CFR 1306.12.

The Government filed an exception to Judge Randall's conclusion regarding these prescriptions arguing that Judge Randall should have specifically found that Respondent falsified the prescription for Ionamin by noting on the prescription that it was to decrease appetite. The Acting Deputy Administrator is extremely troubled by the fact that Respondent made this notation on the prescription knowing that the medication was not going to be used for appetite suppression, and agrees with the Government's contention that this prescription contains false information.

As discussed above, the Acting Deputy Administrator agrees with Judge

Randall's conclusion that a determination cannot be made as to the legitimacy of the prescription issued to the seventh undercover agent.

The Acting Deputy Administrator concludes that Respondent issued four controlled substance prescriptions to the undercover agents for no legitimate medical purpose during the course of the investigation. In addition, at the very least, Respondent's issuance of the prescription to the fourth undercover agent raises serious concerns regarding Respondent's appreciation of the serious nature of controlled substances.

Regarding factor three, it is undisputed that Respondent has not been convicted of any offense related to the manufacture, distribution or dispensing of controlled substances. Further, it is undisputed that the United States Attorney's Office declined to prosecute Respondent following the investigation conducted in 1991 and 1992.

As to factor five, the Acting Deputy Administrator is deeply concerned about Respondent's apparent disregard for the tremendous responsibility that accompanies a DEA registration. His cavalier attitude regarding the addictive quality of amphetamines, as well as his failure to accept any responsibility for any dangers his practices may have created, raise concerns regarding his future prescribing of controlled substances and the risk created to the public health and safety.

The Acting Deputy Administrator concludes that the Government has presented a *prima facie* case and therefore, grounds exist for the revocation of Respondent's DEA Certificate of Registration. However, the Acting Deputy Administrator does not believe that the severe sanction of revocation is warranted in this case. Two physicians who have been in a position to observe Respondent's controlled substance prescribing practices both testified that they have never seen any inappropriate prescribing by Respondent. In addition, as a member of the American Academy of Family Physicians and the American Board of Family Physicians, Respondent's patient charts are periodically reviewed and he must pass an examination that includes four different areas regarding pharmaceuticals. Therefore, like Judge Randall, the Acting Deputy Administrator concludes that the four prescriptions issued for no legitimate medical purpose during the course of the investigation in 1991 and 1992 do not appear to be indicative of Respondent's overall practice.

Additionally, the Acting Deputy Administrator finds it significant that Respondent's practice at the time of the hearing is very different from his practice during the investigation in 1991 and 1992. As an employee of a managed health care organization, Respondent is now subject to routine peer review procedures; his charting and prescribing practices are monitored by his employer; his patient load has decreased; and his number of support staff has increased. As Judge Randall noted, ''common sense leads to the conclusion that the Respondent, now subject to standards established by an employer and conscious of the scrutiny afforded his medical decisions and resulting medical charts, will enhance his attention to detail in his prescribing practices.''

Judge Randall concluded ''that the totality of the circumstances justifies continuing the Respondent's Certificate of Registration with certain requirements.'' Accordingly, Judge Randall recommended that Respondent's registration be continued subject to the following conditions:

''1. Within six months of the effective date of the Deputy Administrator's final order the Respondent [shall] provide to the DEA San Diego Field Division evidence of his successful completion of at least 15 hours of training in the proper handling of controlled substances, to include coverage of the addictive characteristics of such substances.

2. For a period of three years from the effective date of the Deputy Administrator's final order, the Respondent (shall) provide the DEA San Diego Field Division, information of the Respondent's change of employment, if any, thirty days prior to the effective date of the actual change of employment. This requirement is especially necessary for the protection of the public interest should the Respondent choose to leave the HMO setting and return to private practice as a self-employed physician.''

The Acting Deputy Administrator agrees with Judge Randall that Respondent's registration should not be revoked at this time. Based upon the evidence presented, Respondent's inappropriate prescribing in 1991 and 1992 appears to be an aberration from his normal course of practice. Also, since the events in question, Respondent's employment situation has changed dramatically. While these facts lead the Acting Deputy Administrator to conclude that Respondent's registration should be continued, the Acting Deputy Administrator agrees with Judge Randall that some restrictions on Respondent's registration are necessary to protect the public interest. The Acting Deputy Administrator is extremely concerned by Respondent's failure to recognize the addictive nature of amphetamines and by his failure to ensure that controlled substances are only prescribed for a legitimate medical purpose.

The Government filed exceptions to Judge Randall's recommended ruling, arguing that ''if the Acting Deputy Administrator chooses not to revoke (Respondent's) registration * * * then at the very least Respondent's registration should be suspended until and unless he completes the 15 hours of training in the handling of controlled substances as recommended by (Judge Randall).'' The Government argues that suspending Respondent's registration is necessary ''(g)iven the seriousness of the violations and Respondent's total lack of candor in refusing to admit that his conduct violated the law * * *.'' Additionally, the Government argues that a suspension is appropriate because ''(u)nder (Judge Randall's) recommendation, if Respondent did not obtain the required training within 6 months or did not make any attempt to commence this training * * * he would still be registered(,)'' and ''DEA would have to issue another Order to Show Cause based upon Respondent's failure to comply with this condition.'' The Government asserts that with a suspension, the burden of completing the training would be on Respondent and ''the public health and safety would be protected because Respondent would be without a DEA registration unless and until he completed the controlled substance training.'' In support of its contention, the Government cites to *Margaret E. Sarver, M.D.*, 61 FR 57,896 (1996), where DEA previously suspended a DEA registration for at least 120 days or until the registrant demonstrated that she had completed 24 hours of training in pharmacology.

The Acting Deputy Administrator finds that the circumstances of this case are markedly different from those in *Sarver*. In that case there was significantly more evidence than here of a pattern of mishandling of controlled substances. Most notably, Dr. Sarver continued to prescribe a highly abused combination of drugs even after having been warned of the danger and abuse potential of the drugs. The Acting Deputy Administrator does not believe that Respondent's conduct warrants a suspension of his registration.

The Acting Deputy Administrator appreciates the Government's concern that should Respondent not comply with the training requirement, the Government will be forced to issue

another Order to Show Cause to revoke Respondent's registration. In its response to the Government's exceptions, Respondent indicates that ''although disagreeing with portions of the (Administrative Law Judge's) opinion (R)espondent believes that in totality it is an appropriate ruling. Respondent has accepted the ruling and has already completed four hours training in the proper handing (sic) of controlled substances.'' Respondent argues that there were no complaints regarding his prescribing practices before the undercover visits and there has been no complaints since the investigation approximately six years ago. The Acting Deputy Administrator concludes that the public interest would not be served by suspending Respondent's registration. However, the Acting Deputy Administrator hereby orders that should Respondent fail to comply with the training requirement imposed on his registration, all involved in the administrative process to potentially revoke Respondent's registration should act as expeditiously as possible.

In addition, the Government takes exception to Judge Randall's recommended requirement that Respondent merely has to notify DEA of any change in his employment from the HMO. Judge Randall found the oversight offered by the HMO to be significant in recommending that Respondent's registration be continued and she therefore recommended that Respondent be required to notify DEA of any change in employment. The Government makes a compelling argument that ''if no additional sanctions are imposed and Respondent leaves the HMO, gives DEA the required notification and enters into private practice without participating in an HMO, any putative advantages in Respondent's prior participation in an HMO are dissipated. Yet DEA is left with no recourse because Respondent has not violated any conditions.'' Consequently, the Government suggested that Respondent be required to keep a log of his controlled substance handling and to make the log available for inspection. The Acting Deputy Administrator agrees with the Government that mere notification of a change in employment is not enough to monitor Respondent's prescribing practices.

Therefore, the Acting Deputy Administrator finds that Respondent's DEA Certificate of Registration should be continued subject to the following conditions:

(1) Within six months of the effective date of this final order, Respondent shall provide to the Special Agent in charge of the DEA San Diego Field Division, or his designee, evidence of his successful completion of at least 15 hours of training in the proper handling of controlled substances, to include coverage of the addictive characteristics of such substances.

(2) For a period of three years from the effective date of this final order, Respondent shall notify in writing the Special Agent in Charge of the DEA San Diego Field Division, or his designee, of any change in employment. This notification shall be provided at least thirty days prior to the effective date of the actual change of employment.

(3) For three years from the effective date of this final order, Respondent shall maintain a log of all controlled substances that he prescribes. At a minimum, the log shall include the name of the patient, the date that the controlled substance was prescribed, and the name, dosage and quantity of the controlled substance prescribed. Upon the request of the Special Agent in Charge of the DEA San Diego Field Division, or his designee, Respondent shall submit or otherwise make his prescription log available for inspection.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AM0006571, issued to Merritt Matthews, M.D., be continued, and any pending applications for renewal be granted, subject to the above described restrictions. This order is effective September 17, 1998.

Dated: August 11, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–22098 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 13, 1998, and published in the **Federal Register** on March 27, 1998, (63 FR 14975), North Pacific Trading Company, 815 NE Davis Street, Portland, Oregon 97202, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I.

This application is for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of North Pacific Trading Company to import marihuana is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 7, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–22095 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–5]

Michael J. Septer, D.O.; Revocation of Registration

On October 8, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael J. Septer, D.O. (Respondent) of Grand Rapids, Michigan notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS0321430, and deny any pending applications for the renewal of such registration pursuant to 21 U.S.C. 823(f) and 824, for reason that he is not currently authorized to handle controlled substances in the State of Michigan.

By letter dated November 3, 1997, Respondent filed a request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 12, 1997, the Government filed a Motion for Summary Disposition, alleging effective August 18, 1997, the Board of Osteopathic Medicine and Surgery for the State of Michigan (Michigan Board) suspended Respondent's license to practice osteopathic medicine and surgery in Michigan for at least six months and one day. The Government

argued that Respondent is therefore not authorized to handle controlled substances in that state.

Respondent submitted a response dated December 15, 1997, to the Government's motion arguing that the Board suspended his license in Michigan as a ''sister state action'' to the revocation of his Arizona license, and that evidence would be presented at a hearing that would show that ''the Arizona Osteopathic Board of Medical Examiners acted with prejudicial error in there (sic) determination.'' Respondent further argued that both the Arizona Osteopathic Board of Medical Examiners and the Michigan Board engaged in ''prosecutorial indiscretion'' and ''misfeasance.'' However, Respondent did not deny that he was not currently authorized to handle controlled substances in Michigan.

On January 23, 1998, Judge Bittner issued a Memorandum to Parties and Order noting that Respondent did not indicate in his response to the Government's motion ''whether he is pursuing reinstatement of his Michigan license upon conclusion of the minimum six month and one day suspension period.'' Therefore, Judge Bittner gave Respondent until March 12, 1998 to submit documentation that his Michigan license has been reinstated. Judge Bittner warned that, (i)f Respondent fails to timely submit such documentation, I shall grant the Motion for Summary Disposition.'' Respondent did not submit any documentation nor did he indicate that he intends to do so in the future.

On March 24, 1998, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to practice medicine in the State of Michigan, and therefore handle controlled substances; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on April 28, 1998, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrator Law Judge.

The Acting Deputy Administrator finds that by a Superseding Final Order dated July 18, 1997, the Michigan Board suspended Respondent's license to practice osteopathic medicine and surgery effective August 18, 1997, for six month and one day. The Michigan Board further ordered that reinstatement of Respondent's license would not be automatic at the conclusion of the suspension period. Respondent did not deny that he was not currently authorized to handle controlled substances in the State of Michigan and he did not offer evidence that he has sought to have his Michigan license reinstated.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.,* 62 16,193 (1997), *Demetris A. Green,* M.D., 61 F.R. 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104(1993).

Here it is clear that Respondent is not licensed to practice osteopathic medicine in Michigan. Consequently, it is reasonable to infer that he is not authorized to handle controlled substances in Michigan, where he is registered with DEA. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent was unauthorized to handle controlled substances in Michigan. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence an cross-examination of witness is not obligatory. *See Phillip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *Internatioal Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.* 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby order that DEA Certificate of Registration BS0321430, previously issued to Michael J. Septer, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective September 17, 1998.

Dated: August 11, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–22097 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; New collection; 1998 National Study of DNA Laboratories.

The Department of Justice, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 16, 1998 allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 17, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Information Management and Security Staff, Justice Management Division, Attention: Department Clearance Officer, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and effected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Greg Steadman, Statistician, Bureau of Justice Statistics, 810 7th Street, NW., Washington, DC 20531, or via facsimile (202) 307–5846.

Overview of this information collection:

(1) Type of information collection: New collection.

(2) The title of the form/collection: 1998 National Study of DNA Laboratories.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number CLAB–1. Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State, Local or Tribal Government

Other: None.

This information collection is a census of public crime laboratories that perform DNA analysis. The information will provide statistics on laboratories' capacity to analyze DNA evidence, the number and sources of DNA evidence received per year, the number, types, and costs of analyses completed. It will also identify the capacities of states to participate in a national DNA database.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 160 respondents each taking an average 0.75 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 120 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 12, 1998.

Robert B. Briggs,

Department Clearance Officer,

United States Department of Justice.

[FR Doc. 98–22151 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1194]

RIN 1121–ZB30

Notice of Meeting of the Coalition of Juvenile Justice

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Coalition for Juvenile Justice.

DATES: This conference will begin at 8:00 a.m. on September 9, 1998, and end at 1:00 p.m. on September 13, 1998.

FOR FURTHER INFORMATION CONTACT: Freida Thomas, 202/307–5924, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Room 8142, Washington, DC 20531.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. app. I), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces the meeting of the Coalition for Juvenile Justice. This conference will begin at 8:00 a.m. on September 9, 1998, and end at 1:00 p.m. on September 13, 1998. This advisory committee, chartered as the Coalition for Juvenile Justice, will meet at the Sheraton World Resort, 10100 International Drive, Orlando, Florida 32821–8095. The purpose of this meeting is to discuss and adopt recommendations from members regarding the committee's responsibility to advise the OJJDP Administrator, the President and the Congress about State perspectives on the operation of the OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention.

This meeting will be open to the public.

Shay Bilchik,

Administrator Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 98–22186 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1191]

RIN 1121–ZB28

Announcement of the Availability of the National Institute of Justice Solicitation for Communicating Research Findings: Assessing the Communication Strategies and Products of the National Institute of Justice

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice solicitation ''Communicating Research Findings: Assessing the Communication Strategies and Products of the National Institute of Justice.''

DATES: Due date for receipt of proposals is close of business September 15, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is requesting proposals to assess/evaluate its overall communications and dissemination processes and products, especially as they relate to its primary mission to develop knowledge and technology that will improve and strengthen the criminal justice system. Areas of assessment should include, but not be limited to: (1) Topics/content—are they timely and relevant?; (2) formats—are they user-friendly?; (3) which of the current formats are most preferred?; (4) audience; and (5) is NIJ

reaching the right people/organizations with its dissemination efforts?

Proposals will be evaluated on the basis of: conceptual approach, methodological strategy, proposed timeline for the project, and organizational experience. NIJ anticipates funding one award under this solicitation for up to $250,000.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Communicating Research Findings: Assessing the Communication Strategies and Products of the National Institute of Justice (refer to document no. SL000299). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–22110 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1190]

RIN 1121–ZB27

Announcement of the Availability of the National Institute of Justice Solicitation for Evaluation of Vehicle Stopping Electromagnetic Prototype Devices: Phase III—Engineering Field Test

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice solicitation ''Evaluation of Vehicle Stopping Electromagnetic Prototype Devices: Phase III—Engineering Field Test.''

DATES: Due date for receipt of proposals is close of business September 21, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1-800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is calling for interested applicants to submit their prototype electromagnetic (EM) devices for submission to NIJ's vehicle stopping Phase III testing—engineering field testing. Under this solicitation NIJ will provide grant funds for the following purposes:

- Performance of reasonable development work to advance an applicant's EM device to the status of a field-testable prototype;
- Support for applicant technical personnel to attend field testing; and
- Shipment of the prototype device and associated ancillary support equipment to and from the Phase III test site.

Applicants must ensure that the EM device they propose for consideration satisfies NIJ's Phase III testing criteria for device type applicability, deployment capability, and physical and functional maturity.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Evaluation of Vehicle Stopping Electromagnetic Prototype Devices: Phase III—Engineering Field Test'' (refer to document no. SL000298). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–22111 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,773]

Chic by H.I.S. Hickman, Kentucky; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 20, 1998, in response to a petition by a company official filed on behalf of workers at Chic by H.I.S., Hickman, Kentucky.

A certification applicable to the petitioning group of workers, employed at Chic by H.I.S., Hickman, Kentucky was issued on July 20, 1998, and will be in effect until April 29, 2000 (TA–W–34,404E). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 3rd day of August, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–22212 Filed 8–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

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 Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 28, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 28, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of August, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 08/03/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,806	Donnkenny Apparel (Co.)	Rural Retreat, VA	07/21/98	Ladies' Sportswear.
34,807	Philomath Forest Products (Wkrs)	Philomath, OR	07/09/98	Dimension Lumber.
34,808	Koehler Manufacturing (Wkrs)	Marlboro, MA	07/15/98	Lighting and Charging Equipment.
34,809	Tema Enterprises (Wkrs)	Passaic, NJ	07/16/98	Ladies' Coats and Jackets.
34,810	JMA Resources (Wkrs)	Oklahoma City, OK	07/21/98	Oil and Gas.
34,811	General Electric Lighting (Wkrs)	Providence, RI	07/14/98	Incandescent, Fluorescent Lamp Bases.
34,812	Prema-Dona Swimwear (Co.)	Deer Park, NY	06/24/98	Ladies' Swimwear.
34,813	Susan Lazar, Inc (Wkrs)	New York, NY	07/14/98	Ladies' Sportswear.
34,814	North American Rayon (UFCW)	Elizabethton, TN	07/21/98	Rayon Fiber.
34,815	Magnolia Garment (Wkrs)	Bude, MS	08/17/98	Infant, Toddler and Children's Sleepwear.
34,816	Cone International (Wkrs)	Portland, OR	07/22/98	Industrial Lumber Items.
34,817	Hanging Limb Apparel (Wkrs)	Crawford, TN	07/17/98	Men's Shirts.
34,818	J.W. Gibson Well Service (Wkrs)	Williston, ND	07/20/98	Oil Well Services.
34,819	Harris Corporation (Co.)	MountainTop, PA	07/10/98	Semiconductors.
34,820	General Electric Co (Co.)	Fitchburg, MA	04/14/98	Steam Turbines.
34,821	Uniroyal Engineered Prod. (Wkrs)	Port Clinton, OH	07/21/98	Automotive Door and Instrument Panels.
34,822	Arnold Palmer Golf (Wkrs)	Ooltewah, TN	07/28/98	Golf Clubs.
34,823	Sakhina Fashions (Co.)	Murphy, NC	07/20/98	Denim Jeans.
34,824	ARC–USA (Wkrs)	Pauls Valley, OK	07/23/98	Keypads.
34,825	Modern Distributors (Wkrs)	Somerset, KY	07/28/98	Commisary.
34,826	Caro-Knit & C-Knit (Co.)	Jefferson, SC	07/23/98	Knit Fabric and Knit Shirts.
34,827	XEL Communications (Co.)	Aurora, CO	07/22/98	Printed Circuit Board Assemblies.
34,828	NRB Industries, Inc (Co.)	Beavertown, PA	07/24/98	Acetate/Rayon Fabrics.
34,829	Apparel America, Inc (UNITE)	New Haven, CT	07/23/98	Swimwear.
34,830	M. Fine and Son's (UFCW)	Lawrenceburg, TN	07/22/98	Flannel and Chamois Shirts.

[FR Doc. 98–22211 Filed 8–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

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 Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 28, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 28, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, 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 27th day of July, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 07/27/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,776	Gentex International (Wrks)	Brownsville, TX	07/15/98	Sew and Cut Fabrics.
34,777	Industrial Ceramics, Inc. (Wrks)	Lima, NY	07/03/98	Electrical Insulators, Transformers.
34,778	Syroco, Inc. (Wrks)	Siloam Springs, AR	07/07/98	Aluminum Patio Chairs and Cushions.
34,779	Phila. Beth & NE Railroad (UTU)	Bethlehem, PA	07/13/98	Railroad Transportation—Coke.
34,780	Brown—Minneapolis Tank (Wrks)	Eagan, MN	07/27/98	Steel In-Ground and Above Ground Tanks.
34,781	Armco, Inc. (USWA)	Mansfield, OH	07/18/98	Stainless Steel Coils.
34,782	Senea Valleys Garment Co. (Wrks)	Senea Valleys, PA	07/10/98	Ladies' Dresses and Skirts.
34,783	Huber Lace and Embroidery (Wrks)	West New York, NJ	07/06/98	Schiffli Embroidery.
34,784	Thorn Apple Valley (Wrks)	Detroit, MI	07/02/98	Fresh Pork.
34,785	Hubbell Premise Wiring (Wrks)	Marion, NC	07/08/98	Telecommunication Products.

APPENDIX—Continued

[Petitions Instituted on 07/27/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,786	NEPECO (Comp)	Bryon, WY	07/08/98	Crude Oil.
34,787	Del Monte Foods (IBT)	Toppenish, WA	07/09/98	Canned Asparagus Spears.
34,788	Jaclyn, Inc. (ILGPWU)	West New York, NJ	07/10/98	Ladies' Handbags & Sportswear.
34,789	Integrated Solutions, Inc. (Wrks)	Allentown, PA	07/09/98	Semiconductor Capital Equipment.
34,790	Aluminum Conductor Parts (USWA)	Vancouver, WA	07/06/98	Aluminum Conductor Cable and Wire.
34,791	M&J Clothing Sample (Comp)	El Paso, TX	07/07/98	Jeans, Shorts, Shirts & Jackets.
34,792	Brockway Standard, Inc. (Wrks)	St. Elizabeth, NJ	07/14/98	Paint Cans and Oil Cans.
34,793	Spray-Air USA/Alida Group (Wrks)	Grangeville, ID	07/16/98	Agricultural Air-Assisted Sprayers.
34,794	Perry Mfg. Co. (Wrks)	Mt. Airy, NC	07/17/98	Ladies' Sportswear.
34,795	National Textiles, L.L.C. (Comp)	Morganton, NC	07/16/98	Finishing Cloth for Apparel.
34,796	Cordis Corp. (Wrks)	Warren, NJ	07/14/98	Cardiac Shunts.
34,797	Dayco Swan (USWA)	Bucyrus, OH	07/07/98	Automotive Hose.
34,798	Energy Systems (Comp)	Warwick, RI	07/16/98	Medical Lasers and Accessories.
34,799	Dana Corp. (Comp)	Toledo, OH	07/13/98	Heavy, Medium Duty Transmissions.
34,800	Borg-Warner-Automotive (Comp)	Sterling Height, MI	07/14/98	Torque Converters.
34,801	Fleer Corp. (Wrks)	Mt. Laurel, NJ	07/09/98	Confectionery Products.
34,802	Fina Oil & Chemical Co. (Wrks)	Big Spring, TX	07/17/98	Buying and Selling Crude Oil.
34,803	United Technologies Auto (Wrks)	Bay City, MI	07/15/98	Interior Automotive Trim.
34,804	Capstar Drilling (Wrks)	Odessa, TX	07/09/98	Oil Drilling.
34,805	Kern Manufacturing (Wrks)	Flora, IL	07/09/98	Maternity Clothing.

[FR Doc. 98–22210 Filed 8–17–98; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,538 and TA–W–34–538U]

OXY USA, Incorporated, Logan, Kansas; Occidental Oil and Gas Corporation Headquartered in Bakersfield, California; 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 Certification of Eligibility to Apply for Worker Adjustment Assistance on July 8, 1998, applicable to all workers of OXY USA, Incorporated, Logan, Kansas. The notice was published in the **Federal Register** on July 31, 1998 (63 FR 40935).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information received from the company shows that Occidental Oil and Gas Corporation, Bakersfield, California is the parent firm of OXY USA, Incorporated, Logan, Kansas. The company also reports that worker separations have occurred and will continue at the Bakersfield, California location of Occidental Oil and Gas Corporation. Bakersfield, California is the corporate headquarters and administrative offices to support the production of crude oil and natural gas at OXY USA, Incorporated, Logan Kansas. Accordingly, the Department is amending the certification to cover workers at Occidental Oil and Gas Corporation, Bakersfield, California.

The intent of the Department's certification is to include all workers of OXY USA, Incorporated, Logan, Kansas adversely affected by increased imports.

The amended notice applicable to TA–W–34, 538 is hereby issued as follows:

''All workers of OXY USA, Incorporated, Logan, Kansas (TA–W–34, 538), and workers of Occidental Oil and Gas Corporation, Bakersfield, California (TA–W–34, 538U) providing support services for the production of crude oil and natural gas for OXY USA, Incorporated who became totally or partially separated from employment on or after April 29, 1997 through July 8, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington D.C. this 6th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–22215 Filed 8–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02502]

CHIC by H.I.S. Hickman, Kentucky; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended 919 USC 2273), an investigation was initiated on July 9, 1998 in response to a petition filed on behalf of workers at Chic by H.I.S., Hickman, Kentucky.

The Department of Labor has determined that the petitioner is covered by an existing certification, as amended (NAFTA 02273E). Consequently, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 3rd day of August, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–22213 Filed 8–11–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

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)(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 Employment Standards Administration is soliciting comments concerning five information collections: (1) Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlements, CA–1032; (2) Black Lung Provider Enrollment Form, CM–1168; (3) Application for Continuation of Death Benefit for Student, LS–266; (4) Representative Fee Request; and (5) Office of Federal Contract Compliance Recordkeeping and Reporting Requirements: Supply and Service. Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 18, 1998. 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 techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Contact Ms. Patricia Forkel at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0010. The Fax number is (202) 219–65920 (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlements—CA–1032

I. Background

The Federal Employees' Compensation Act (FECA) provides for the collection of information from claimants receiving continuing compensation on the periodic disability rolls. The FECA states the following: Compensation must be adjusted to reflect a claimant's earnings while in receipt of benefits (5 U.S.C. 8106); Compensation is payable at the augmented rate of 75 percent only if the claimant has one or more dependents (5 U.S.C. 8110); Compensation may not be paid concurrently with certain benefits from other Federal agencies, e.g., Social Security (5 U.S.C. 8116); and, Compensation must be adjusted to reflect any settlement from a third party responsible for the injury for which the claimant is being paid compensation (5 U.S.C. 8132). Completion of the Form CA–1032 is requested annually and is used to ensure that compensation being paid on the periodic roll is correct.

II. Current Actions

The Department of Labor (DOL) is seeking approval to revise this information collection to include a question asking if the respondent has ever been convicted of a fraud related offense in connection with the application or receipt of worker's compensation benefits. It also asks whether the respondent has been incarcerated for any period during the last 15 months for any felony offense. These additional questions are necessitated by 5 U.S.C. 8148 (a), which provides that an individual convicted of any violation related to fraud in the application for, or receipt of, any compensation benefit, forfeits (as of the date of such conviction) any entitlement to such benefits for any injury occurring on or before the date of conviction. Also, 5 U.S.C. 8148 (b)(1) requires that no Federal compensation benefit can be paid to any individual for any period during which such individual is incarcerated for any felony offense.

Type of Review: Revision.
Agency: Employment Standards Administration.
Title: Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and third Party Settlements—Form CA–1032.
OMB Number: 1215–0151.
Agency Numbers: CA–1032.
Affected Public: Individuals or households.
Total Respondents: 50,000.
Frequency: Annually.
Total Responses: 50,000.
Average Time Per Response: 20 minutes.
Total Burden Hours: 16,666.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $17,500.

Black Lung Provider Enrollment Form, CM–1168

I. Background

The Division of Coal Mine Workers' Compensation (DCMWC) is responsible for maintaining a list of authorized treating physicians and medical facilities in the area of a miner's residence and for payment of certain medical bills and services provided to the miner under the Black Lung Benefits Act. This form is sent to and completed by new providers who wish to participate in providing medical services to miners. The information provided is used by DCMWC to create a data base identifying medical providers by name, address, and billing information, and the type of medical service they will provide.

II. Current Actions

The Department of Labor is seeking extension of approval of this information collection in order to maintain up-to-date information on medical providers for the timely payment of medical benefits for miners. The form is used both for newly enrolled medical providers and to update information for already enrolled medical providers as necessary

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Black Lung Program Provider Enrollment Form.
OMB Number: 1215–0137.
Agency Number: CM–1168.
Affected Public: Business or other for-profit.
Total Respondents: 4,000.
Frequency: On occasion.
Total Responses: 4,000.
Average Time per Response: Three to seven minutes.
Total Burden Hours: 300.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): $1,400.

Application for Continuation of Death Benefit for Student, LS–266

I. Background

Under the Longshore and Harbor Workers' Compensation Act, a child or certain other surviving dependents of a deceased beneficiary may be eligible for continuation of death benefits if the

dependent qualifies as a student under certain provisions of the Act. The Form LS–266 is submitted by the parent or guardian of the dependent for whom the benefit is sought and is used by the Department of Labor to determine if the continuation of benefits is justified.

II. Current Actions

The Department of Labor seeks extension of approval of this information collection in order to ensure that eligible dependents may continue to receive benefits to which they are entitled.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Continuation of Death Benefit for Student.

OMB Number: 1215–0073.

Agency Number: LS–266.

Affected Public: Individuals or households; Business of other for-profit.

Total Respondents: 43.

Frequency: On occasion.

Total Responses: 43.

Average Time per Response: 30 minutes.

Total Burden Hours: 22.

Total Burden Cost (capital/startup): 0.

Total Burden Cost: (operating/maintenance): $15.05.

Representative Fee Request

I. Background

Individuals filing for compensation benefits with the Office of Workers' Compensation Programs (OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under 20 CFR 10.145 (Federal Employees' Compensation Act) and 20 CFR 702.132 (Longshore and Harbor Workers' Compensation Act). The fee must be approved by the OWCP before any demand for payment can be made by the representative.

II. Current Actions

The Department of Labor (DOL) seeks extension of this information collection in order to carry out its responsibility to ensure that the fee request is consistent with services provided and with customary local charges for similar services, and to ensure that any fee request considered excessive is reduced accordingly.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Representative Fee Request.

OMB Number: 1215–0078.

Affected Public: Business or other for-profit; Individuals or households.

Total Respondents: 14,000.

Frequency: On occasion.

Total Responses: 14,000.

Average Time per Response: 30 to 90 minutes.

Total Burden Hours: 10,000.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $17,150.

Recordkeeping and Reporting Requirements; Supply and Service

I. Background

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of equal employment opportunity programs which prohibit employment discrimination and require affirmative action. These programs are Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended (38 U.S.C. 4212). This information collection contains all recordkeeping and reporting requirements and forms which are derived from the implementing regulations found in Title 41 of the Code of Federal Regulations, Chapter 60, for supply and service contractors.

Current Actions

The Department of Labor (DOL) is seeking an extension of this information collection in order to substantiate compliance with nondiscrimination and affirmative action requirements monitored by OFCCP. In addition, DOL is reviewing all aspects of this information collection, including compliance reviews, for applicability of the Paperwork Reduction Act of 1995.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: OFCCP Recordkeeping and Reporting Requirements: Supply and Service.

OMB Number: 1215–0072.

Affected Public: Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Total Respondents: 89,807.

Requirement	Average time per response	Frequency	No. respondents	Hours
Recordkeeping:				
Initial Development of AAP	179.46	Once	89,807	161,153
Update of AAP	74.889	Annually	88,909	6,658,288
Maintenance of AAP	74,889	Annually	89,807	6,725,543
Uniform Guidelines on Employee Selection Procedures*	*	*	*	482,804
Reporting:				
Standard Form 100	3.7	Annually	51,603	191,265
Compliance Evaluation	135.35	On occasion	3,324	449,900

*The Uniform Guidelines are used by four agencies other than OFCCP, and have been approved by the Office of Management and Budget under an information collection submitted by the Equal Employment Opportunity Commission. The OFCCP has been apportioned a part of this burden. The EEOC estimate for OFCCP is 482,804 burden hours, or slightly less than a third of the 1.6 million burden hours in the EEOC inventory.

Total Recordkeeping Hours: 14,027,788.

Total Reporting Hours: 641,165.

Total Hours, Reporting and Recordkeeping: 16,668,953.

Total Respondent Cost (capital/startup): 0.

Total Respondent Cost (operation/maintenance): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 11, 1998.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 98–22214 Filed 8–17–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Primrose Coal Company

[Docket No. M–98–53–C]

Primrose Coal Company, 475 High Road, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Buck Mountain Vein Slope (I.D. No. 36–08698) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Shamrock Coal Company, Inc.

[Docket No. M–98–54–C]

Shamrock Coal Company, P.O. Box 1360, London, Kentucky 40743 has filed a petition to modify the application of 30 CFR 75.1902(c)(2)(i)(underground diesel fuel storage—general requirements) to its No. 18 Mine (I.D. No. 15–02502) located in Leslie County, Kentucky. The petitioner proposes to have a temporary underground diesel fuel storage area located within 500 feet of the longwall section track loading area; to have the track loading area for the longwall section within 200 to 1200 foot range outby the active longwall face as the longwall section retreats; and to have the loading point for the longwall crews within the normal daily work and travel area. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Twentymile Coal Company

[Docket No. M–98–55–C]

Twentymile Coal Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner proposes to measure the thickness of the deck plate and related components on its longwall face conveyor using a hand-held, double insulated 7.5 volt non-permissible ultrasonic thickness gauge during idle shifts when mining is not occurring; to deenergize all electrical equipment, except lighting, on the longwall face and follow all appropriate lockout and tagout procedures prior to using the gauge; and to have a certified person examine for methane in the immediate area of the longwall face conveyor and record the results, as a special examination, in the onshift examination books after the shift on which the examination is performed. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Twentymile Coal Company

[Docket No. M–98–56–C]

Twentymile Coal Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner proposes to use a portable diesel powered generator to move electrically powered mining equipment from one section of the mine to another. The petitioner proposes to incorporate a ground fault system for the power circuits that would deenergize mining equipment if a phase to frame fault occurs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Blue Mountain Energy, Inc.

[Docket No. M–98–57–C]

Blue Mountain Energy, Inc., P.O. Box 1067, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its Deserado Mine (I.D. No. 05–03505) located in Rio Blanco County, Colorado. The petitioner requests a modification of the standard to allow the use of non-permissible electronic testing or diagnostic equipment within 150 feet of pillar workings. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Rustler Coal Company

[Docket No. M–98–58–C]

Rustler Coal Company, 66 South Tremont Street, Zerby, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to allow the use of bar and pin, or link and pin couplers on underground haulage equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. CONSOL of Kentucky, Inc.

[Docket No. M–98–59–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler system; arrangement of sprinklers) to its Big Springs No. 17 Mine (I.D. No. 15–17996) located in Knott County, Kentucky. The petitioner requests a modification of the standard to allow the use of a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors in the Big Springs No. 1 Mine. The petitioner proposes to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt adjacent to the belt drive, with actuation temperatures between 200 and 230 degrees Fahrenheit, and with water pressure equal to or greater than 10 psi. The petitioner proposes to have the automatic sprinklers located not more than 10 feet apart so that the discharge of water would extend over the belt drive, belt take-up, electrical control, and gear reducing unit. The petitioner states that the water sprinkler system would be tested annually. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. ANR Coal Company, LLC

[Docket No. M–98–60–C]

ANR Coal Company, LLC, P.O. Box 1578, Coeburn, Virginia 24230 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Sargent Hollow Mine (I.D. No. 44–06795) located in

Wise County, Virginia. The petitioner proposes to use belt air to ventilate active working faces. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Independence Coal Company, Inc.

[Docket Nos. M–98–61–C, M–98–62–C, and M–98–63–C]

Independence Coal Company, Inc., HC 78 Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Buffalo Creek Mine (I.D. No. 46–08514); its Justice No. 1 Mine (I.D. No. 46–07273); and its Twilight Chilton-R Mine (I.D. No. 46–08513) all located in Boone County, West Virginia. The petitioner proposes to use high-voltage longwall mining equipment. The nominal voltage of power circuits for this equipment would not exceed 2,400 volts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Southern Edge, Inc.

[Docket No. M–98–64–C]

Southern Edge, Inc., HC 63 Box 22B, Bandy, Virginia 24602 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Mine No. 2 (I.D. No. 46–08362) located in McDowell County, West Virginia. Due to a roof fall in the third crosscut in by the portals, the Right return air course is unsafe to travel in its entirety. The petitioner proposes to establish evaluation monitoring points A and B to monitor the affected area. The petitioner asserts that adverse roof conditions at the roof fall prevent any clean-up work to be safely performed at the roof fall.

11. Leeco, Inc.

[Docket No. M–98–65–C]

Leeco, Inc., 1374 Highway 192 East, London, Kentucky 40741–3123 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Maces Creek Mine (I.D. No. 15–17911) located in Perry County, Kentucky. Due to deteriorating roof conditions in the Fan Mains return air course, traveling the area to examine for hazardous conditions would be unsafe. The petitioner proposes to establish monitoring stations in the return air course instead of traveling the affected area in its entirety; to have a certified person evaluate the monitoring stations on a weekly basis to determine the quantity and quality of air entering and exiting the monitoring stations; to have the examiners record the date, their initials, the time, and the results of the examination in a book kept on the surface available to all interested parties; to maintain all monitoring stations and approaches to the monitoring stations in a safe condition at all times; and to have the monitoring station locations and air quantity and quality measurements at each monitoring station on the mine ventilation map; and not to remove the monitoring stations without prior approval from the District Manager as part of the mine's ventilation plan. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. G and A Coal Company, Inc.

[Docket No. M–98–66–C]

G and A Coal Company, Inc., P.O. Box 250, Raven, Virginia 24639 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its No. 1 Mine (I.D. No. 44–06239) located in Tazewell County, Virginia. The petitioner proposes to use belt air to ventilate the working faces. The petitioner proposes to install carbon monoxide monitoring devices to monitor the air at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry, and to have an audible alarm that would sound at the surface master station and that would give the location and type of alarm on a computer screen located at the surface master station. The petitioner states that the alarm system would be capable of giving a warning of a fire for a minimum of four (4) hours after the power to the belt is removed, except when the power is removed during a fan stoppage or the belt haulageway is examined. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov'', or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 17, 1998. Copies of these petitions are available for inspection at that address.

Dated: August 10, 1998.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98–22164 Filed 8–17–98; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Work Group; Notice of Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: NARA will hold a public meeting of the Electronic Records Work Group with its external consultants on August 26, 1998, to discuss the comments received from the public and Federal agencies on the Work Group's proposed recommendations for replacing NARA's General Records Schedule (GRS) 20 for Electronic Records, and the associated draft work products that were published in the **Federal Register** on July 21, 1998 (63 FR 39185). Members of the public are invited to observe the meeting, but there will be no opportunity at the meeting for the observers to submit comments to the Work Group since comments are due on the July 21 notices by August 20. The Electronic Records Work Group, with members drawn from NARA and other Federal agencies, has been charged with identifying workable alternatives to the disposition practices previously authorized under GRS 20. Additional information about the Electronic Records Work Group is available on NARA's GRS 20 Internet Web page at <http://www.nara.gov/records/grs20/>.

DATES: The meeting will be held on August 26, 1998, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in Lecture Rooms C and D at the National Archives at College Park facility, 8601 Adelphi Rd., College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Lisa Haralampus at 301–713–6677, extension 266.

Dated: August 12, 1998.

Lewis J. Bellardo,

Deputy Archivist of the United States.

[FR Doc. 98–22109 Filed 8–17–98; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Notice of License Termination of the Cintichem, Inc. New York Facility

This notice is to inform the public that the U. S. Nuclear Regulatory Commission (NRC) is terminating Special Nuclear Materials License SNM–639 issued to Cintichem, Inc. for its Tuxedo, New York facility. NRC staff has completed its review of the information submitted by Cintichem, Inc., to support the decommissioning of its Tuxedo, New York facility including: Cintichem's Final Radiological Surveys and Dose Assessments, the Oak Ridge Institute for Science and Education's Confirmatory Survey for the facility, the results of NRC inspections, and radiological evaluations by the New York State Department of Environmental Conservation. Based on this review, NRC staff has concluded that decommissioning actions at the Cintichem facility are complete and Cintichem's Tuxedo, New York facility meets the unrestricted release criteria prescribed in Cintichem's radioactive materials license.

Based on these conclusions, no further remediation or actions with respect to NRC regulated material is required. NRC does not plan to take any further actions regarding this site and will not require any additional decontamination in response to future NRC criteria or standards, unless additional contamination is found, indicating a significant threat to public health.

Background

Cintichem used radioactive materials at its Tuxedo, New York facility from 1961 through 1990 in the production of radioisotopes and services for a variety of research, production, medical, and educational institutions and groups. Cintichem currently holds two licenses issued by the NRC, SNM–639 issued pursuant to 10 CFR Part 70 for operations involving special nuclear material and R–81, which was issued by the NRC pursuant to 10 CFR Part 50 for the operation of a 5-megawatt (thermal) test reactor. In addition to the licenses issued by the NRC, Cintichem held a byproduct materials license issued by the State of New York, an NRC Agreement State.

Six principal buildings were located at the facility including a reactor building, a hot laboratory building, a maintenance/engineering building, an administration building, a heating plant and a low-level waste storage building. On February 9, 1990, Cintichem reported the identification of an unmonitored release of radioactively contaminated water from the reactor building to an on-site retention pond. It was determined that this release resulted from the failure of a concrete wall in a water-filled pool that was used for the temporary storage of radioactive materials. Cintichem voluntarily ceased operations on February 9, 1990. On February 12, 1990, Cintichem informed NRC that another concrete vessel on site also had apparently developed a leak. On February 13, 1990, NRC issued an order requiring that the Cintichem facility remain shutdown until existing leaks at the facility were identified and repaired. On May 31, 1990, Cintichem informed the NRC that it had decided to decommission the reactor and radiochemical processing facilities and was preparing a decommissioning plan.

On April 17, 1991, NRC received a request from Cintichem to amend SNM–639 to decommission the facilities and areas associated with the activities authorized under this license. On May 22, 1991, NRC noticed in the **Federal Register** (56 FR 23601, May 22, 1991) that it was considering amending Cintichem's license and offered the public the opportunity to request a hearing pursuant to 10 CFR Part 2. NRC did not receive any requests for a hearing pursuant to the **Federal Register** notice.

On January 16, 1992, NRC amended SNM–639 to authorize decommissioning and required Cintichem to develop residual soil contamination criteria for use as unrestricted release criteria for the facility. These criteria were submitted on October 22, 1992, and approved on August 26, 1993. On February 1, 1994, Cintichem requested approval of residual contamination criteria for five additional radionuclides that were not included in the original submittal. NRC approved the criteria for the five additional radionuclides on October 17, 1994. Unrestricted release criteria for surfaces are described in NRC Regulatory Guide 1.86. These criteria were modified in October 1994 to increase the limits for tritium (H–3) and iron-55 (Fe–55) in accordance with NRC guidance. Cintichem was also required to demonstrate that the dose to a critical member of the public from all residual radioactive material on site did not exceed a few millirem per year. In addition, the dose via the water pathway alone could not exceed 4 millirem per year in conformance with EPA's Clean Water Act requirements.

Since deciding to permanently cease operations, Cintichem has been decommissioning its facility under its existing license and the approved decommissioning plan for the facility. As Cintichem completed decommissioning portions of the facility, Cintichem performed final radiological surveys to demonstrate that the facility met the criteria for unrestricted use. In order to ensure that remediated areas were not re-contaminated, Cintichem instituted controls to prevent recontamination of the surveyed areas. Due to the large geographical size of the site and the considerable number of radiation survey data points recorded, the Final Radiation Surveys were divided into five sequential phases. For each phase, Cintichem conducted radiation surveys using techniques recommended in NUREG/CR–5849 ''Manual for Conducting Radiological Surveys in Support of License Termination'' to show that unconditional release criteria were satisfied. The Final Radiation Survey data was reviewed by NRC, and the Oak Ridge Institute for Science and Education (ORISE). After all questions or comments were resolved, confirmatory surveys were conducted to verify Cintichem's Final Radiation Survey results. Results of Cintichem's surveys and the ORISE confirmatory surveys demonstrate that the facility meets the criteria for unrestricted use prescribed in the approved decommissioning plan for the site. On May 27, 1998, Cintichem affirmed that all radioactive material had been removed from site. This was confirmed by inspection of the site by NRC and the State of New York on June 15, 1998.

NRC staff has concluded that decommissioning actions at the Cintichem facility are complete and Cintichem's Tuxedo, New York facility meets the unrestricted release criteria prescribed in Cintichem's radioactive materials license. NRC does not plan to take any further actions regarding this site and will not require any additional decontamination in response to future NRC criteria or standards, unless additional contamination is found, indicating a significant threat to public health.

For further details with respect to this action, documents are available for inspection at NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20555–0001.

Dated at Rockville, Maryland this 11th day of August 1998.

For the U.S. Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–22190 Filed 8–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 040–02384]

Notice of Consideration of Amendment Request to the Decommissioning License for the RMI Titanium Company Extrusion Plant Site in Ashtabula, Ohio, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SMB–602, issued to RMI Environmental Services, a Division of RMI Titanium Company (the Licensee), for the decommissioning of its extrusion plant facility in Ashtabula, Ohio.

The Licensee requested the amendment in a letter dated May 13, 1998. The amendment would authorize the Licensee to use an unrestricted release criterion of 220 pCi/g of technetium-99 in soil for decommissioning the site.

The amendment would also delete existing license conditions for: demonstrating that site soils are not contaminated with thorium-230 (the Licensee has provided documentation showing that thorium-230 concentrations are at background levels); and certification of the signator's authorities of DOE's statement of intent to fund decommissioning of the site (the Licensee has provided acceptable documentation of the signator's authorities).

Radioactive contamination at the extrusion plant facility resulted primarily from extrusion operations, using depleted, natural, and slightly enriched uranium. Uranium extrusion operations occurred from 1962 through 1988.

The Licensee is currently remediating the extrusion plant site in accordance with its approved decommissioning plan to meet NRC's criteria as specified in the Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites (57 FR 13389; April 16, 1992), and is maintaining effluents as low as reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that an application for a license amendment falls within the scope of the informal hearing procedures set forth in 10 CFR Part 2, Subpart L, which addresses NRC's rules and practice for domestic licensing proceedings. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice in accordance with § 2.1205(d)(1).

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, RMI Environmental Services, P.O. Box 579, Ashtabula, Ohio 44004–579, Attention: Mr. Eric Marsh, RMI Environmental Services, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Md., this 11th day of August, 1998.

For the U.S. Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–22189 Filed 8–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 17, 24, 31, and September 7, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 17

Wednesday, August 19

11:30 a.m.—Affirmation Session (Public meeting), a: Commission Order Referring Request for Hearing on Baltimore Gas and Electric Company's Application for License Renewal to the Atomic Safety and Licensing Board Panel (Contact: Ken Hart, 301–415–1659).

Week of August 24—Tentative

Tuesday, August 25

10:00 a.m.—Briefing on 10 CFR Part 70—Proposed Rulemaking, ''Revised Requirements for the Domestic Licensing of Special Nuclear Material'' (Public meeting) (Contact: Elizabeth Ten Eyck, 301–415–7212).

Wednesday, August 26

10:00 a.m.—Briefing by Executive Branch (Closed—Ex. 1)

2:00 p.m.—Briefing on Status of Activities with CNWRA and HLW Program (Public Meeting) (Contact: Mike Bell, 301–415–7286).

3:30 p.m.—Briefing Affirmation Session (Public meeting) (if needed).

Week of August 31—Tentative

Wednesday, September 2

10:00 a.m.—Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5828).

11:30 a.m.—Affirmation Session (Public meeting) (if needed).

Thursday, September 3

10:00 a.m and 1:30 p.m.—All Employees Meetings (Public Meetings) on ''The Green'' Plaza Area between building at White Flint (Contact: Bill Hill—301–415–1661).

Week of September 7—Tentative

Thursday, September 10

3:30 p.m.—Affirmation Session (Public Meeting) (if needed).

*The schedule for Commission meetings is subject to change on short notice. To verify the Status of Meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/ smj/ schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–22343 Filed 8–14–98; 3:35 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Standard Forms 2803 and 3108

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. SF 2803, Application to Make Deposit or Redeposit (CSRS), and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

There are approximately 75 respondents for SF 2803 and 75 respondents for SF 3108. The forms take approximately 30 minutes to complete. The annual burden is 75 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before September 17, 1998.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–0001

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance

Director.

[FR Doc. 98–22016 Filed 8–17–98; 8:45 am]

BILLING CODE 6325–01–P

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, August 31, 1998; 8:30 a.m., Tuesday, September 1, 1998.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: August 31 (Closed); September 1 (Open).

MATTERS TO BE CONSIDERED:

Monday, August 31—1:00 p.m. (Closed)

1. Compensation Matters.
2. Strategic Plan—Government Performance and Results Act.
3. International Mail Rates.

Tuesday, September 1—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 3–4, 1998.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Consideration of Amendments to BOG Bylaws.
4. Postal Rate Commission FY 1999 Budget.
5. Fiscal Year 1999 Operating Budget.
6. Preliminary FY 2000 Appropriation Request.
7. Review of the Five-Year Capital Investment Program.
8. Fiscal Year 1999 Financing Plan.
9. Capital Investments.
   a. Robotic Tray Handling (Phase I)—Additional Funding Request.
   b. Replacement of 614 Martin Marietta Delivery Bar Code Sorters.
   c. Carrier Route Vehicles.
   d. Arlington, Virginia, Headquarters Office Space.
10. Tentative Agenda for the October 5–6, 1998, meeting in Honolulu, Hawaii.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

Neva R. Watson,

Alternate Certifying Officer.

[FR Doc. 98–22359 Filed 8–14–98; 3:55 p.m.]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23386; 812–11082]

American General Series Portfolio Company 2, et al.; Notice of Application

August 12, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF THE APPLICATION: American General Series Portfolio Company 2 (''AGSPC 2''), American General Series Portfolio Company 3 (''AGSPC 3'')

(together, the ''Funds,'') and The Variable Annuity Life Insurance Company (''VALIC'' or the ''Manager'') seek an order to allow applicants to enter into and materially amend investment sub-advisory agreements without shareholder approval.

FILING DATES: The application was filed on March 19, 1998. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 8, 1998 and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Nori L. Gabert, Esq., 2929 Allen Parkway, L4–01, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicant's Representations

1. AGSPC 2, a Delaware business trust, is registered as an open-end management investment company under the Act. AGSPC 2 consists of twenty-three series (each a ''Portfolio'', each of which has its own investment objective and policies. AGSPC 2 intends to offer classes of the shares of its Portfolios for sale to the public.

2. AGSPC 3, also a Delaware business trust, is registered as an open-end management investment company under the Act. AGSPC 3 consists of eighteen series (each a ''Portfolio''), each of which has its own investment objective and policies. AGSPC 3 intends to offer shares of its Portfolios for sale through separate accounts of VALIC, separate accounts of life insurance companies that are affiliated with VALIC, employee thrift plans maintained by VALIC or its affiliates, separate accounts of life insurance companies that are not affiliated with VALIC and, subject to applicable laws, the public.[1]

3. VALIC, a Texas life insurance company, is an indirect wholly-owned subsidiary of American General Corporation and is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Funds and VALIC have entered into an investment advisory agreement in which VALIC will have overall supervisory and administrative responsibility for the Funds and, subject to the general supervision of the board of trustees of each Fund (''Board''), will select and contract with sub-advisers to provide each Portfolio with portfolio management services (''Manager/Sub-Adviser Strategy''). VALIC also will monitor and evaluate each sub-adviser's performance, and may recommend to the Board of each Fund whether a sub-advisory agreement (''Sub-Advisory Agreement'') will be renewed, modified or terminated. VALIC is paid a management fee by each Portfolio and VALIC will be responsible for paying each sub-adviser. Each sub-adviser is either registered under the Adviser's Act or exempted from registration.

4. VALIC will employ its expertise to select sub-advisers that have shown the ability, over a period of time, to select specific investments to achieve well-defined objectives. The specific investment decisions for the Funds employing a sub-adviser will be made by one or more sub-advisers, each of which has discretionary authority to invest all or a portion of the assets of a particular Portfolio, subject to the general supervision of VALIC and the Board of the Fund. No sub-adviser will have responsibility for the on-going administration and corporate maintenance of a Fund or for servicing of the shareholders. VALIC will review the historical investment results of a number of sub-advisers and perform fact-to-face evaluations of the sub-adviser and its personnel. VALIC seeks to select sub-advisers that have shown a consistent ability to achieve targeted results within select asset classes and investment styles and that have demonstrated expertise in particular areas. VALIC performs internal due diligence on prospective sub-advisers for each Portfolio and thereafter will monitor sub-adviser performance to identify a departure by a sub-adviser from its investment style, a deterioration in its investment performance, or an adverse change in its personnel or organization, and will recommend changes in sub-advisers accordingly. VALIC has responsibility for communicating performance expectations and evaluations to be sub-advisers, supervising and monitoring compliance with the Portfolio's investment objectives and policies, authorizing a sub-adviser to engage in certain investment techniques for a Portfolio and recommending to the Board of each Fund whether Sub-Advisory Agreements should be renewed, modified, or terminated.

5. Applicants request relief to permit VALIC to enter into and amend Sub-Advisory Agreements with shareholder approval. The requested relief will not extend to a sub-adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of either the Funds or VALIC, other than by reason of serving as a sub-adviser to one or more of the Portfolios (Affiliated Sub-adviser'').

Applicant's Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person at act as investment adviser to a register and investment company except pursuant to a written contract that has been approved by a majority of the company's outstanding voting shares. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from section 15(a) of the Act and rule 18f–2 under the Act permit them to enter into

[1] Applicants also request that the relief apply to future portfolios of AGSPC 2 and 3 and to any other registered open-end management investment company or series thereof for which the Manager, or any person controlling, controlled by, or under common control with the Manager, serves as investment adviser (''Future Fund''). All existing investment companies that currently intend to rely on the order have been named as applicants, and any Future Fund that relies on the order will comply with the terms and conditions in the application.

and materially amend Sub-Advisory Agreements without shareholder approval.

3. Applicants believe that under their Manager/Sub-Advisor Strategy, sub-advisers take the place of individual portfolio managers in a conventional fund context. Applicants assert that investors in the Portfolios have determined to rely on VALIC's ability to select, monitor, and terminate sub-advisers. Applicants state that investors expect VALIC to select and retain sub-advisers who successfully meet the Portfolio's objectives and policies and replace those who do not. Applicants contend that requiring shareholder approval of sub-advisers and Sub-Advisory Agreements would impose costs and unnecessary delays on the Portfolios. Specifically, applicants believe that without the requested exemptions, VALIC may be precluded from promptly and timely employing a sub-adviser, or the applicable Portfolio of the Fund may be subjected to additional expenses of proxy solicitations when employing or replacing a sub-adviser. Applicants believe that the effective functioning of the Manager/Sub-Adviser Strategy would be greatly facilitated if applicants are permitted promptly to implement changes in the sub-advisers, or, in the event of circumstances constituting an assignment of a Sub-Advisory Agreement, if VALIC could enter into and materially amend a new sub-advisory agreement with the sub-adviser, or its successor, without the expense and delay of a proxy solicitation and special shareholder's meeting. Applicants also note that each Portfolio's investment advisory agreement with VALIC will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the order, the operation of the Portfolio in the manner described in the application will be approved by a majority of the Portfolio's outstanding voting securities (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Investment Company Act, or, in the case of a new Portfolio whose public shareholders purchases shares on the basis of a prospectus(es) containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of such Portfolio to the public (or the variable contract owners through a separate account).

2. Any Portfolio relying on the requested relief will disclose in its prospectus the existence, substance, and effect on any order granted pursuant to the application. In addition, any such Portfolio will hold itself out to the public as employing the Manager/Sub-Adviser Strategy described in the application. The prospectus(es) will prominently disclose that VALIC has ultimate responsibility to oversee the sub-advisers and recommended their hiring, termination, and replacement.

3. VALIC will provide management services to each Fund, including overall supervisory responsibility for the general management and investment of each Portfolio, and, subject to review and approval by the applicable Board will (i) set each Portfolio's overall investment strategies; (ii) evaluate, select and recommend sub-advisers to manage all or part of a Portfolio's assets; (iii) when appropriate, allocate and reallocate a Portfolio's assets among multiple sub-advisers; (iv) monitor and evaluate the investment performance of sub-advisers; and (v) implement procedures reasonably designed to ensure that the sub-advisers comply with the relevant Portfolio's investment objective, policies, and restrictions.

4. At all times, a majority of each Fund's Board will person who are ''interested persons,'' within the meaning of section 2(a)(19) of the Act, of the Fund (''Independent Trustees''), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

5. No Portfolio will enter into an Investment Sub-Advisory Agreement with a sub-advisor that is an ''affiliated person'' of VALIC or the Fund (as defined in section 2(a)(3) of the Investment Company Act)) (''Affiliated Sub-Advisor'') other than by reason of serving as sub-advisor to one or more Portfolios without such Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then pursuant to voting instructions by the unitholders of the sub-account).

6. When a change of sub-adviser is proposed for a Portfolio with an Affiliated Sub-adviser, each applicable Fund's Board of Trustees, including a majority of the Independent Trustees, will make a separate finding, reflected in the Fund's board minutes, that such change of sub-adviser is in the best interests of the Portfolio and its shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Portfolio and the unitholders of any sub-account) and that the change does not involve a conflict of interest from which VALIC or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. No director, trustee or officer of the Funds or VALIC will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee or officer) any interest in a sub-adviser except for ownership of (a) interests in VALIC or any entity that controls, is controlled by, or is under common control with VALIC or (b) less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a sub-adviser or an entity that controls, is controlled by, or is under common control with a sub-adviser.

8. Within 90 days of the hiring of any new sub-adviser, VALIC will furnish shareholders (or, if the Portfolio serves as funding medium for any sub-account of a registered separate account, the unitholders or the sub-account) with respect to the appropriate Portfolio with an information statement about the new sub-adviser or Investment Sub-Advisory Agreement that would be include in a proxy statement. Such information will include any changes caused by addition to a new sub-adviser. To meet this condition, VALIC will provide shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then by providing unitholders of the sub-account) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22113 Filed 8–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40318; File No. SR–Phlx–98–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Extension of the Permissible Maturity for FLEX Equity Options

August 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 24, 1998, the Philadelphia Stock Exchange (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (e)(6) of Rule 19b–4 under the Act[2] which renders the proposal effective upon receipt of this filing by the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1079(a)(6)(B), FLEX Index and Equity Options, to permit flexible (''FLEX'') equity options[4] to have a term of up to five years when requested by a Requesting Member, if the Regulatory Services Post personnel determines that sufficient liquidity exists among FLEX equity participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to allow FLEX equity options traded on the Exchange to have a maturity beyond three years and up to five years in certain circumstances. Currently, FLEX equity options, by operation of Rule 1079(a)(6)(B), are limited to a maturity of three years.

When the Exchange filed to list and trade FLEX equity options[5] it determined to limit the maturity of these options to three years because, unlike FLEX Index options which could have a maturity of up to five years, there was concern that there would not be sufficient liquidity in many equity options to support series with a longer term to expiration. Since it has traded FLEX equity options, however, the Exchange has had numerous requests to extend the maturity of FLEX equity options to five years. Among the reasons in seeking an extension in the allowable maturity is that these longer expiration FLEX equity options might be used to hedge the longer term issuances of structured products linked to the returns of an individual stock. Thus, the proposed rule change would permit the longer term FLEX equity options to be listed when requested by the Requesting Member if the Regulatory Services Post personnel determined that sufficient liquidity existed among FLEX equity participants.[6] By allowing for the extension of the maturity of FLEX equity options to five years in situations where there is demand for a longer term expiration and where there is sufficient liquidity to support the request, the proposed rule change will better serve the needs of Phlx's customers and the Exchange members who make a market for such options.[7]

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[8] of the Act in general and further the objectives of Section 6(b)(5)[9] in particular in that it is designed to promote just and equitable principles of trade by providing longer expiration FLEX equity options that may be used by investors to hedge the longer term issuance of structured products linked to returns of an individual stock.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(i) of the Act[11] and subparagraph (e)(6) of Rule 19b–4

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4(e)(6).

[3] The Exchange has represented that the proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also have provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act. *Id.*

[4] FLEX equity options are flexible exchange-traded options contracts which overlie equity securities. In addition, FLEX equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[5] *See* Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (SR–Phlx–96–38).

[6] The Exchange has represented that Regulatory Services Post personnel refer to the two Regulatory Services employees who work at the Surveillance Post on the options floor. The Exchange has also provided that, if the Regulatory Services Post personnel are unavailable, the Exchange may designate other qualified Exchange employees as substitutes. These ''other qualified Exchange employees'' include persons from the Market Surveillance group, such as the Vice President of Market Surveillance or his or her designee, or persons from the Regulatory Services group, such as the Vice President of Regulatory Services or his or her designee. The Exchange has also represented that it will seek approval from the Commission prior to any deviation from the above method of selecting Regulatory Services Post personnel. Telephone Call between Linda Christie, Phlx, and Christine Richardson, Commission, August 10, 1998.

[7] The Commission has previously approved substantially similar proposals by the American Stock Exchange (''Amex'') and Chicago Board Options Exchange (''CBOE''). *See* Exchange Act Release Nos. 39706 (March 2, 1998), 63 FR 11469 (March 9, 1998) (SR–Amex–98–07); and 39524 (January 8, 1998), 63 FR 3009 (January 20, 1998) (SR–CBOE–97–57).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

thereunder.[12] Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until August 24, 1998, more than 30 days from July 24, 1998, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–32 and should be submitted by September 8, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22207 Filed 8–17–98; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 240.19b–4(e)(6).

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Work Activity Report (Self-Employed) 0960–NEW. The information collected on form SSA–820 is used by the Social Security Administration to help determine if an individual meets the disability provisions for entitlement to benefits. The respondents are claimants for initial or continuing entitlement to disability benefits who are or were engaging in substantial gainful activity.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 50,000 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Notice Regarding Substitution of Party Upon Death of Claimant—Reconsideration of Disability Cessation—0960–0351. The Social Security Administration uses the form SSA–770 to obtain information from substitute parties regarding their intention to pursue the appeals process for an individual who has died. The respondents are such parties.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 200 hours.

2. Report of Student Beneficiary About to Attain Age 19—0960–0274. The Social Security Administration uses the information collected on form SSA–1390 to determine whether a student beneficiary is entitled to benefits for the month of attainment of age 19 and subsequent months. The respondents are students about to attain age 19.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 2,500.

3. Supplemental Security Income (SSI) Redetermination by Mail—0960–NEW. SSA will conduct a test of prototype form SSA–8204(TEST). This test will study the feasibility of using a questionnaire mailed to recipients as opposed to the current in person or telephone interview process. The information collected will be used to determine whether SSI recipients have met and continue to meet all requirements for continuing SSI program eligibility. The respondents for this study are randomly selected SSI recipients in the Atlanta and Kansas City regions.

Number of Respondents: 300.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 150.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Correction

The Information Collection Notices for the RSI/DI Quality Review Case Analysis—Sampled Number Holder; RSI/DI Quality Review Case Analysis—Auxiliaries/Survivors; RSI/DI Quality

Review Case Analysis—Parent; and RSI/DI Quality Review Case Analysis—Annual Earnings Test (AET) that appeared at 63 FR 55 13903, and 63 FR 37161 inadvertently cited an incorrect OMB clearance number. The correct number is 0960–0189.

Dated: July 10, 1998.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–21848 Filed 8–17–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hector International Airport, Fargo, North Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hector International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Shawn A. Dobberstein, Executive Director, of the Fargo Municipal Airport Authority at the following address: Hector International Airport, P.O. Box 2845, Fargo, North Dakota 58108.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Fargo Municipal Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hector International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 28, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Fargo Municipal Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 24, 1998.

The following is a brief overview of the application.

PFC application number: 98–02–C–00–FAR.

Level of the PFC: $3.00.

Proposed charge effective date: February 1, 2000.

Proposed charge expiration date: June 30, 2003.

Total estimated PFC revenue: $1,981,857.00.

Brief description of proposed project(s): Impose and use: Expand North General Aviation Apron; Air Cargo Apron, Connecting Taxiway, Access Road, Lighting and Signage; PFC Development Costs; Relocate Airport Beacon; Improve Drainage at A4 and Southeast General Aviation Apron; Purchase Snow Removal Equipment (SRE)/Rotary Snowplow; Purchase SRE/Fixed Blade Truck with Sander; Impose Only: Acquire Snow Removal Equipment (Fixed Blade Truck); Rehabilitate Existing Airport Terminal Access Road Lighting; Acquire Passenger Boarding Bridge.

Class or classes of air carriers which the public agency has requested not to be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under ''**FOR FURTHER INFORMATION CONTACT**.'' In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in persons at the Fargo Municipal Airport Authority offices at the Hector International Airport.

Issued in Des Plaines, Illinois on August 10, 1998.

Robert Benko,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–22177 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rhinelander-Oneida County Airport, Rhinelander, Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rhinelander-Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Joseph Brauer, Manager of the Rhinelander-Oneida County Airport at the following address: Rhinelander-Oneida County Airport, 3375 Airport Road, Rhinelander, Wisconsin 54501–9178.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Rhinelander and County of Oneida under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy M. Nistler, Assistant Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rhinelander-Oneida County Airport

under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 31, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Rhinelander and County of Oneida was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 28, 1998.

The following is a brief overview of the application.

PFC application number: 98–05–C–00–RHI.

Level of the PFC: $3.00.

Proposed charge effective date: March 1, 1999.

Proposed charge expiration date: May 31, 1999.

Total estimated PFC revenue: $20,500.00.

Brief description of proposed project(s): Infrared Aircraft Deicing Facility and PFC Administration Costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rhinelander-Oneida County Airport.

Issued in Des Plaines, IL on August 10, 1998.

Robert Benko,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–22178 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use a Passenger Facility Charge (PFC) a Savannah International Airport, Savannah, Georgia

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to Impose and Use the revenue from a PFC at Savannah International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Patrick, S. Graham, Executive Director of the Savannah Airport Commission at the following address: Patrick S. Graham, Executive Director, Savannah Airport Commission, Savannah International Airport, 400 Airways Avenue, Savannah, GA 31408.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Savannah Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Mr. Daniel Gaetan, Program Manager, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7146.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to Impose and Use the revenue from a PFC at Savannah International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 10, 1998, the FAA determined that the application to Impose and Use the revenue from a PFC submitted by Savannah Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 26, 1998.

The following is a brief overview of the application:

PFC Application No.: 98–03–C–00–SAV.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 2016.

Proposed charge expiration date: October 31, 1998.

Total estimated PFC revenue: $1,111,931.

Brief description of proposed project(s): (1) Extend Taxiway 'E'; (2) Construct Fire Station; (3) Reconstruct East End Taxiway 'C'; (4) Runway 18–36 Replace Keel Section; (5) Extend Taxiway 'A' to Runway 36, (6) Construct General Aviation Taxiway; and (7) PFC Development, Implementation, and Administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operations (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Savannah Airport Commission.

Issued in College Park, Georgia on August 10, 1998.

Lee M. Kyker,

Acting Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 98–22179 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Public Hearing

The Union Pacific Railroad Company (UP) has petitioned the Federal Railroad Administration (FRA) seeking a waiver of compliance with the requirements of Title 49 CFR Part 228.11(a)(1). UP proposes to utilize a computerized system of recording hours of duty data for Train, Engine and Yard employees.

The FRA issued a public notice seeking comments of interested parties. After examining the railroad's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made of this proposal.

Accordingly, a public hearing is hereby set for 9:00 a.m. MST, on Tuesday, September 15, 1998 in the Peak National Bank Building, 12345 W. Alameda Parkway, Room 207, in Lakewood, Colorado. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of

Practice (Title 49 CFR Part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on August 11, 1998.

Michael J. Logue,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 98–22217 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4320; Notice 1]

Shelby American, Inc.; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Shelby American, Inc., of Las Vegas, Nevada (''Shelby''), has applied for an exemption until July 1, 2000, from the automatic restraint provisions of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection* (S4.1.5.3). The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

Shelby is a Texas corporation, privately held and wholly owned by Carroll Shelby. Its current business activities are conducted by three wholly owned subsidiaries. The first of these subsidiaries is Shelby Series One, Inc., the unit that will produce a new sports car which is the subject of this application for a temporary exemption. These vehicles currently exist in prototype form only, and none have been produced. The second subsidiary is Shelby CSX4000, Inc., which produces ''a component vehicle sold without engine or transmission,'' to individuals who will install the power train of their choice. Shelby sold 75 of these Cobra replica assemblies in the past year. The third subsidiary is Shelby Original 427S/Cs, Inc., whose business is to assemble automobiles ''from certain new old stock parts surviving from the original 1965 Shelby Cobra production run . . . supplemented by newly manufactured parts utilizing original tooling.'' Two such vehicles have been assembled and sold to date.

The Series I is a two-passenger open convertible sports car, powered by the Oldsmobile Aurora engine. The first prototypes were shown in early 1997. Shelby has asked to be excused from compliance with the automatic restraint requirements of Standard No. 208. Shelby is working ''with many outside companies'' to complete the vehicle development and certification. Development of the Series I started in March 1995 (i.e., engineering tasks subsequent to initial design development). To date, Shelby has spent an estimated total of 400 man hours and $75,000 related to air bag development. As with development of the engine and interior, Shelby must contract the air bag development to an outside company. This cost will total $4,643,500 over the period of time for which it has asked for an exemption. Additional expenditures of $546,000 will be necessary to cover the costs of testing, and integration of airbag wiring. In the interim, the Series I will be equipped with a three-point driver and passenger restraint system. It is optimistic that it can sell 500 Series I cars in the period for which it has requested exemption. With these sales ''Shelby American will be able to support the estimated $216,229 monthly development expenditure necessary for implementation of the airbag at the end of the two year period.''

Shelby had no material operations in 1995. Its unaudited consolidated balance sheet shows a net loss of $738,415 for 1996, and a net income of $147,904 for 1997.

The applicant argues that ''the production of the Shelby Series I is in the best interest of the public and the US economy.'' The company is opening a new 100,000 square foot facility in June 1998 in Las Vegas to produce the Series I. The new facility ''will provide direct employment to approximately 200 employees.'' In addition, ''there are approximately 25 development/partner companies working with Shelby American on the development of the Shelby Series I, providing indirect employment for those companies' personnel . . .'' The car will be sold through select Oldsmobile dealers . . . providing employment to many sales and service personnel at the dealership level.'' Most major components are produced in the United States, including the engine (Oldsmobile), tires (Goodyear), and transmission (ZF, from RBT, a US company). The Series I is technically advanced, combining ''an aluminum chassis with a carbon-fiber body, a new concept amongst production vehicles, which provides strength and durability while minimizing weight.'' Shelby believes that ''the reduced weight achieved with this vehicle will translate into a new standard for improved emissions and fuel efficiency. Aside from Standard No. 208, the car will be certified as conforming to all applicable Federal motor vehicle safety standards.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 17, 1998.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: August 13, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–22209 Filed 8–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33626]

Union Pacific Railroad Company and Central Kansas Railway—Joint Relocation Project Exemption—in Wichita, Sedgwick County, KS

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate lines of railroad in the City of Wichita,

Sedgwick County, KS. UP is a Class I rail carrier and Central Kansas Railway Limited Liability Company (CKR) is a limited liability rail carrier. The proposed transaction was expected to be consummated on or shortly after July 29, 1998, the effective date of the exemption.

The joint relocation project involves: (1) CKR's grant to UP of overhead trackage rights on CKR's line extending from South Junction westward to the line of Kansas Southwestern Railway (KSR): (a) over a portion of CKR's Wichita Subdivision from milepost 0.20 near South Junction to CKR's milepost 3.45 (which connects with KSR's Hardtner Industrial Lead at milepost 487.80) and (b) over CKR's track from milepost 211.49 (which is also milepost 2.80 on CKR's Wichita Subdivision) to milepost 212.44 (which also connects with KSR's Hardtner Industrial Lead at milepost 488.8); and (2) UP's incidental abandonment of, and discontinuance of operations over, a parallel portion of UP's Hutchinson Industrial Lead between milepost 483.44 and milepost 485.94 at Hardtner Junction, a distance of 2.50 miles in Wichita. The trackage rights to be abandoned includes the non-agency station of Hardtner Junction at milepost 485.94.

The proposed joint relocation project will not disrupt service to shippers. The notice states that the project is to remove long freight trains from UP's trackage and to eliminate approximately 24 grade crossings in Wichita. It also states that the project will facilitate implementation of part of an agreement which has been reached between UP, the City of Wichita and Sedgwick County in a signed Memorandum of Understanding (MOU), filed with the Board on June 26, 1998, and granted.[1]

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into a new territory. *See City of Detroit* versus *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority* versus *ICC,* 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33626, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, 1416 Dodge Street, #830, Omaha, NE 68179.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–22021 Filed 8–17–98; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation. Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company,* Finance Docket No. 32760 [Decision No. 80] (STB served July 8, 1998).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33603]

Richard B. Webb and Susan K. Lundy—Control Exemption—Blue Mountain Railroad, Inc. and Southeast Kansas Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25: (1) for Richard B. Webb and Susan K. Lundy to acquire indirect control of Blue Mountain Railroad, Inc. (BMR), and Southeast Kansas Railroad Company (SEK), through their direct control of South Kansas and Oklahoma Railroad Company (SKO) and the Palouse River & Coulee City Railroad, Inc. (PRCC); and (2) for SKO to acquire control of SEK and for PRCC to acquire control of BMR through the acquisition of all outstanding stock of the respective companies.

DATES: This exemption will be effective on September 17, 1998. Petitions to stay must be filed by September 2, 1998, and petitions to reopen must be filed by September 14, 1998.

ADDRESSES: Send an original and 10 copies of pleadings referring to STB Finance Docket No. 33603 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of pleadings to petitioners' representative: Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD Services (202) 565–1695.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 7, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–21881 Filed 8–17–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Modification of National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: A notice was published in the **Federal Register** on February 6, 1998, announcing the U.S. Customs ACS Reconciliation Prototype. This document serves to announce certain operational changes to the prototype, as well as to provide clarification on some

items. Most aspects of the prototype are unchanged, including the Customs Service policy that the prototype will serve, until implementation of the Reconciliation component of NCAP/P, as the exclusive means to reconcile entry summaries.

EFFECTIVE DATE: The starting date announced in the February 6, 1998 notice is unchanged. This prototype will commence no earlier than October 1, 1998, will run for approximately two years, and may be extended. Applications to participate in the prototype will be accepted throughout the duration of the prototype.

ADDRESSES: Written comments regarding this notice should be addressed to Mr. Don Luther, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave. N.W., Mailstop 5.2A, Washington, DC, 20229–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Don Luther at (202) 927–0915.

SUPPLEMENTARY INFORMATION:

Changes and Clarifications

The following items are changes and clarifications to the February 6, 1998 **Federal Register** notice on the Reconciliation Prototype. Unless specifically addressed in this notice, all elements of the earlier notice still apply.

A. Additional Information on the Prototype

Additional information on the prototype is available on the U.S. Customs Internet Web Site. The address for this site is: www.customs.ustreas.gov/imp-exp2/comm-imp/recon/index.htm

B. Bond Issues

1. Bond Rider

The specific language in the bond rider has been changed to more adequately address coverage for Aggregate Reconciliations. The rider must be filed with the bond prior to any entry summaries being flagged for reconciliation. Because the new bond rider is different, applicants who already have provided the earlier bond rider must provide the new bond rider prior to flagging entries for reconciliation.

The rider shall read as follows:

By this rider to the Customs Form 301 No. _____, executed on _____, by _____ as principal(s), importer no(s). _____, and _____, as surety, code no. _____, which is effective on _____, the principal(s) and surety agree that this bond covers all Reconciliations pursuant to 19 U.S.C. 1484(b) that are elected on any entries secured by this bond, and that all conditions set out in Section 113.62, Customs Regulations, are applicable thereto. The principal(s) and surety also agree that, when an Aggregate Reconciliation under this rider lists entries occurring in more than one bond period, any liabilities to Customs reflected in that Aggregate Reconciliation shall be attributable (up to the full available bond amount) to any or all of those bond periods.

2. Termination of Bond Rider

Termination of the Reconciliation Bond Rider by either the principal or the surety may be affected in accordance with procedures set forth in § 113.27, Customs Regulations. Termination of the Reconciliation Bond Rider will not serve to terminate the underlying bond. Moreover, it should be noted that Customs will not terminate bonds or riders filed pursuant to this prototype.

3. Bond Coverage to be Evaluated

In addition to the test evaluation criteria listed in the February 6, 1998 notice, adequacy of bond coverage for participating importers will also be evaluated for this prototype.

C. Changes in Terminology

The previous notice described two methods for flagging entry summaries for reconciliation, and two methods for reconciling flagged entry summaries. The method of flagging does not dictate the method of reconciling. Due to some confusion caused by similar terms, Customs is changing the terminology of the flagging methods. The methods themselves are unchanged, but are shown here for clarification.

Individual entry flag (Previously called entry-by-entry flagging): The importer electronically via ABI inputs an indicator on all entries which are subject to reconciliation. This indicator identifies the issue(s) subject to reconciliation.

Blanket flag (Previously called blanket application): Prior to filing entries subject to reconciliation, the importer provides Customs a letter which contains the importer of record number, the time period in which entries are subject to reconciliation, and the issue(s) subject to reconciliation. Customs will input an electronic indicator on ALL entries for that importer for that time period, which will identify them as being subject to reconciliation for the issue(s) indicated. The flag that results is the same as the individual entry flag, except that it is applied by Customs to all entries filed for a given importer of record.

D. Designated Processing Ports

The previous notice stated that Reconciliations may be filed at any Customs port, but would be processed at a processing port assigned to the importer by Customs. Due to intricacies relating to financial collections and routing of documents, Customs has changed this aspect of the prototype. While the underlying entries may still be filed at any port, the Reconciliation must be filed at the processing port assigned to the importer by Customs. For purposes of filing the Reconciliation at the processing port, the broker permit requirement is waived (See below).

The Reconciliation Processing Ports are:

Boston, MA
Champlain, NY
Detroit, MI
El Paso, TX
Laredo, TX
Miami, FL
Minneapolis, MN
New York, NY/Newark, NJ
Nogales, AZ
Pharr, TX
Portland, OR
San Diego/Otay Mesa, CA

Other ports may be added at a later date, at which time affected participants would be notified.

E. Entry Types Eligible for Reconciliation

The notice of February 6, 1998 stated that the following entry types would be eligible for the ACS Reconciliation Prototype: 01, 02, 03, 06 and 07. During the course of program development, it became apparent that Customs would not be able to include entry types 03 and 07 in this initial phase of the prototype. These entry types are those subject to Antidumping/Countervailing duty cases, which due to their inherent complexity, cannot be incorporated into reconciliation at this time. *The entry types covered by the prototype will be types 01, 02, and 06.* (Type 06 Foreign Trade Zone entries are allowed only when no Antidumping/Countervailing duty merchandise is included on them.)

Entry summaries subject to Antidumping/Countervailing duty cases may be adjusted via existing procedures for individually adjusting entry summaries prior to liquidation.

F. Taxes and Fees

For Entry-by-entry Reconciliations, all taxes and fees on each entry summary must be adjusted to show the correct amount appropriate to that entry summary had the complete information for the transaction been known at the time of entry summary filing.

On Aggregate Reconciliations, since monetary changes to individual entry summaries are not reported, adjustments to taxes and fees will be reported on the Summarized Line Item Data Spreadsheet, as follows:

Taxes and Fees applied to individual commodities, such as Cotton Fee, Beef Fee and the like, will be adjusted by multiplying any increase in dutiable value by the rate associated with the tariff number for the product in question.

For Harbor Maintenance Tax (HMT), the importer is responsible for determining and declaring the amount owed, based on any increase in dutiable value, for those products which had been subject to HMT at the time of original entry summary.

Merchandise Processing Fee (MPF) will be determined and declared in a similar fashion. The importer is responsible for determining and declaring the proper amount of MPF due based on any increase in dutiable value, at the MPF rate applied to the product at time of filing the underlying entry summary. Because there is a maximum assessment of MPF for entry summaries, Customs will use the following formula to set the maximum MPF to be paid on an Aggregate Reconciliation: [($485 × number of entries covered by the Reconciliation which were subject to MPF), less the amount of MPF already paid on those same entries.]

G. Regulatory Provisions

The February 6, 1998 **Federal Register** notice included a section on regulatory provisions suspended. That section is hereby modified by removing all references to Part 113.62, Customs Regulations, and adding the following statement: Certain provisions in Part 111, and Part 141 of the Customs Regulations will be suspended during this prototype test. This will allow brokers to file Reconciliations on behalf of importers at the designated Reconciliation Processing Port, without holding a permit in that port. The suspension provided in this notice pertains only to filing type ''09'' Reconciliation entries, and not to any other Customs business transacted by brokers.

H. Handbook

A Reconciliation procedures handbook is currently under development by Customs. Participants in the prototype will receive a copy of this handbook, which will contain specific operational information, including instructions on how to file and flag underlying entries, and how to file Reconciliations. The publication will be made available to the general public via the web site listed above, and a version of it will be distributed to Customs officers.

I. Interest

Interest accrues on all Reconciliations where monetary adjustments take place, whether they are increases or decreases in duties, taxes, and fees. If interest is due Customs, the filer will make payment of the interest upon filing the Reconciliation, along with duties, taxes, and fees. Interest due the importer will be paid upon liquidation of the Reconciliation. Customs is currently seeking a statutory amendment to 19 U.S.C. 1505 which would allow an alternate interest accounting methodology, such as the following, which will be used *if the required statutory change is obtained:*

Interest will be calculated on the entire amount of adjusted duties, taxes, and fees, as if they had been due on the midpoint date of the period covered by the Reconciliation. For example, if a Reconciliation covers January 1, 1999 through December 31, 1999, and results in $20,000 in increased revenue, the interest would be calculated for the $20,000 from the midpoint date of July 1, 1999.

If no such statutory amendment occurs: Importers will be required to determine the appropriate amount of interest due for each entry summary, and report such adjustment for each entry summary, either via the Association File for Entry-by-Entry Reconciliations, or as a total amount of interest due for Aggregate Reconciliations.

J. Components of the Reconciliation

Reconciliations will consist of three parts. This is true of both Entry-by-entry and Aggregate Reconciliations: The Header, Association File, and Summarized Line Data Spreadsheet. The characteristics of these three components are unchanged from those described in the **Federal Register** notice of February 6, 1998. In cases where a Reconciliation is filed with no adjustments to value or other elements of the underlying transactions, that is, merely to satisfy the obligation to file a Reconciliation initiated by flagging entry summaries, the spreadsheet need not be provided, as it would be a spreadsheet containing no data. Importers should be aware of the distinction between this situation and one where there are adjustments to value but no revenue implications, in which a spreadsheet would be required.

K. Summarized Line Item Data Spreadsheet

The spreadsheet shown in the February notice is correct except that the title reads ''Aggregate Reconciliation'' when it should read ''Reconciliation Summarized Line Data Spreadsheet,'' since the spreadsheet is used both for Entry-by-entry and Aggregate Reconciliations. Also, it was brought to Customs attention that totals on certain columns were incorrect. These were typographical errors not intended to represent calculations other than those described in the notice or on the face of the spreadsheet.

L. Application to Participate in the Prototype

Importers interested in participating in the prototype must apply to Customs in writing. Policies from the earlier notice regarding applications remain in effect. Applications will be accepted throughout the duration of the prototype. The application requirements from the earlier notice are unchanged, except that applicants are no longer required to specify the port where the Reconciliations will be filed, as Customs will instruct the importer on where they must be filed.

Applications should be submitted to Mr. Don Luther, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave, NW, Mailstop 5.2A, Washington, DC, 20229–0001. Applications may be submitted until the start of the prototype and throughout the duration of the prototype. Parties interested in the ACS Reconciliation Prototype should consult the **Federal Register** notice (63 FR 6257) of February 6, 1998. All terms and conditions set forth in that notice remain in effect except to the extent they are specifically modified by this notice.

Dated: August 12, 1998.

Robert S. Trotter,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 98–22148 Filed 8–17–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–69]

Recordation of Trade Name: ''Ronson Consumer Products Corporation''

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

SUMMARY: On Friday, April 24, 1998, a notice of application for the recordation

under Section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name *Ronson Consumer Products Corporation,* used by Ronson Consumer Products Corporation is wholly owned subsidiary of Ronson Corporation and is located at 3 Ronson Road, Woodbridge, New Jersey 07095, was published in the **Federal Register** (63 FR 20444). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than June 23, 1998. No responses were received in opposition to the notice.

Accordingly, as provided in Section 133.14, Customs Regulations (19 CFR 133.14), the name *Ronson Consumer Products Corporation,* is recorded as the trade name used by *Ronson Consumer Products Corporation,* a wholly owned subsidiary of Ronson Corporation and is located at 3 Ronson Road, Woodbridge, New Jersey 07095.

The trade name is used in connection with lighters and parts thereof, including pieces of sparking metal/flints, lighter fluid and liquefied petroleum gas for use in lighters, multi-purpose igniters and the like, packaged chemical liquids such as multi-use spray lubricants, general purpose spot removers, leather, vinyl and rubber surface protectants/cleaners, electric shavers, cigar piercers, cigar and cigarette holders, pipe holders, broilers, electric knives, electric blenders, electric can openers, electric powered toothbrushes, other small electric appliances and writing instruments.

The merchandise is manufactured in the United States.

EFFECTIVE DATE: August 18, 1998.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229 (202–927–2330).

Dated: August 12, 1998.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 98–22150 Filed 8–17–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

(T.D. 98–70)

Recordation of Trade Name: Ronson Corporation

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

SUMMARY: On Friday, April 24, 1998, a notice of application for the recordation under Section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''RONSON CORPORATION,'' used by Ronson Corporation, a corporation organized under the laws of the State of New Jersey, located at Corporate III, Campus Drive, P.O. Box 6707, Somerset, New Jersey 08875, was published in the **Federal Register** (63 FR 20444). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than June 23, 1998. No responses were received in opposition to the notice.

Accordingly, as provided in Section 133.14, Customs Regulations (19 CFR 133.14), the name *Ronson Corporation,* is recorded as the trade name used by *Ronson Corporation* and is located at Corporate III, Campus Drive, P.O. Box 6707, Somerset, New Jersey 08875.

The trade name is used in connection with lighters and parts thereof, including pieces of sparking metal/flints, lighter fluid and liquefied petroleum gas for use in lighters, multi-purpose igniters and the like, packaged chemical liquids such as multi-use spray lubricants, general purpose spot removers, leather, vinyl and rubber surface protectants/cleaners, electric shavers, cigar piercers, cigar and cigarette holders, pipe holders, broilers, electric knives, electric blenders, electric can openers, electric powered toothbrushes, other small electric appliances and writing instruments.

The merchandise is manufactured in the United States.

EFFECTIVE DATE: August 18, 1998.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229 (202–927–2330).

Dated: August 12, 1998.

John F. Atwood,

Chief Intellectual Property Rights Branch.

[FR Doc. 98–22149 Filed 8–17–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 11, 1998.

The Office of Thrift Supervision (OTS) 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 OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

DATES: Written comments should be received on or before September 17, 1998 to be assured of consideration.

OMB Number: 1550–0017.

Form Number: Not Applicable.

Type of Review: Extension of an already approved collection.

Title: Amendment of a Savings Association's Bylaws.

Description: 12 CFR Parts 544 and 552 require that federally chartered savings associations obtain approval of any change in its bylaws which is not preapproved by regulation.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 3.

Estimated Burden Hours Per Respondent: 8 hours.

Frequency of Response: 1.

Estimated Total Reporting Burden: 24 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–22101 Filed 8–17–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 11, 1998.

The Office of Thrift Supervision (OTS) 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 OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

DATES: Written comments should be received on or before September 17, 1998 to be assured of consideration.

OMB Number: 1550–0018.

Form Number: Not Applicable.

Type of Review: Extension of an already approved collection.

Title: Amendment of a Savings Association's Charter.

Description: 12 CFR Parts 544 and 552 require that federally chartered savings associations obtain approval of any change in its charter which is not preapproved by regulation.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 6.

Estimated Burden Hours Per Respondent: 6.33 average hours.

Frequency of Response: 1.

Estimated Total Reporting Burden: 38 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–22102 Filed 8–17–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 11, 1998.

The Office of Thrift Supervision (OTS) 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 OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

DATES: Written comments should be received on or before September 17, 1998 to be assured of consideration.

OMB Number: 1550–0050.

Form Number: Not Applicable.

Type of Review: Extension of an already approved collection.

Title: Application Mutual Capital Certificates.

Description: 12 CFR Section 563.74 requires any insured mutual institution wishing to issue mutual capital certificates to obtain OTS approval. Approval may not be granted unless the proposed issuance of mutual capital certificates and the form and manner of application filing are in accordance with the provisions of Section 563.74.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 2.

Estimated Burden Hours Per Respondent: 6 hours.

Frequency of Response: 1.

Estimated Total Reporting Burden: 12 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW, Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–22103 Filed 8–17–98; 8:45 am].

BILLING CODE 6720–01–P.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 11, 1998.

The Office of Thrift Supervision (OTS) 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 OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

DATES: Written comments should be received on or before September 17, 1998 to be assured of consideration.

OMB Number: 1550–0053.

Form Number: Not Applicable.

Type of Review: Extension of an already approved collection.

Title: Application Processing Fees.

Description: 12 CFR Section 502.3 requires fees to accompany certain application filings, notices and requests. In addition, OTS is issuing a proposed regulation that would move this requirement from Section 502.3 to Section 502.70 without any change to the burden.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 3,066.

Estimated Burden Hours Per Respondent: .036 average hours.

Frequency of Response: 1.

Estimated Total Reporting Burden: 110 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–22104 Filed 8–17–98; 8: 45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 11, 1998.

The Office of Thrift Supervision (OTS) 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 OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

DATES: Written comments should be received on or before September 17, 1998 to be assured of consideration.

OMB Number: 1550–0056.

Form Number: Not Applicable.

Type of Review: Extension of an already approved collection.

Title: Application Filing Requirements.

Description: 12 CFR Section 516.1 contains the OTS application filing procedures. Three copies of applications must be filed with the appropriate OTS Regional Office. Certain applications require more than three copies because the application raises a significant issue of policy or law or because other agencies have statutory oversight over the application.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 3,066.

Estimated Burden Hours Per Respondent: .17 average hours.

Frequency of Response: 1.

Estimated Total Reporting Burden: 521 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–22105 Filed 8–17–98; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 63, No. 159

Tuesday, August 18, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–441–000, ER98–1019–000, ER98–2550–000, ER98–495–000, ER98–1614–000, ER98–2145–000, ER98–2668–000, ER98–2669–000, ER98–496–000, ER98–2160–000, ER98–441–001, ER98–495–001, and ER98–496–001]

Southern California Edison Company, California Independent System Operator Corp., El Segundo Power, LLC, Pacific Gas & Electric Company, Duke Energy Moss Landing LLC, Duke Energy Oakland LLC, San Diego Gas & Electric Company, Southern California Edison Company, Pacific Gas & Electric Company and San Diego Gas & Electric Company; Notice of Settlement Conference

Correction

In notice document 98–21312 beginning on page 42624 in the issue of Monday, August 10, 1998, the docket numbers are corrected to read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–16]

Summary of Petitions Received; Dispositions of Petitions Issued

Correction

In notice document 98–21091, beginning on page 42093, in the issue of Thursday, August 6, 1998, make the following correction.

On page 42094, in the first column, in the tenth line, ''9–NPRM–CMTSfaa.dot.gov.''should read ''9–NPRM–CMTS@faa.dot.gov.''.

BILLING CODE 1505–01–D

federal register

Tuesday
August 18, 1998

Part II

Department of Transportation

Research and Special Programs Administration

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178 and 180

[Docket No. RSPA–98–4185 (HM–215C)]

RIN 2137–AD15

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice consolidates Docket HM–215C and HM–217 (''Labeling Requirements for Poisonous Materials''). RSPA proposes to amend the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by proposing to incorporate numerous changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. In addition, RSPA proposes to make other amendments to the HMR, including the proposal to eliminate the ''Keep Away From Food'' label for poisonous materials in Division 6.1, Packing Group III. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these proposed revisions are necessary to facilitate the transport of hazardous materials in international commerce.

DATES: Comments must be received by October 2, 1998.

ADDRESSES: Address comments to the Dockets Unit, U.S. Department of Transportation, Room PL 401, 400 Seventh St., S.W., Washington, D.C. 20590–0001. Comments should identify the docket number RSPA–98–4185 (HM–215C) and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted by E-mail to rules@rspa.dot.gov. The Dockets Unit is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address. Public dockets may be reviewed between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays. Internet users may access all comments received by the U.S. Department of Transportation by using the Universal Resource Locator (URL) at http://dms.dot.gov. An electronic copy of the document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661.

FOR FURTHER INFORMATION CONTACT: Bob Richard, Assistant International Standards Coordinator, telephone (202) 366–0656, or Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

This NPRM consolidates two related rulemakings; Docket HM–215C, ''Harmonization with the UN Recommendations, IMDG Code and ICAO Technical Instructions'' and Docket HM–217, ''Labeling Requirements for Poisonous Materials.'' By this action, Docket HM–217 is incorporated under Docket HM–215C and is terminated as a separate rulemaking action. This preamble discusses each rulemaking, including comments received to Docket HM–217.

II. Background

On December 21, 1990, the Research and Special Programs Administration (RSPA) published a final rule [Docket HM–181; 55 FR 52402] which comprehensively revised the Hazardous Materials Regulations (HMR), 49 CFR Parts 171 to 180, with respect to hazard communication, classification, and packaging requirements, based on the UN Recommendations. One intended effect of the rule was to facilitate the international transportation of hazardous materials by ensuring a basic consistency between the HMR and international regulations.

The UN Recommendations are not regulations, but are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the UN Committee of Experts and are distributed to nations throughout the world. They serve as the basis for national, regional, and international modal regulations (specifically the IMDG Code, issued by the International Maritime Organization (IMO), and the ICAO Technical Instructions, issued by the ICAO Dangerous Goods Panel). In 49 CFR 171.12, the HMR authorize hazardous materials shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations. Offering, accepting and transporting hazardous materials by aircraft, in conformance with the ICAO Technical Instructions, and by motor vehicle either before or after being transported by aircraft, are authorized in § 171.11 (subject to certain conditions and limitations).

On December 29, 1994, RSPA issued a final rule [Docket HM–215A; 59 FR 67390] amending the HMR by incorporating changes to more fully align the HMR with the seventh and eighth revised editions of the UN Recommendations, Amendment 27 to the IMDG Code and the 1995–96 ICAO Technical Instructions. The final rule provided consistency with international air and sea transportation requirements which became effective January 1, 1995.

On May 6, 1997, RSPA issued a final rule [Docket HM–215B; 62 FR 24690] amending the HMR by incorporating changes to more fully align the HMR with the ninth revised edition of the UN Recommendations, Amendment 28 to the IMDG Code and the 1997–1998 ICAO Technical Instructions. The final rule provided consistency with international air and sea transportation requirements which became effective January 1, 1997.

This NPRM proposes changes to the HMR based on the tenth revised edition of the UN Recommendations, the 1999–2000 ICAO Technical Instructions, and Amendment 29 to the IMDG Code. In addition, petitions for rulemaking pertinent to harmonization with international standards and the facilitation of international transportation were considered. Proposed changes on the basis of these petitions are also incorporated in this NPRM. It is intended to more fully align the HMR with international air and sea transport requirements which become effective on January 1, 1999. Other proposed changes are based on feedback from the regulated industry and RSPA initiatives.

Background on HM–217

During its seventeenth session (December 7–16, 1992), UN Committee of Experts adopted amendments to be incorporated into the eighth revised edition of the UN Recommendations.

These amendments were incorporated in Amendment 27 of the IMDG Code and the 1995–1996 ICAO Technical Instructions effective January 1, 1995. Previously, the UN Recommendations specified two different labels to identify materials that meet the toxicity criteria for Division 6.1. A label incorporating a skull and crossbones symbol was used for any material which poses a high (Packing Group I) or medium (Packing Group II) danger. This label, which is referred to as the POISON label, is described in 49 CFR 172.430. For any material with a low toxicity danger (Packing Group III), a label incorporating an ear (stalk) of wheat with an ''X'' through it was prescribed. This label, which is referred to as the KEEP AWAY FROM FOOD label, is described in § 172.431.

Consistent with the decision of the UN Committee of Experts, the requirement for a KEEP AWAY FROM FOOD label was removed from the eighth revised edition of the UN Recommendations. As a result, packagings containing Division 6.1 Packing Group III materials offered for transport in international commerce must bear a POISON or TOXIC label (known as the toxic substances label in the UN Recommendations). Based on the amendments to the eighth revised edition of the UN Recommendations, the ICAO Technical Instructions, the IMDG Code, and national and regional regulations applicable in countries other than the United States (e.g., Mexico and European countries) now require the use of the POISON label for substances meeting the criteria for Division 6.1 Packing Group III. The UN Recommendations, the ICAO Technical Instructions and IMDG Code also replaced the term ''poison'' with the term ''toxic.'' Docket HM–215A authorized the interchangeable use of either ''toxic'' or ''poison'' (or ''poisonous'') for domestic transportation to provide greater flexibility.

RSPA first requested public comment on the substitution of the POISON label for the KEEP AWAY FROM FOOD label on September 2, 1992, in Notice 92–8; International Standards on the Transport of Dangerous Goods; Request for Comments [57 FR 40247]. The advance notice of proposed rulemaking (ANPRM) was issued to assist in developing the United States' position at the seventeenth session of the UN Committee of Experts held on December 7–16, 1992, in Geneva, Switzerland. The primary concern expressed by RSPA in the September 2, 1992, ANPRM was that the KEEP AWAY FROM FOOD label and the optional text on the label were misleading. RSPA was concerned that the label inaccurately implied that materials meeting Division 6.1 Packing Group III toxicity criteria pose a risk only of food contamination, and that the label did not communicate other hazards such as oral, dermal, and inhalation toxicity risks. In addition, RSPA noted that the label could best be characterized as a handling label rather than a hazard communication or warning label.

An in-depth explanation of the issues leading up to the question of whether to amend the UN Recommendations by requiring the POISON label in lieu of the KEEP AWAY FROM FOOD label was provided in the ANPRM. RSPA received comments from the Hazardous Materials Advisory Council (HMAC), the Association of American Railroads, the Chemical Specialties Manufacturers Association (CSMA), and a multi-national chemical company. All four commenters opposed the removal of the KEEP AWAY FROM FOOD label, citing the negative perception and operational constraints placed on packages bearing the POISON label or placard. HMAC and CSMA suggested adoption of a more appropriate pictogram to distinguish Division 6.1 Packing Group III materials from those Division 6.1 Packing Group I and II materials that pose a more significant danger.

In the final rule issued under Docket HM–215A, RSPA noted that the issue of removing the KEEP AWAY FROM FOOD label would be addressed under Docket HM–217.

In the ANPRM to Docket HM–217, [HM–217; 58 FR 59224], RSPA stated that if the HMR were amended to remove the KEEP AWAY FROM FOOD label, a POISON label would be required on packagings containing Division 6.1 Packing Group III materials. Consistent with these changes, a bulk packaging, freight container, unit load device, transport vehicle, or rail car containing a Division 6.1 Packing Group III material that is required to be placarded would be required to display POISON placards.

RSPA stated that if such changes were adopted, the HMR would not impose more severe operational requirements on Division 6.1 Packing Group III materials and current operational exceptions would be retained. Therefore, amendments to certain modal requirements would be necessary. For example, §§ 174.680, 175.630, 176.600 and 177.841 contain differing operational requirements for packages bearing a POISON label or a KEEP AWAY FROM FOOD label.

Summary of Comments to HM–217

In the ANPRM, RSPA requested comments in response to the following questions:

1. The STOW AWAY FROM FOODSTUFFS instruction on the Division 6.1 Packing Group III label is also an appropriate instruction for Division 6.1 Packing Group I and Packing Group II materials. Should this label be retained and required as an additional label for all Division 6.1 materials, independent of packing group?

2. Other than the current labeling provisions, which distinguish Division 6.1 Packing Group I and Packing Group II materials from Packing Group III materials, are there other effective means (e.g., a package marking or shipping paper notation) that may be used to facilitate compliance with the applicable operating and handling requirements?

3. If the KEEP AWAY FROM FOOD label is removed and the POISON label is required for Packing Groups I, II and III, should the Packing Group III label be altered in some manner so that packagings containing Division 6.1 Packing Group III materials can be distinguished from Packing Group I and II materials? If so, please provide examples. Should the use of such an altered label be required or optional?

4. What costs would be incurred by industry (e.g., operational and handling costs) if a POISON label and placard are required for packages containing Division 6.1, Packing Group III materials?

RSPA received nearly 40 comments to the ANPRM. Comments were received from chemical manufacturers and distributors, chemical trade associations, highway carriers, highway and rail carrier associations and the Department of Energy.

Most comments indicated that use of a POISON label for Division 6.1 Packing Group III materials greatly overstates the dangers of these materials. Several commenters claimed these materials pose a minimal safety risk in transportation. One commenter stated that end users would prefer products that do not bear a POISON label, because it would be very difficult for customers to understand that the addition of a POISON label on a package was not due to an increase in the material's hazard.

Commenters also cited higher motor carrier rates, special packaging required by some carriers, additional segregation in warehouses, and refusal by carriers to transport a package bearing a POISON label. The American Trucking

Associations, Inc. noted several areas of concern, including employee training to identify products, confusion caused by use of the POISON label, and disruption of present shipping and transport practices, particularly for less-than-truckload shipments. Several commenters urged RSPA to revisit this issue at the international level. COSTHA, Inc. encouraged RSPA to maintain the status quo with regard to poison labeling for domestic shipments until both the UN and DOT have completed work with regard to globally harmonized cut-off values for defining acute oral toxicity of liquids and solids in Packing Group III.

HMAC maintained that without some method to distinguish between materials in Packing Group I and Packing Group II and those in Packing Group III, carrier or enforcement personnel will have no way to identify these materials even if stowage and segregation requirements are less stringent for Packing Group III materials. HMAC did not favor any delayed compliance or enforcement of this rule and added that a rulemaking action could not be fully developed without considering proposed food safety regulations and future revisions to toxicity levels.

Finally, if a POISON label requirement is adopted, many commenters requested a one to two-year transition period to implement the change. Commenters indicated the need for a sufficient length of time to re-train employees, deplete the inventory of existing packages labeled KEEP AWAY FROM FOOD, and deplete existing stocks of labels and placards.

Subsequent to the close of the ANPRM's comment period, RSPA received correspondence from U.S. companies engaged in the international transportation of Division 6.1, Packing Group III materials. International regulations now mandate the use of the POISON label for Division 6.1 Packing Group III materials. These companies currently must maintain two sets of inventory. One inventory is labeled POISON for international shipments and the other inventory is labeled KEEP AWAY FROM FOOD for domestic transportation. Alternatively, they may label all packages with the POISON label for either domestic or international transportation, as authorized in the final rule under Docket HM–215A. However, these commenters expressed concern that if a company chooses to maintain one set of inventory bearing the POISON label, more restrictive operational requirements are imposed, thereby, increasing costs.

Because RSPA believes that the POISON label better represents the toxicity hazard of materials that are toxic at the Packing Group III level, RSPA is proposing adoption of the POISON label for these materials. The KEEP AWAY FROM FOOD label could best be described as a handling label, not as a hazard warning label. The ear (stalk) of wheat with an ''X'' and the words ''HARMFUL, STOW AWAY FROM FOODSTUFFS'' imply that a material in a package bearing this label poses a limited hazard only to food. For a material assigned to Division 6.1, Packing Group III on the basis of acute oral toxicity, the label fails to clearly convey a message of danger through direct oral ingestion. In addition to oral toxicity, materials are assigned to Division 6.1, Packing Group III on the basis of dermal toxicity and inhalation toxicity by vapors and by dusts and mists. The KEEP AWAY FROM FOOD label clearly fails to convey these skin absorption and inhalation hazards.

Adoption of the POISON label will maintain alignment with international standards and facilitate the transportation of Division 6.1 Packing Group III materials in international commerce. RSPA believes that concerns expressed by commenters can be alleviated through gradual implementation of the POISON label and placard requirements and maintenance of existing operational exceptions applicable to Division 6.1, Packing Group III materials.

In response to commenters' concerns indicating that ''POISON'' or ''TOXIC'' on a hazard warning label will overstate the hazard of these materials and will result in increased costs, RSPA is proposing to authorize use of the text ''PG III'' on the POISON hazard warning label as an option to ''POISON'' or ''TOXIC.'' The placement of ''PG III'' on the label would be below the center of the label, consistent with the display of ''POISON'' or ''TOXIC''. Since provisions in international regulations permit the insertion of text indicating the nature of the risk, RSPA believes a POISON or TOXIC label displaying ''PG III'' as text is acceptable in international transportation. The following is an illustration of the modified label:

BILLING CODE 4910–60–P

BILLING CODE 4910–60–C

Current operational requirements in 49 CFR Parts 174 through 177 for Division 6.1 Packing Group III materials would be retained for labels displaying ''PG III'' text. This would allow less restrictive stowage or separation from foodstuffs for these materials. However, if a package containing a Division 6.1 Packing Group III material bears a POISON or TOXIC label *not* displaying ''PG III'' text, the package would be subject to more stringent segregation requirements.

This proposal is responsive to those who favor harmonization with international requirements because a POISON label with text indicating risk and handling precautions is authorized under international labeling requirements for Division 6.1 Packing Group III materials. An extended transition period should minimize costs by permitting existing stocks of KEEP AWAY FROM FOOD labels and placards to be depleted, gradually reducing the inventory of packages bearing a KEEP AWAY FROM FOOD label, and allowing training in the new requirements to be accomplished as part of the required three-year recurrent training cycle. Maintaining flexible operational requirements for these materials will preclude the need for special packagings, carriers will be more amenable to accepting shipments, and additional truckload shipments will be avoided by requiring separation from foodstuffs rather than loading on separate vehicles.

III. Overview of Proposed Changes in This NPRM

Proposed amendments to the HMR in this notice include:

—Addition of a new approval provision to allow use of recycled plastics material for the manufacturing of plastic drums and jerricans.

—Amendments to the Hazardous Materials Table (HMT) which would add, revise or remove certain proper shipping names, hazard classes, packing groups, special provisions including portable tank requirements, packaging authorizations, bulk packaging requirements, and passenger and cargo aircraft maximum quantity limitations.

—Addition, removal and revision of certain entries to the List of Marine Pollutants.

—Addition, removal and revision of new special provisions including one new special provision to deregulate cotton under specific conditions.

—Amendment of the n.o.s. and generic proper shipping names which are required to be supplemented with technical names in association with the basic description.

—Incorporation of provisions authorizing the reconditioning of packagings other than metal drums.

—Incorporation of four new shipping descriptions to more clearly describe internal combustion engines and vehicles powered by flammable liquid and flammable gas fuels.

—Elimination of the KEEP AWAY FROM FOOD label for poisonous materials in Division 6.1, Packing Group III. Requiring the use of a POISON or TOXIC label on packagings containing materials meeting the toxicity criteria for poisonous materials in Division 6.1, Packing Group III. Allowing optional text on the POISON or TOXIC label to read ''PG III.''

—Amendment of periodic inspection requirements for portable tanks and IBCs which are intended for the transport of a single material.

—Addition of requirements for limited quantity packagings containing fragile inner packagings.

—Incorporation of an exception for certain shock absorbers, struts, gas springs and shocks and other automobile energy absorbing articles.

—Amendment of IBC repair, qualification and maintenance requirements.

IV. Summary of Regulatory Changes by Section

Part 171

Section 171.7

RSPA proposes to update the incorporation by reference for four American Society of Mechanical Engineers (ASTM) standards, one American Pyrotechnics Association (APA) standard, one Department of Defense (DOD) standard, the ICAO Technical Instructions, the IMDG Code and the UN Recommendations. One new incorporation by reference would be added under the International Organization for Standardization (ISO).

''ASTM D 3278–95 Standard Test Methods for Flash Point of Liquids by Setaflash Scale Closed-Cup Apparatus'' would be updated to the 1996 edition. ''ASTM D56–93 Standard Test Method for Flash Point by Tag Closed Tester,'' ''ASTM D93–94 Standard Test Method for Flash Point by Pensky-Martens Closed Cup Tester'' and ''ASTM D3828–93 Standard Test Method for Flash Point by Small Scale Closed Tester'' would be updated to the 1997 editions. The updates would reflect the latest revisions to the standards which are used for the classification of Class 3 flammable liquids in §§ 173.120 and 173.121. ''APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics'' would be updated to the January 23, 1998 version which would bring the standards up-to-date with current industry practices. ''DOD TB 700–2; NAVSEAINST 8020.8; AFTO 11A–1–47; DLAR 8220.1: Explosives Hazard Classification Procedure'' would be updated to the January 1998 edition. RSPA has reviewed the updated standards and has concluded that no major technical amendments have been incorporated into these standards.

References to the ICAO Technical Instructions would be updated to the 1999–2000 edition, the IMDG Code would be updated to Amendment 29 and the UN Recommendations would be updated to the tenth revised edition.

Finally, consistent with the proposed addition of a new special provision for the entry ''Cotton,'' NA1365, ''ISO 8115, Cotton Bales—Dimensions and Density, 1986 Edition'' would be added to the table of material incorporated by reference. (See proposed amendments to the Hazardous Materials Table.)

Section 171.11

Paragraph (d)(4)(ii) requires a hazardous material being transported in accordance with the ICAO Technical Instructions to include on the shipping papers an indication that the shipment is being made in accordance with § 171.11 or include the letters ''ICAO.'' RSPA is proposing to change this requirement from a mandatory requirement to a recommendation by changing the word ''must'' to ''should'' each place it appears in paragraph (d)(4)(ii). Paragraph (d)(14) would be revised for consistency with § 173.306(a)(1) which allows an exception from the HMR for certain aerosols in containers of not more than four fluid ounces.

Section 171.12

Paragraph (b)(15) would be revised to include references to § 171.12a(b)(13). Paragraph (b)(17) would be revised for consistency with § 173.306(a)(1) which allows an exception from the HMR for certain aerosols in containers of not more than four fluid ounces.

Section 171.12a

Paragraph (b)(13) would be revised to provide reciprocity for certain Canadian specification cylinders to be transported within the United States. Canada's cylinder specifications contained in the Transportation of Dangerous Goods (TDG) Regulations and prior to that in the Canadian Transport Commission

Regulations for the Transportation of Dangerous Commodities by Rail (CTC) were identical to the DOT specifications. Only after the implementation of the DOT's foreign approval program and Transport Canada's (TC) recent changes to implement standards harmonizing the international regulations were there any restrictions placed on the free movement of CTC/TC and US DOT specification cylinders across the border. RSPA has reached an agreement with Transport Canada to establish a program for cylinders manufactured and certified in accordance with the TDG regulations to be qualified for the transportation of hazardous materials in the United States. These changes would facilitate the movement of Canadian and domestic cylinders between the United States and Canada. Transport Canada has agreed to make similar amendments in the TDG Regulations.

Paragraph (b)(16) would be revised for consistency with § 173.306(a)(1) which allows an exception from the HMR for certain aerosols in containers of not more than four fluid ounces.

Section 171.14

Paragraph (f) would be revised to provide a delayed implementation date for amendments adopted in the final rule. The effective date of the final rule would be October 1, 1998. However, RSPA would authorize an immediate voluntary compliance date to allow shippers to prepare their international shipments in accordance with the new ICAO, IMDG Code and HMR provisions. RSPA would also authorize a delayed mandatory compliance with the new requirements until October 1, 1999. This delay would be comparable to the transition provisions provided in the final rule under Docket HM–215B and offers a sufficient phase-in period to implement new provisions and deplete current stocks of shipping papers, labels, placards and containers affected by the new requirements. In addition, paragraph (d)(2) would permit intermixing of old and new hazard communication requirements until October 1, 1999. Based on its own initiative and comments provided in petitions, RSPA is also proposing an extended delayed implementation period for use of the POISON/TOXIC label for Division 6.1, Packing Group III materials and allowing continued use of the KEEP AWAY FROM FOODSTUFFS label until October 1, 2003.

Part 172

Section 172.101

In RSPA's ongoing effort to improve and simplify the HMR, a new symbol, the asterisk (*), would be added to § 172.101(b). The new symbol would denote the n.o.s. and generic proper shipping names which are required to be supplemented with the technical name of the hazardous material in parentheses and in association with the basic description. Currently, these proper shipping names are listed in § 172.203(k)(3). As a result of the proposed change, paragraph (k)(3) would be removed. In addition, RSPA is proposing to add and remove certain proper shipping names concerning this requirement for consistency with the tenth revised edition of the UN Recommendations. (See § 172.203 preamble discussion.)

The Hazardous Materials Table (HMT)

Proposed amendments to the HMT for the purpose of harmonizing with the tenth revised edition of the UN Recommendations would include the following:

The ''+'' would be added to Column 1 to fix the proper shipping name, hazard class and packing group for the entries, ''Aminophenols (*o-;m-;p-;*),'' ''Chlorodinitrobenzenes,'' ''Dichloroanilines, liquid,'' ''Dichloroanilines, solid,'' ''o-Dichlorobenzene,'' ''N,N-Diethylaniline,'' ''Epichlorohydrin,'' ''Nitroanilines (*o-;m-;p-;*),'' ''Nitroanisole,'' ''Nitrobenzene,'' ''Nitrophenols (*o-;m-;p-;*),'' ''Phenetidines,'' ''Phenylenediamines (*o-;m-;p-;*),'' ''Toluene diisocyanate,'' ''Toluidines, *liquid*'' and ''Toluidines, *solid*.'' This proposed action would align the HMR with the UN Recommendations which uses Special Provision 279 to indicate materials which are classified on the basis of human experience.

Various other changes to the HMT include the following:

A number of hazardous materials proper shipping names would be revised, including the deletion of the word ''commercial'' from the entries, ''Charges, shaped, commercial, *without detonator*,'' (UN 0059, 0439, 0440 and 0441), the revision of the entry ''Amyl alcohols'' to ''Pentanols'' and the revision of the entry ''Dithiocarbamate pesticides, liquid, toxic'' to ''Thiocarbamate pesticide, liquid, toxic.''

For entries such as ''Aluminum alkyls'' and ''Sodium nitrite,'' the subsidiary risks would be revised.

The entries, ''Aviation regulated liquid, n.o.s.'' and ''Aviation regulated solid, n.o.s.'' would be added for alignment with the ICAO Technical Instructions and the UN Recommendations.

The entry ''Wheel chair, electric'' would be removed as an acceptable proper shipping name. ''Wheel chair, electric'' would only be maintained as a ''see entry'' for purposes of referring users of the HMR to the proper shipping name ''Battery powered equipment.''

For materials such as ''Chlorosilanes, corrosive, n.o.s,'' Column 7 would be revised to reflect the alignment of the portable tank assignments with those in the UN Recommendations.

For the entry, ''Plastic molding compounds *in dough, sheet or extruded rope form evolving flammable vapor*.'' to correct an error, the non-bulk authorization reference would be amended by revising the reference to read ''221.'' In addition, § 173.221 would be amended to authorize bulk packagings. The packaging authorization for the entry, ''Polymeric beads, *expandable, evolving flammable vapor*.'' would also be revised to read ''221.'' (See § 173.221 for additional discussion.)

For the entries, ''Batteries, wet, filled with acid, *electric storage*'' and ''Batteries, wet, filled with alkali, *electric storage*,'' RSPA proposes to increase the passenger aircraft quantity limitation from 25 kg gross mass to 30 kg gross mass. This proposed change is consistent with the amendments to the 1999–2000 edition of the ICAO Technical Instructions.

RSPA received a petition (P–1316), requesting that under certain conditions baled cotton which does not meet the criteria of any hazard class should be excepted from the requirements of the HMR. In response to this petition, RSPA is proposing to add a new special provision for NA1365, ''Cotton'' (dry), indicating that it is not subject to the requirements of the HMR when it is baled in accordance with ISO 8115, ''Cotton Bales—Dimensions and Density'' to a density of at least 360 kg/m^3 (22.4lb/ft^3) and it is transported in a freight container or closed transport vehicle. This is consistent with a decision taken by the International Maritime Organization and a subsequent competent authority approval issued by RSPA.

Based on its own initiative, RSPA is proposing that the entry, ''Dangerous goods in machinery *or* Dangerous goods in apparatus'' be included in the HMT. This entry was adopted in the ICAO Technical Instructions to provide an exception from the UN packaging

performance tests for equipment, machinery or apparatus containing small quantities of hazardous materials. RSPA believes this entry is useful for transport by all modes of transportation and provides a more practical means of describing machinery or apparatus containing small quantities of hazardous materials when the machinery or apparatus is not specifically listed in the HMT. Although this shipping description has not been adopted by the UN Committee of Experts on the Transport of Dangerous Goods, RSPA expects that the Committee will adopt this entry and assign it a new UN number in the eleventh revised edition of the UN Recommendations. RSPA will include the UN number assignment in the final rule if it is assigned after publication of this NPRM. In this NPRM, RSPA is proposing the assignment of a North American (NA8001) identification number in the interim.

For purposes of the Government Printing Office's typesetting procedures, readers should be aware that for certain entries in the HMT, such as those with revised proper shipping names, the change may appear as a removal and addition, as opposed to a revision of the regulatory text in the Column (2) changes. Readers should review all changes appearing in the § 172.101 regulatory text for a complete view of the proposed changes.

Appendix B to § 172.101

A number of materials would be added, removed or amended in the HMR's List of Marine Pollutants. The proposed amendments are consistent with the marine pollutants identified in Amendment 29 to the IMDG Code. Included is the proposed removal of ''Nitrates, inorganic, n.o.s.'' which is based on a petition (P–1311).

Section 172.102

Eleven new special provisions would be added and one removed for consistency with the tenth revised edition of the UN Recommendations; three obsolete special provisions would be removed; and two would be editorially revised as follows:

Special Provision 43 would be revised by adding an exception for certain nitrocellulose membrane filters. The exception is consistent with the 1999–2000 edition of the ICAO Technical Instructions.

Special Provision 125 would be revised to correct an editorial error for the percentages of phlegmatizers in mixtures.

A new special provision 129 would be assigned to the proposed new entry, ''Nitroglycerin mixture, desensitized, liquid, flammable, n.o.s. *with not more than 30% nitroglycerin, by mass.*'' to require that the material's classification, transportation, packing group assignment and packaging must be approved by the Associate Administrator for Hazardous Materials Safety.

A new special provision 130 would be added for the entry, ''*Battery, dry, not subject to the requirements of this subchapter*'' to identify conditions that must be met in order to be excepted from the HMR.

A new special provision 131 would be assigned to the proposed new entry, ''Flammable solid, oxidizing, n.o.s.,'' (Packing Groups II and III), to prohibit the material from being offered for transportation unless approved by the Associate Administrator for Hazardous Materials Safety.

A new special provision 132 would be added for the proper shipping name, ''Ammonium nitrate fertilizers,'' UN2071. The special provision would allow this material to be excepted from the requirements of the HMR provided a UN trough test (Section 38, UN Manual of Test and Criteria) demonstrates that the material is not liable to self-sustaining decomposition, and that the material does not contain an excess of nitrate greater than 10% by mass. This material is currently only regulated for transportation by air and water modes.

A new special provision 133 would be added for the proposed new entry, ''Air bag inflators, compressed gas *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas,'' to clarify which articles should be transported under these shipping descriptions. The special provision would also provide conditions for packaging and design of these articles.

A new special provision 134 would be added for the entry ''Battery-powered vehicle *or* Battery-powered equipment'' to identify the entry as being used for battery-powered equipment or vehicles.

A new special provision 135 would be added for the proposed new entries, ''Engines, internal combustion, flammable gas powered,'' ''Engines, internal combustion, flammable liquid powered,'' ''Vehicle, flammable gas powered,'' and ''Vehicle, flammable liquid powered'' to indicate the appropriate shipping description to be used when internal combustion engines are installed in a vehicle.

A new special provision 136 would be added for the proposed new entry, ''Dangerous goods in machinery *or* Dangerous goods in apparatus.'' The special provision clarifies the restrictions and exceptions for transporting hazardous materials under the new entry.

A new special provision 137 would be added for the entry, ''Cotton,'' NA1365. See discussion under The Hazardous Materials Table (HMT).

A new special provision 138 would be added for the entry, ''Lead compounds, soluble, n.o.s.'' This special provision would clarify the definition for soluble lead compounds.

A new special provision A35 would be added for the proposed new entries, ''Aviation regulated liquid, n.o.s.'' and ''Aviation regulated solid, n.o.s.,'' to clarify that the proper shipping names include any substance not meeting any of the other hazard classes, but which has certain properties that could cause extreme annoyance or discomfort in the event of spillage or leakage aboard aircraft to crew members so as to prevent their performance of duties.

Special Provision 17 applies to the entry, ''Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary).*'' Special Provision 17 would be deleted because the information it contains is duplicative with the italicized portion of the proper shipping name.

Special Provision 20 would be removed because it no longer is used for any entries in the HMT.

Special Provision 104 would be removed for consistency with the UN Recommendations.

Based on a comment received by RSPA, Special Provision B101 would be editorially revised to clarify that when intermediate bulk containers are used, only those constructed of metal are authorized. RSPA agrees with the commenter that the present wording is confusing and can be intrepreted to mean that metal IBCs are the only authorized packagings.

Special Provision N9 applies to the entry, ''Cotton waste, oily,'' UN1364. Special Provision N9 would be deleted consistent with the deletion of Special Provision 34 in the tenth revised edition of the UN Recommendations.

Section 172.203

In § 172.203, paragraph (k) would be revised to reflect the proposed means of identifying n.o.s. and generic names (see § 172.101) and paragraph (k)(3) would be removed and paragraph (k)(4) would be redesignated (k)(3). This proposed action would be a result of the proposed amendment to § 172.101(b) which would add a new symbol (the asterisk) to the HMT for the assignment to n.o.s. and generic proper shipping names requiring technical names.

Approximately 19 new proper shipping names are being proposed, in this NPRM, to be required to be supplemented with a technical name. These additions are consistent with the UN Recommendations. There are approximately 99 proper shipping names currently required to be supplemented with a technical name in the UN Recommendations that, in the opinion of RSPA, do not warrant requiring a supplementary technical name. The majority of these are pesticides with proper shipping names which RSPA believes are sufficiently descriptive. RSPA believes that requiring these proper shipping names to be supplemented with technical names adds minimal value for emergency response purposes while introducing an unwarranted burden on the shipper. The proposed actions would simplify the use and reduce the volume of the HMT, as well as align it with international requirements. (See preamble discussion under § 172.101.)

Sections 172.400, 172.400a, 172.405, 172.407

RSPA is proposing revisions to the labeling requirements for Division 6.1 Packing Group III materials. RSPA issued an ANPRM on November 8, 1993, under Docket HM–217, [58 FR 59224] addressing changes to Division 6.1, Packing Group III labeling requirements consistent with an amendment incorporated in the eighth revised edition of the UN Recommendations. Because RSPA believes that the POISON label better represents the toxicity hazard of materials that are toxic at the Packing Group III level, RSPA is proposing adoption of the POISON label requirement for these materials. The KEEP AWAY FROM FOOD label could best be described as a handling label, not as a hazard warning label. The ear (stalk) of wheat with an ''X'' and the words ''HARMFUL, STOW AWAY FROM FOODSTUFFS'' imply that a material in a package bearing this label poses a limited hazard only to food. For a material assigned to Division 6.1, Packing Group III on the basis of acute oral toxicity, the label fails to clearly convey a message of danger through direct oral ingestion. Paragraph (f)(10) in § 172.405 would be revised to reflect that a label for a Division 6.1 Packing Group III material may be modified to display the text ''PG III'' below the mid-line of the label, instead of ''TOXIC'' (''POISON''). Section 172.407 is revised to add the lettering size requirements for SPONTANEOUSLY COMBUSTIBLE and DANGEROUS WHEN WET labels.

Section 172.431

This section would be removed and reserved, thereby deleting the specifications for the KEEP AWAY FROM FOOD label and placard.

Section 172.504

Consistent with the proposed changes in §§ 172.400, 172.400a, 172.405 and 172.407, in the paragraph (e) Table 2, the entry for Division 6.1, Packing Group III would be removed and the entry for Division 6.1, Packing Group I or II, other than Zone A or B inhalation hazard would be revised. Paragraph (f)(10) would be revised to reflect that a placard for Division 6.1, PG III material may be modified to display the text ''PG III'' below the mid-line of the placard.

Section 172.553

This section would be removed and reserved, in line with § 172.431 to delete the specifications for the KEEP AWAY FROM FOOD label and placard.

Part 173

Section 173.1

For uniformity with other references in the HMR, the reference to the ''Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods'' in paragraph (d) is revised to read ''UN Recommendations.''

Section 173.2a

The § 173.2a, paragraph (b) Precedence of Hazard Table would be revised to align it with the UN Recommendations. Currently, there are two differences between the UN Precedence of Hazard Table and the HMR Precedence of Hazard Table. The differences involve, (1) the combination of a Division 4.3, Packing Group II material and a Class 8, Packing Group II material, and (2) a Division 5.1, Packing Group II material and a Class 8, Packing Group II material. Consistent with the UN Recommendations, RSPA proposes to revise these entries by having the Division 4.3, Packing Group II hazard and the Division 5.1, Packing Group II hazards take precedence over the Class 8 Packing Group II hazard.

Section 173.25

Paragraph (b) would be revised to authorize shrink-wrapped or stretch-wrapped trays as outer packagings only if the inner packagings are not fragile, liable to break or be easily punctured (such as those made of glass, porcelain, stoneware or certain plastics). On the basis of this provision, RSPA is proposing to remove the requirement for these packages to meet the PG III performance standards. These proposed changes would be consistent with amendments adopted in the ninth and tenth revised editions of the UN Recommendations.

Section 173.28

Paragraph (c)(2) would be revised and a new paragraph (c)(5) would be added to authorize the reconditioning of packagings other than metal drums. This revision is consistent with amendments adopted in the tenth revised edition of the UN Recommendations.

Section 173.29

In § 173.29, paragraph (b)(2)(iv)(B) would be revised to clarify that a non-flammable gas other than anhydrous ammonia, no longer meeting the defining criteria because of reduced pressure, is not subject to the HMR. Currently, § 173.29 references an absolute pressure less than 276 kPa (40 psia); at 21 °C (70 °F). The absolute pressure would be corrected to read ''less than 280 kPa (40.6 psia) at 20 °C (68 °F)'' for consistency with the absolute pressure reference in § 173.115(b).

Section 173.32b

Consistent with an amendment adopted in the tenth revised edition of the UN Recommendations, a new sentence would be added to paragraph (b)(1) to allow for the internal inspection to be waived or substituted by other test methods or inspection procedures for tanks transporting a single substance (dedicated service), subject to approval by the Associate Administrator for Hazardous Materials Safety.

Section 173.32c

Paragraph (j) would be revised for consistency with the UN Recommendations to allow IM portable tanks which are filled to less than 20% of their capacity, to be offered for transportation. Currently, the HMR prohibit any portable tank or tank compartment having a volume greater than 7,500 liters, which is filled to less than 80% of capacity, from being offered for transportation.

Section 173.35

Consistent with the UN Recommendations, the prohibition of the reuse of fiberboard, wooden and some flexible IBCs would be eliminated. However, based on RSPA's own safety concerns, RSPA is proposing to maintain the reuse restriction for multiwall paper flexible IBCs (13M1 and 13M2).

Section 173.56

In paragraphs (b)(2)(i) and (b)(3)(i), the reference to a DOD incorporation by reference document would be updated by removing an outdated edition date. A corresponding change with the updated edition date is proposed under § 171.7.

Section 173.59

Consistent with amendments adopted in the tenth revised edition of the UN Recommendations and consequential proposed amendments to the HMT, the word ''commercial'' would be deleted from the proper shipping names, ''Charges, shaped, commercial, *without detonator.*'' in this section. RSPA believes that the word ''commercial'' does not add information which could be useful to emergency responders.

Section 173.121

Paragraph (b) would be amended to align it with the UN Recommendations based on a decision taken by the UN Committee of Experts at its nineteenth session. Paragraph (b) provides an exception for viscous flammable liquids such as paints, enamels, varnishes, adhesives and polishes with a flash point of less than 23 °C to be classified as PG III materials, provided the material does not contain any substance with a primary or subsidiary risk of Division 6.1 or Class 8. In the ninth revised edition, the UN Committee of Experts included an exception which authorized mixtures containing not more than 5% of substances in Packing Group I or Packing Group II of Division 6.1 or Class 8, or not more than 5% of substances in Packing Group I of Class 3 requiring a Division 6.1 or Class 8 subsidiary label to be reclassified in PG III in the Recommendations. This exception was not adopted by ICAO or IMO based in part on proposals submitted by RSPA. RSPA believes the proposed amendment enhances safety while simplifying the classification provisions in § 173.121.

Section 173.159

In § 173.159(g)(2), RSPA proposes to authorize additional packagings for electrolyte, acid or alkaline corrosive battery fluid included with storage batteries and filling kits. RSPA received a petition (P–1313) which stated that the corrosive attack to steel is slight and that steel drums and steel boxes have a structural integrity that exceeds the presently authorized plywood and wooden boxes. RSPA agrees and proposes to revise paragraph (g)(2) to reflect the authorization of steel drums and steel boxes by authorizing strong outer packagings which conform to military specifications, as opposed to only wooden boxes. RSPA is interested in comments or proposals for simplifying the packaging requirements in § 173.159 and the need to allow additional packagings such as plastic packagings.

Section 173.162

In § 173.162, the packaging requirements for gallium would be revised by affording shippers more flexibilty in packaging alternatives while providing an adequate level of safety. The revision would be consistent with the IMDG Code which currently includes more packaging alternatives for transporting gallium than does the HMR.

Section 173.164

In § 173.164, in paragraph (a), the limitation of not more than 3.5 kg (7.7 pounds) capacity for quicksilver flasks would be replaced with 35 kg (77 pounds). This action would correct an editorial error and bring the quantity in line with ICAO. Paragraph (c) would also be revised to correct an editorial error by removing the 100 mg quantity limitation for mercury in manufactured articles or apparatuses. Paragraph (c) applies to exceptions from specifications packaging requirements.

Section 173.196

In § 173.196, paragraph (a)(iii) indicates that absorbent material must be placed between the primary receptacle and the secondary packaging. Consistent with a decision taken by the ICAO Dangerous Goods Panel, absorbent material is only necessary for liquid materials. On this basis, in § 173.196(a)(iii), the words ''When the primary receptacle contains liquids'' would be inserted in the first sentence before ''An absorbent material''.

Section 173.220

RSPA is proposing amendments to § 173.220 to include requirements for both liquid and gas fueled vehicles consistent with amendments adopted by ICAO in Packing Instruction 900 and the four new shipping descriptions proposed for incorporation in the HMT for internal combustion engines and vehicles. For editorial purposes and clarity, specific requirements in § 173.306 relevant to gas powered vehicles and hazardous components installed in vehicles are proposed to be consolidated in this section.

Section 173.221

In response to two petitions (P–1344 and P–1353), RSPA is proposing to revise the packaging requirements for ''Polymeric beads, *expandable, evolving flammable vapor.*'' and ''Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor.*'' while consolidating the non-bulk and bulk packaging requirements in § 173.221. RSPA agrees with the petitioners that the packaging requirements for these materials are overly restrictive and that bulk packagings should be authorized for ''Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor.*''

Section 173.222

RSPA is proposing to remove § 173.222 and replace it with requirements for a proposed new entry. Since § 175.10 applies to wheelchairs transported as checked baggage and § 173.220 applies to wheelchairs transported in commerce, RSPA believes § 173.222 is not necessary. This proposed amendment is consistent with the proposal to remove the description ''Wheel chair, electric'' in the HMT as an acceptable proper shipping name and include it only for purposes of referencing users of the HMR to ''Battery powered equipment,'' UN3171. ''Battery powered equipment'' is the proper shipping name used in the ICAO Technical Instructions, IMDG Code and UN Recommendations for wheel chair, electric.

Section 173.222 would be replaced with requirements applicable to the proposed new entry, ''Dangerous goods in machinery *or* Dangerous Goos in Apparatus.'' The proposed requirements would be consistent with those currently in the ICAO Technical Instructions.

Section 173.225

In paragraph (b) a new organic peroxide formulation would be added to the Organic Peroxides table consistent with the tenth revised edition of the UN Recommendations. Various entries would be corrected due to typographical errors. in addition, based on comments received by RSPA, the word ''product'' would be inserted before the word ''evaluation'' in paragraph (c)(2). This proposed change would clarify that the exception for samples applies for purposes of shipping products for evaluation and not only for hazard classification purposes. In addition, various changes would be made due to printing errors.

Section 173.243

RSPA proposes to add a new paragraph (e)(3) to authorize a Class 8 subsidiary hazard, PG III to be packaged in accordance with § 173.242. In the IMDG Code, certain dual hazard

materials with a subsidiary hazard of Class 8, PG III are permitted in IBCs, consistent with those specified in § 173.242. Section 173.242(e) authorizes certain dual hazard materials with subsidiary risks of Class 3, with a flash point greater than 38° C, and Division 6.1, PG III to be packaged in intermediate bulk containers specified in § 173.242. However, this exception is not applied to dual hazard materials with subsidiary hazards of Class 8, PG III. RSPA has issued a number of competent authority approvals consistent with the intermediate bulk container assignments for these materials in the IMDG Code, and on this basis, proposes to incorporate this allowance into the HMR.

Section 173.301

RSPA is proposing to amend paragraph (i) to clarify than non-DOT specification cylinders which are being imported into or exported from the United States or passing through the United States, in the course of being shipped between places outside the United States, may be offered and accepted for transportation and transported by motor vehicle within a single port area (including contiguous harbors) when packaged, marked, classed, labeled, stowed and segregated in accordance with the IMDG Code. This exception is not readily apparent in § 173.301(i) and this results in numerous inquiries by shippers and users of the HMR.

Section 173.306

A new paragraph (f)(4) would be added to except certain accumulators intended to function as automotive shock absorbers, struts, energy absorbing devices or gas springs from the requirements of the HMR if they meet certain provisions. This amendment would be consistent with Special Provision 283 in the tenth revised edition of the UN Recommendations as modified in a petition from the American Automobile Manufacturers Association, (P–1335).

Paragraphs (d)(1), (d)(2), (d)(3) and (d)(4) would be moved to the proposed revised § 173.220.

Part 174

Section 174.81

The paragraph (f) Compatibility Table for Class 1 (Explosive) Materials would be revised to allow Compatibility Group G to be loaded and transported with Compatibility Groups C, D and E under certain conditions. This allowance would be consistent with the § 176.144(a) Table for Authorized Mixed Stowage for Explosives aboard vessels and with the IMDG Code. RSPA would revise the § 177.848 Compatibility Table to reflect the same allowance.

Section 174.680

Paragraph (b) would be revised to authorize separation in the same car, rather than segregation in different cars, of Division 6.1 Packing Group III materials from foodstuffs. The reference to the KEEP AWAY FROM FOOD label would be removed and replace by a reference to a modified POISON label displaying ''PG III'' text.

Part 175

Section 175.630

Paragraph (a) would be revised by removing the reference to the KEEP AWAY FROM FOOD label.

Part 176

Section 176.76

A new paragraph (i) would be added, consistent with the Amendment 29 of the IMDG Code, to require flammable gases or liquids having a flashpoint of 23° C or less to be stowed away from possible sources of ignition.

Section 176.83

Paragraphs (a)(1), (a)(3), (a)(8) would be revised and a new paragraph (a)(10) would be added to clarify segregation requirements aboard vessels. In addition, the § 176.83(g) Segregation Table would be revised for the segregation requirement ''Away From'' by revising ''No restriction'' for ''Open versus open—On deck'' to read ''At least 3 meters.'' These changes are consistent with Amendment 29 of the IMDG Code.

Section 176.600

This section would be revised to specify that packages containing a Division 6.1 Packing Group III material and bearing a modified POISON label displaying the text ''PG III,'' instead of the text ''POISON'' or ''TOXIC.''

Part 177

Section 177.841

Paragraph (e)(3) would be revised to specify requirements for separating Division 6.1 Packing Group III materials from foodstuffs, consistent with provisions in § 177.848. A Division 6.1 Packing Group III material bearing either a primary or subsidiary POISON hazard warning label with text displaying ''PG III'' could be transported on the same vehicle as foodstuffs if separated to prevent commingling. This will allow less restrictive segregation requirements for a package bearing a label indicating ''PG III'' which contains a material meeting only Division 6.1 Packing Group III toxicity criteria.

Section 177.848.

The paragraph (f) Compatibility Table for Class 1 (Explosive) Materials would be revised to allow Compatibility Group C to be loaded and transported with Compatibility Groups C, D and E under certain conditions. This allowance would be consistent with the § 176.144(a) Table for Authorized Mixed Stowage for Explosives aboard vessels and with the IMDG Code. RSPA would revise the § 174.81 Compatibility Table to reflect the same allowance.

Part 178

Section 178.270–3.

The reference to ISO 82–1974(E) Steels-Tensile Testing would be revised to correct a printing error.

Section 178.509.

Paragraph (b) would be amended to authorize the use of recycled plastic materials of known origin and characteristics for the manufacture of UN specification plastic drums and jerricans when approved by the Associate Administrator for Hazardous Materials Safety. RSPA believes that use of recycled plastics should only be allowed under an approval process until further experience and data is gathered to support introduction of specific provisions for its use into the HMR.

Section 178.703.

Under Docket HM–215B (62 FR 24743), RSPA added a requirement to § 178.703(b)(6)(ii) which states, ''Where the outer casing of a composite intermediate bulk container can be dismantled, each of the detachable parts must be marked with the month and year of manufacture and name or symbol of the manufacturer.'' This addition was adopted consistent with changes in the UN Recommendations. This requirement was reconsidered by the UN Sub-committee of Experts at its fifteenth session because IBC manufacturers asked for clarification of the term ''detachable parts.'' The Sub-committee adopted revised text to indicate that this requirement only applies to parts intended to be detached for dismantling. RSPA is proposing to incorporate this text in the HMR in response to concerns raised by industry concerning the costs associated with applying the existing HMR marking requirements.

Section 178.813.

RSPA is proposing to revise paragraph (b) to include the provision that the inner receptacle of a composite IBC may

be tested without the outer packaging provided the test results are not affected. This provision was inadvertently omitted in previous efforts to harmonize the HMR with the UN Recommendations.

Section 180.352.

In § 180.352, in paragraph (b), RSPA proposes to relocate a requirement that a person must perform a visual inspection prior to filling an IBC to § 173.35. The periodic leakproofness test and visual inspection requirements would be retained in paragraphs (b)(1) and (b)(2) of part 180.

In paragraph (b)(3), consistent with the changes proposed in § 173.35 to allow the reuse of rigid plastic and composite IBCs, RSPA proposes to require that they must also be internally inspected at least every five years. This requirement is consistent with paragraph 6.5.1.6.4 of the UN Recommendations.

In addition, RSPA proposes to add a new paragraph (c) to provide for the repair, testing and inspection of IBCs which are repaired after being damaged (for example, due to an impact, such as an accident). This provision was inadvertently omitted in Docket HM–215B [62 FR 24690] and is consistent with the UN Recommendations.

RSPA is specifying a deadline for comments that is less than the 45 days recommended in Executive Order 12866. This shorter comment period is intended to enable RSPA to develop and issue a final rule to coincide with the effective date of these changes in the ICAO Technical Instructions and the IMDG.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal hazardous materials transportation law, 49 U.S.C. 5701–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This notice of proposed rulemaking addresses covered subjects under items i, ii, iii and v above and, if adopted as final, would preempt State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be 180 days after the effective date of a final rule under this docket. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This proposed rule would incorporate changes introduced in the tenth revised edition of the UN Recommendations, the 1997–98 ICAO Technical Instructions, and Amendment 29 to the IMDG Code. It would apply to offerors and carriers of hazardous materials and would facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. U.S. companies, including numerous small entities competing in foreign markets, will be forced to comply with a dual system of regulation, to their economic disadvantage, if the changes proposed in this NPRM are not adopted. The proposed changes are intended to avoid this result. The costs associated with this proposed rule are considerd to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. In contrast, the majority of proposed amendments should result in cost savings. No cost increases are associated with the incorporation of an exception for certain shock absorbers, struts, gas springs and shocks, and other automobile energy absorbing articles in § 173.306(f). This amendment should result in an increased cost savings for the automotive industry. Although the labeling requirements for poisonous materials in this NPRM may affect some small business entities that ship or transport hazardous materials, any adverse economic impact should be offset through a lengthy transition period, retention of current operational requirements, and modification of the POISON or TOXIC label. The proposed amendments for IBCs would remove prohibitions for reusing certain IBCs which would result in costing savings for industry by allowing IBCs to be inspected and reused, instead of used and discarded. In addition, the proposed amendments to the IBC marking requirements in § 178.703 will eliminate the burden of unnecessary markings which will also result in cost savings.

A number of amendments proposed will result in relaxation of overly burdensome requirements which will result in cost savings. For example, the removal of the requirement to performance test shrink or stretch-wrapped trays containing limited quantities of hazardous materials should result in a cost savings for many companies. The proposed authorization to allow use of recycled plastic materials when approved by the Associate Administrator for Hazardous Materials Safety, the proposed relaxation of filling requirements for IM portable tanks, the proposed authorization to use steel packages for batteries and the proposed amendments for packaging gallium, mercury, polymeric beads and plastic molding compound are other examples where cost savings will be realized. Many companies involved in domestic, as well as global operations, will realize economic benefits as a result of the proposed amendments. Therefore, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget

(OMB) under OMB control numbers 2137–0034 for shipping papers and 2137–0557 for approvals. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.7 [Amended]

2. In the § 171.7(a)(3) Table, the following changes are made:

a. Under ''American Pyrotechnics Association'', for the entry ''APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks and Novelties'', the wording ''April 1993 Edition'' would be revised to read ''January 23, 1998''.

b. Under ''American Society for Testing and Materials'', for the entry ''ASTM D 56–93 Standard Test Method for Flash Point by Tag Closed Tester'', the wording ''ASTM 56–93'' would be revised to read ''ASTM D 56–97''.

c. Under ''American Society for Testing and Materials'', for the entry ''ASTM 93–94 Standard Test Methods for Flash Point by Pensky-Martens Closed Tester'', the wording ''ASTM 93–94'' would be revised to read ''ASTM 93–97''.

d. Under ''American Society for Testing Materials'', for the entry ''ASTM D 3278–95 Standard Test Methods for Flash Point of Liquids by Setaflash Closed-Cup Apparatus,'' the wording ''ASTM D 3278–95'' would be revised to read ''ASTM D 3278–96''.

e. Under ''American Society for Testing Materials'', for the entry ''ASTM D 3828–93 Standard Test Methods for Flash Point by Small Scale Closed Tester'', the wording ''ASTM D 3828–93'' would be revised to read ''ASTM D 3828–97''.

f. Under ''Department of Defense (DOD),'' for the entry ''DOD TB 700–2; NAVSEAINST 8020.8; AFTO 11A–1–47; DLAR 8220.1: Explosives Hazard Classification Procedure, December 1989.'', the wording ''December 1989'' would be revised to read ''January 1998''.

g. Under ''International Civil Aviation Organization (ICAO), for the entry ''Technical Instructions for the Safe Transport of Dangerous Goods by Air, DOC 9284–AN/905, 1997–1998 Edition., the wording ''1997–1998 Edition'' would be revised to read ''1999–2000 Edition''.

h. Under ''International Maritime Dangerous Goods (IMDG) Code, 1994 Consolidated Edition, as amended by Amendment 28 (1996) (English edition).'', the wording ''Amendment 28 (1996)'' would be revised to read ''Amendment 29 (1997)''.

i. Under ''International Organization for Standardization'', a new entry ''ISO 8115 Cotton Bales—Dimensions and Density, 1986 Edition'' would be added in the appropriate order in the first column and the reference ''§ 172.102'' would be added in the second column.

j. Under ''United Nations'', for the entry ''UN Recommendations on the Transport of Dangerous Goods, Ninth Revised Edition (1995)'', the wording ''Ninth Revised Edition (1995)'' would be revised to read ''Tenth Revised Edition (1999)''.

k. Under ''United Nations'', for the entry ''UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria'', in the second column, the reference ''§ 172.102,'' would be added immediately before ''173.21''.

§ 171.11 [Amended]

3. In § 171.11, the following changes would be made:

a. In paragraph (d)(4)(ii), the word ''must'' would be revised to read ''should'' each place it appears.

b. In paragraph (d)(14), the wording ''An aerosol'' would be removed and ''Except as provided for aerosols of not more than 4 fluid ounces capacity in § 173.306(a)(1) of this subchapter, aerosols'' would be added in its place.

4. In § 171.12, paragraph (b)(15) would be revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(15) Cylinders not manufactured to DOT specification must conform to the requirements of § 173.301(i) and (j) of this subchapter or, for Canadian manufactured cylinders, to the requirements of § 171.12a(b)(13).

* * * * *

§ 171.12 [Amended]

5. In addition, in § 171.12, in paragraph (b)(17), the words ''An aerosol'' would be removed and ''Except as provided for aerosols of not more than 4 fluid ounces capacity in § 173.306(a)(1) of this subchapter, aerosols'' would be added in its place.

6. In § 171.12a, paragraph (b)(13) is redesignated as paragraph (b)(13) introductory text, a new sentence is added at the end of newly designated paragraph (b)(13) introductory text, and paragraphs (b)(13)(i) through (b)(13)(iv) would be added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(13) * * * However, a cylinder made in Canada that meets the following conditions is authorized for the transportation of a hazardous material within the United States:

(i) During the manufacturing process, the cylinder was marked with an approval number and an inspector's mark authorized by TDG or by its predecessor, the Railway Transport Committee of the Canadian Transport Commission (CTC), in its regulations for the Transport of Dangerous Commodities by Rail and was marked ''CTC'' or ''TDG';

(ii) The cylinder is in full conformance with the specifications prescribed by the TDG regulations;

(iii) The cylinder has been requalified under a program authorized by the Canadian regulations or requalified in accordance with subpart C of part 180 of this subchapter within the prescribed requalification period; and

(iv) At the time the requalification is performed, in addition to the markings prescribed in § 180.211 of this subchapter, the cylinder is marked ''DOT/'' immediately before the Canadian specification marking (such as, ''DOT/CTC'').

* * * * *

§ 171.12a [Amended]

7. In addition, in § 171.12a, in paragraph (b)(16), the words ''An aerosol'' would be removed and ''Except as provided for aerosols of not more than 4 fluid ounces capacity in § 173.306(a)(1) of this subchapter, aerosols'' would be added in its place.

8. In § 171.14, as amended at 62 FR 39404, effective October 1, 1998, a new paragraph (f) would be added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(f) Until October 1, 2003, the KEEP AWAY FROM FOODSTUFFS labeling and placarding requirements applicable to the use of the KEEP AWAY FROM FOODSTUFFS, in effect on October 1, 1997, label and placard may continue to be used in place of the new requirements for Division 6.1, Packing Group III materials.

§ 171.14 [Amended]

9. In addition, in § 171.14, as amended at 62 FR 39404, effective October 1, 1998, in the table in paragraph (b), the following changes would be made:

a. In Column 1, the entry ''Division 6.1, PG I and II (other than Zone A or B inhalation hazard)'' would be revised to read ''Division 6.1, PG I or II (other than Zone A or B inhalation hazard), or PG III''.

b. The entry ''Division 6.1, PG III'' would be removed.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

10. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

11. In § 172.101, paragraph (b) introductory text would be revised and a new paragraph (b)(6) would be added to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(b) *Column 1: Symbols.* Column 1 of the Table contains six symbols (''+'', ''A'', ''D'', ''I'', ''W'' and ''*'' as follows:

* * * * *

(6) The asterisk (*) identifies proper shipping names for which the technical name of the hazardous material must be entered in parentheses in association with the basic description. (See § 172.203(k).)

* * * * *

§ 172.101 [Amended]

12. In addition, in § 172.101, in the Label Substitution Table in paragraph (g), as amended at 62 FR 39404, effective October 1, 1998, the following changes would be made:

a. In Column 1, the language ''6.1 (I or II, other than Zone A or B inhalation hazard)'' would be revised to read ''6.1 (PG I or II, other than Zone A or B inhalation hazard, or PG III)''.

b. In Column 1, the entry for ''6.1 (III)'' would be removed.

13. In § 172.101, the Hazardous Materials Table would be amended by removing, adding, or revising, in appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	* *	*		*		*		*		*			
	Alkali metal amalgams												
	* *	*		*		*		*		*			
	Amyl alcohols (PG II, III)												
	* *	*		*		*		*		*			
	Battery, wet, with wheelchair, *see Wheelchair, electric*.												
	* *	*		*		*		*		*			
	Benzoic derivative pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.* (PG I, II) Benzoic deriative pesticides, liquid, toxic. (PG I, II, III) Benzoic derivative pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C.* (PG I, II, III) Benzoic derative pesticides, solid, toxic (PG I, II, III)												
	* *	*		*		*		*		*			
	Engines, internal combustion, *including when fitted in machinery or vehicles*.												
	* *	*		*		*		*		*			
	Ethyl cyanoacetate												
	* *	*		*		*		*		*			
D	Hexafluoropropylene oxide.												
	* *	*		*		*		*		*			
	Hydrocarbon gases, compressed, n.o.s. Hydrocarbon gases, liquefied, n.o.s.												
	* *	*		*		*		*		*			
	Metal alkyl halides, n.o.s. *or* Metal aryl halides, n.o.s. Metal alkyl hydrides, n.o.s. *or* Metal aryl hydrides, n.o.s.												
	* *	*		*		*		*		*			
	Metal alkyls, n.o.s. *or* Metal aryls, n.o.s.												
	* *	*		*		*		*		*			
I	Nitrogen triflouride, compressed (Class 2.3)												
	* *	*		*		*		*		*			
	Nitroglycerin mixture *with more than 2 percent but not more than 10 percent nitroglycerin, by mass, desensitized*.												
	* *	*		*		*		*		*			
	2,5-Norbomadiene *or* Bicyclo-[2,2,1]-hepta-2,5-diene, inhibited.												
	* *	*		*		*		*		*			
	Phenoxy pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.* (PG I, II) Phenoxy pesticides, liquid, toxic (PG I, II, III)												

§ 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Phenoxy pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C.* (PG I, II, III)												
	Phenoxy pesticides, solid, toxic (PG I, II, III)												
	* *	*		*		*		*		*			
	Phenyl urea pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.* (PG I, II)												
	* *	*		*		*		*		*			
	Phenyl urea pesticides, liquid, toxic, flammable *flash point not less than 23 degrees C.* (PG I, II, III)												
	Phenyl urea pesticides, solid, toxic (PG I, II, III)												
	* *	*		*		*		*		*			
	Phthalimide derivative pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.* (PG I, II)												
	Phthalimide derivative pesticides, liquid, toxic (PG I, II, III)												
	Phthalimide derivative pesticides, liquid, toxic, flammable *flash point not less than 23 degrees C.* (PG I, II, III)												
	Phthalimide derivative pesticides, solid, toxic (PG I, II, III)												
	* *	*		*		*		*		*			
AW.	Polychlorinated biphenyls												
	* *	*		*		*		*		*			
	Pyrophoric organometallic compound, n.o.s.												
	* *	*		*		*		*		*			
	Vehicles, self-propelled including internal combustion engines or other apparatus containing an internal combustion Engine or electric storage battery, see Engines etc. *or* Battery powered etc. *or* Wheel chair, electric).												
	* *	*		*		*		*		*			
	Wheel chair, electric (*spillable or non-spillable type batteries*).												
	* *	*		*		*		*		*			
	[ADD:]												
	* *	*		*		*		*		*			
	Acetic acid solution, *with more than 10 percent and less than 50 percent acid, by mass*	8	UN2790	III	8	T8	154	203	242	5 L	60 L	A	
	* *	*		*		*		*		*			
	Airbag inflators, compressed gas *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas	2.2	UN3353		2.2	133	166	166		75 kg	150 kg	A	
	* *	*		*		*		*		*			
	Alkali metal amalgam, liquid	4.3	UN1389	I	4.3	A2, A3, N34.	None	201	244	Forbidden	1 L	E	40
	Alkali metal amalgam, solid	4.3	UN1389	I	4.3	B101, B106, N40.	None	211	242	Forbidden	15 kg	E	

	* *	*		*		*		*		*				
*	Aviation regulated liquid, n.o.s.	9	UN3334		9	A35	155	204		No limit	No limit	A	
*	Aviation regulated solid, n.o.s.	9	UN3335		9	A35	155	204		No limit	No limit	A	
	* *	*		*		*		*		*				
	Bicyclo[2,2,1]hepta-2,5-diene, inhibited *or* 2,5-Norbornadiene, inhibited	3	UN2251	II	3		150	202	242	5 L	60 L	D	
	* *	*		*		*		*		*				
	Bromopropanes	3	UN2344	III	3	T2	150	203	242	60 L	220 L	B	
	* *	*		*		*		*		*				
D	Dangerous Goods in Machinery *or* Dangerous Goods in Apparatus		NA8001			136	None	222	None	No limit	No limit	A	
	* *	*		*		*		*		*				
	Dyes, solid, corrosive, n.o.s. *or* Dye intermediates, solid, corrosive, n.o.s.	8	UN3147	I	8		None	211	242	1 kg	25 kg	A	
	* *	*		*		*		*		*				
	Engines, internal combustion, *flammable gas powered*	9	UN3166		9	135	220	220	220	Forbidden	No limit	A	
	Engines, internal combustion, *flammable liquid powered*	9	UN3166		9	135	220	220	220	No limit	No limit		
	* *	*		*		*		*		*				
	Flammable solid, oxidizing, n.o.s.	4.1	UN3097	II	4.1, 5.1	131	None	214	214	Forbidden	Forbidden	E	40
				III	4.1, 5.1	131	None	214	214	Forbidden	Forbidden	D	40
	* *	*		*		*		*		*				
	Fumigated lading, see §§ 172.302(g), 173.9 and 176.76(h)													
	* *	*		*		*		*		*				
*	Hydrocarbon gas mixture, compressed, n.o.s.	2.1	UN1964		2.1		306	302	314, 315.	Forbidden	150 kg	E	40
*	Hydrocarbon gas mixture, liquefied, n.o.s.	2.1	UN1965		2.1		306	304	314, 315.	Forbidden	150 kg	E	40
	* *	*		*		*		*		*				
	Insecticide gases, flammable, n.o.s.	2.1	UN3354		2.1		306	304	314, 315.	Forbidden	150 kg	D	40
	* *	*		*		*		*		*				
	Insecticide gases, toxic, flammable, n.o.s. *Inhalation hazard Zone A.*	2.3	UN3355		2.3, 2.1	1	None	192	245	Forbidden	Forbidden	D	40
	Insecticide gases, toxic, flammable, n.o.s. *Inhalation hazard Zone B.*	2.3	UN3355		2.3, 2.1	2, B9, B14	None	302, 305.	314, 315.	Forbidden	Forbidden	D	40
	Insecticide gases, toxic, flammable, n.o.s. Inhalation hazard Zone C.	2.3	UN 3355		2.3, 2.1	3, B14	None	302, 305.	314, 315.	Forbidden	Forbidden	D	
	Insecticide gases toxic, flammable, n.o.s. Inhalation hazard Zone D.	2.3	UN 3355		2.3, 2.1	4	None	302, 305.	314, 315.	Forbidden	Forbidden	D	
	* *	*		*		*		*		*				
	Lithium batteries packed with equipment	9	UN3091	II	9	29	185	185	None	5 kg	35 kg gross	A	
	* *	*		*		*		*		*				
	Mercaptans, liquid, flammable, n.o.s. *or* Mercaptan mixture, liquid, flammable, n.o.s.	3	UN3336	I	3	T23	150	201	243	1 L	30 L	E	95
				II	3	T8, T31	150	202	242	5 L	60 L	B	95
				III	3	B1, B52, T7, T30.	150	203	241	60 L	220 L	B	95
	* *	*		*		*		*		*				
	Metal alkyl halides, water-reactive n.o.s. *or* Metal aryl halides, water-reactive, n.o.s..	4.2	UN3049	I	4.2, 4.3	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Metal alkyl hydrides, water-reactive, n.o.s. *or* Metal aryl hydrides, water-reactive, n.o.s.	4.2	UN3050	I	4.2, 4.3	B9, B11, T28, T29.	None	181	244	Forbidden	Forbidden	D	

§ 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Metal alkyls, water-reactive, n.o.s. *or* Metal aryls, water-reactive n.o.s.	4.2	UN2003	I	4.2, 4.3	B11, T42	None	181	244	Forbidden	Forbidden	D	
	* *		*	*		*		*		*			
	Nitroglycerin mixture, desensitized, liquid, flammable, n.o.s. *with not more than 30 percent nitroglycerin, by mass.*	3	UN3343		3	129, N8	None	214	None	Forbidden	5 L	D	
*	Nitroglycerin mixture, desensitized, solid, n.o.s. *with more than 2 percent but not more than 10 percent nitroglycerin, by mass.*	4.1	UN3319	II	4.1	118	None	None	None	Forbidden	0.5 kg	E	
	* *		*	*		*		*		*			
	Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. *with more than 10 percent but not more than 20 percent PETN, by mass.*	4.1	UN3344	II	4.1	118	None	214	None	Forbidden	Forbidden	B	40
	* *		*	*		*		*		*			
	Pentanols	3	UN1105	II	3	T1	150	202	242	5 L	60 L	B	
				III	3	B1, B3, T1	150	203	242	60 L	220 L	A	
	* *		*	*		*		*		*			
	Phenoxyacetic acid derivative pesticide, liquid, flammable, toxic *flashpoint less than 23°C.*	D	UN3346	I	3, 6.1	T23	None	201	243	Forbidden	30 L	B	40
				II	3, 6.1	T14	None	202	243	1 L	60L	B	40
	Phenoxyacetic acid derivative pesticide, liquid, toxic	6.1	UN3348	I	6.1	T24, T26	None	201	243	1 L	30 L	B	40
				II	6.1	T14	153	202	243	5 L	60 L	B	40
				III	6.1	T14	153	203	241	60 L	220 L	A	40
	Phenoxyacetic acid derivative pesticide, liquid, flammable, toxic *flashpoint not less than 23°C.*.	6.1	UN3347	I	6.1, 3	T24, T26	None	201	243	1 L	30 L	B	40
		x		II	6.1, 3	T14	153	202	243	5 L	60 L	B	40
		x		III	6.1, 3	T14	153	203	241	60 L	220 L	A	40
	Phenoxyacetic acid derivative pesticide, solid, toxic	6.1	UN3345	I	6.1		None	211	242	5 kg	50 kg	A	40
				II	6.1		153	212	242	25 kg	100 kg	A	40
				III	6.1		153	213	240	100 kg	200 kg	A	40
	* *		*	*		*		*		*			
AW	Polychlorinated biphenyls, liquid	9	UN2315	II	9	9, 81	155	202	241	100 L	220 L	A	34
AW	Polychlorinated biphenyls, solid	9	UN2315	II	9	9, 81	155	202	241	100 kg	200 kg	A	34
	* *		*	*		*		*		*			
	Pyrethroid pesticide, liquid, flammable, toxic, *flashpoint less than 23°C.*	8	UN3350	I	3,6.1	T24, T26	None	201	243	Forbidden	30 L	B	40
				II	3, 6.1	T14	None	202	243	1 L	60 L	B	40
	Pyrethroid pesticide, liquid toxic	6.1	UN3352	I	6.1		None	211	242	1 L	30 L	A	40
				II	6.1		153	212	242	5 L	60 L	A	40
				III	6.1		153	213	240	60 L	220 L		
	Pyrethroid pesticide, liquid, toxic, flammable, *flashpoint not less than 23°C.*	6.1	UN3351	I	6.1, 3	T24, T26	None	201	243	1 L	30 L	B	40
				II	6.1, 3	T14	153	202	243	5 L	60 L	B	40
				III	6.1, 3	T14	153	203	241	60 L	220 L	B	40
	Pyrethroid pesticide, solid, toxic	6.1	UN3349	I	6.1		None	211	242	5 kg	50 kg	A	40
				II	6.1		153	212	242	25 kg	100 kg	A	40
				III	6.1		153	213	240	100 kg	200 kg	A	40
	* *		*	*		*		*		*			
	Pyrophoric organometallic compound, water-reactive, n.o.s	4.2	UN3203	I	4.2, 4.3	T28, T40	None	187	242	Forbidden	Forbidden	D	

*	*	*		*		*		*		*			
Refrigerant gas R 404A	2.2	UN3337		2.2		306	304	314, 315.	75 kg	150 kg	A		
Refrigerant gas R 407A	2.2	UN3338		2.2		306	304	314, 315.	75 kg	150 kg	A		
Refrigerant gas R 407B	2.2	UN3339		2.2		306	304	314, 315.	75 kg	150 kg	A		
Refrigerant gas R 407C	2.2	UN3340		2.2		306	304	314, 315.	75 kg	150 kg	A		
*	*	*		*		*		*		*			
Thiourea dioxide	4.3	UN3341	II	4.2		None	212	241	15 kg	50 kg	D		
			III	4.2		None	213	241	25 kg	100 kg	D		
*	*	*		*		*		*		*			
Vehicle, flammable gas powered	9	UN3166		9	135	220	220	220	Forbidden	No limit	A		
Vehicle, flammable liquid powered	9	UN3166		9	135	220	220	220	No limit	No limit	A		
*	*	*		*		*		*		*			
Xanthates	4.2	UN3342	II	4.2		None	212	241	15 kg	50 kg	D	25, 40	
			III	4.2		None	213	241	25 kg	100 kg	D		
*	*	*		*		*		*		*			
[REVISE]													
*	*	*		*		*		*		*			
Nitrogen trifluoride, compressed	2.2	UN2451		2.2, 5.1		None	302	None	75 kg	150 kg	D	40	
*	*	*		*		*		*		*			
Piperidine	8	UN2401	I	8, 3	T17	None	201	243	0.5 L	2.5 L	D		
*	*	*		*		*		*		*			
Propyleneimine, inhibited	3	UN1921	I	3, 6.1	A3, N34, T24.	None	201	243	1 L	30 L	B, 40		
*	*	*		*		*		*		*			
Vanadium pentoxide, *non-fused form*	6.1	UN2862	III	6.1		153	213	240	100 kg	200 kg	A	40	

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14. In addition, in the § 172.101 Hazardous Materials Table, the following changes would be made:

14–1. In Column (1), the symbol ''+'' would be added for each of the following entries:

Aminophenols (*o-;m-;p-;*) (UN2512)
Chlorodinitrobenzenes (UN1577)
Dichloroanilines, liquid (UN1590)
Dichloroanilines, solid (UN1590)
o-Dichlorobenzene (UN1591)
N,N-Diethylaniline (UN2432)
Epichlorohydrin (UN2023)
Nitroanilines (*o-;m-;p-;*) (UN1661)
Nitroanisole (UN2730)
Nitrobenzene (UN1662)
Nitrophenols (*o-;m-;p-;*) (UN1663)
Phenetidines (UN2311)
Phenylenediamines (*o-;m-;p-;*) (UN1673)
Toluene diisocyanate (UN2078)
Toluidines, *liquid* (UN1708)
Toluidines, *solid* (UN1708)

14–2. In Column (1), the letter ''A'' would be removed for each of the following entries:

Other regulated substances, liquid, n.o.s.
Other regulated substances, solid, n.o.s.

14–3. In Column (1), the new symbol ''*'' would be added for each of the following entries:

Alcoholates solution, n.o.s., *in alcohol.*
Alcohols, flammable, toxic, n.o.s.
Aldehydes, flammable, toxic, n.o.s.
Alkali metal alcoholates, self-heating, corrosive, n.o.s.
Alkaline earth metal alcoholates, n.o.s.
Alkaloids, liquid, n.o.s. *or* Alkaloid salts, liquid, n.o.s.
Alkaloids, solid, n.o.s. *or* Alkaloid salts, solid, n.o.s. *poisonous.*
Amines, flammable, corrosive, n.o.s. *or* Polyamines, flammable, corrosive, n.o.s.
Amines, liquid, corrosive, flammable, n.o.s. *or* Polyamines, liquid, corrosive, flammable, n.o.s.
Amines, liquid, corrosive, n.o.s. *or* Polyamines, liquid, corrosive, n.o.s.
Amines, solid, corrosive, n.o.s., *or* Polyamines, solid, corrosive, n.o.s.
Ammunition, toxic *with burster, expelling charge, or propelling charge.* (two entries, UN0020 and UN0021)
Articles, explosive, n.o.s. (all 19 entries)
Caustic alkali liquids, n.o.s.
Chloroformates, toxic, corrosive, flammable, n.o.s.
Chloroformates, toxic, corrosive, n.o.s.
Combustible liquid, n.o.s.
Components, explosive train, n.o.s. (all four entries)
Compounds, cleaning liquid (two entries, NA1760 and NA1993)
Compounds, tree killing, liquid *or* Compounds, weed killing, liquid (NA1760)
Compounds, tree killing, liquid *or* Compounds, weed killing, liquid (NA1993)
Compressed gas, oxidizing, n.o.s.
Compressed gas, toxic, corrosive, n.o.s. (All hazard zones, four entries)
Compressed gas, toxic, flammable, corrosive, n.o.s. (All hazard zones, four entries)
Compressed gas, toxic, oxidizing, corrosive, n.o.s. (All hazard zones, four entries)
Compressed gas, toxic, oxidizing, n.o.s. (All hazard zones, four entries)
Compressed gases, flammable, n.o.s.
Compressed gases, n.o.s.
Compressed gases, toxic, flammable, n.o.s. (All hazard zones, four entries)
Compressed gases, toxic, n.o.s. (All hazard zones, four entries)
Corrosive, liquid, acidic, inorganic, n.o.s.
Corrosive, liquid, acidic, organic, n.o.s.
Corrosive, liquid, basic, inorganic, n.o.s.
Corrosive, liquid, basic, organic, n.o.s.
Corrosive liquid, self-heating, n.o.s.
Corrosive liquids, flammable, n.o.s.
Corrosive liquids, n.o.s.
Corrosive liquids, oxidizing, n.o.s.
Corrosive liquids, toxic, n.o.s.
Corrosive liquids, water-reactive, n.o.s.
Corrosive, solid, acidic, inorganic, n.o.s.
Corrosive, solid, acidic, organic, n.o.s.
Corrosive, solid, basic, inorganic, n.o.s.
Corrosive, solid, basic, organic, n.o.s.
Corrosive solids, flammable, n.o.s.
Corrosive solids, n.o.s.
Corrosive solids, oxidizing, n.o.s.
Corrosive solids, self-heating, n.o.s.
Corrosive solids, toxic, n.o.s.
Corrosive solids, water-reactive, n.o.s.
Disinfectant, liquid, corrosive, n.o.s.
Disinfectants, liquid, corrosive n.o.s.
Disinfectants, liquid, toxic, n.o.s.
Disinfectants, solid, toxic, n.o.s.
Dispersant gases, n.o.s.
Dyes, liquid, corrosive, n.o.s. *or* Dye intermediates, liquid, corrosive, n.o.s.
Dyes, liquid, toxic, n.o.s. *or* Dye intermediates, liquid, toxic, n.o.s.
Dyes, solid, corrosive, n.o.s. *or* Dye intermediates, solid, corrosive, n.o.s.
Dyes, solid, toxic, n.o.s. *or* Dye intermediates, solid, toxic, n.o.s.
Environmentally hazardous substances, liquid, n.o.s.
Environmentally hazardous substances, solid, n.o.s.
Flammable liquid, toxic, corrosive, n.o.s.
Flammable liquids, corrosive, n.o.s.
Flammable liquids, n.o.s.
Flammable liquids, toxic, n.o.s.
Flammable solid, corrosive, inorganic, n.o.s.
Flammable solid, inorganic, n.o.s.
Flammable solid, organic, molten, n.o.s.
Flammable solid, toxic, inorganic, n.o.s.
Flammable solids, corrosive, organic, n.o.s.
Flammable solids, organic, n.o.s.
Flammable solids, toxic, organic, n.o.s.
Gas, refrigerated liquid, flammable, n.o.s. (*cryogenic liquid*).
Gas, refrigerated liquid, n.o.s. (*cryogenic liquid*).
Gas, refrigerated liquid, oxidizing, n.o.s. (*cryogenic liquid*).
Hazardous waste, liquid, n.o.s.
Hazardous waste, solid, n.o.s.
Infectious substances, affecting animals *only*.
Infectious substances, affecting humans *only*.
Insecticide gases *flammable* n.o.s.
Insecticide gases, n.o.s.
Insecticide gases, toxic, n.o.s.
Isocyanates, flammable, toxic, n.o.s. *or* Isocyanate solutions, flammable, toxic, n.o.s. *flashpoint less than 23 degrees C.*
Isocyanates, toxic, flammable, n.o.s. or Isocyanate solutions, toxic, flammable, n.o.s., *flash point not less than 23 degrees C but not more than 61 degrees C and boiling point less than 300 degrees C.*
Isocyanates, toxic, n.o.s. *or* Isocyanate solutions, toxic, n.o.s., *flash point more than 61 degrees C and boiling point less than 300 degrees C.*
Ketones, liquid, n.o.s.
Liquefied gas, flammable, n.o.s.
Liquefied gas, n.o.s.
Liquefied gas, oxidizing, n.o.s.
Liquefied gas, toxic, corrosive, n.o.s. (All hazard zones)
Liquefied gas, toxic, flammable, corrosive, n.o.s. (All hazard zone entries)
Liquefied gas, toxic, flammable, n.o.s. (All hazard zone entries)
Liquefied gas, toxic, n.o.s. (All hazard zone entries)
Liquefied gas, toxic, oxidizing, corrosive, n.o.s. (All hazard zone entries)
Liquefied gas, toxic, oxidizing, n.o.s. (All hazard zone entries)
Metal salts of organic compounds, flammable, n.o.s.
Metallic substance, water-reactive, n.o.s.
Metallic substance, water-reactive, self-heating, n.o.s.
Nitriles, flammable, toxic, n.o.s.
Nitriles, toxic, flammable, n.o.s.
Nitriles, toxic, n.o.s.
Organic peroxide type B, liquid
Organic peroxide type B, liquid, temperature controlled
Organic peroxide type B, solid
Organic peroxide type B, solid, temperature controlled
Organic peroxide type C, liquid
Organic peroxide type C, liquid, temperature controlled
Organic peroxide type C, solid
Organic peroxide type C, solid, temperature controlled

Organic peroxide type D, liquid
Organic peroxide type D, liquid, temperature controlled
Organic peroxide type D, solid
Organic peroxide type D, solid, temperature controlled
Organic peroxide type E, liquid
Organic peroxide type E, liquid, temperature controlled
Organic peroxide type E, solid
Organic peroxide type E, solid, temperature controlled
Organic peroxide type F, liquid
Organic peroxide type F, liquid, temperature controlled
Organic peroxide type F, solid
Organic peroxide type F, solid, temperature controlled
Organometallic compound *or* Compound solution *or* Compound dispersion, water-reactive, flammable, n.o.s.
Organometallic compound, toxic, n.o.s.
Oxidizing liquid, corrosive, n.o.s.
Oxidizing liquid, n.o.s.
Oxidizing liquid, toxic, n.o.s.
Oxidizing solid, corrosive, n.o.s.
Oxidizing solid, flammable, n.o.s.
Oxidizing solid, n.o.s.
Oxidizing solid, self-heating, n.o.s.
Oxidizing solid, toxic, n.o.s.
Oxidizing solid, water-reactive, n.o.s.
Pesticides, liquid, flammable, toxic, *flashpoint less than 23 degrees C.*
Pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*
Pesticides, liquid, toxic, n.o.s.
Pesticides, solid, toxic, n.o.s.
Pyrophoric liquid, inorganic, n.o.s.
Pyrophoric liquids, organic, n.o.s.
Pyrophoric metals, n.o.s. or Pyrophoric alloys, n.o.s.
Pyrophoric organometallic compound, n.o.s.
Pyrophoric solid, inorganic, n.o.s.
Pyrophoric solids, organic, n.o.s.
Refrigerant gases, n.o.s.
Samples, explosive, *other than initiating explosives*
Self-heating liquid, corrosive, inorganic, n.o.s.
Self-heating liquid, corrosive, organic, n.o.s.
Self-heating liquid, inorganic, n.o.s.
Self-heating liquid, organic, n.o.s.
Self-heating liquid, toxic, inorganic, n.o.s.
Self-heating liquid, toxic, organic, n.o.s.
Self-heating solid, corrosive, inorganic, n.o.s.
Self-heating solid, corrosive, organic, n.o.s.
Self-heating solid, inorganic, n.o.s.
Self-heating solid, organic, n.o.s.
Self-heating solid, oxidizing, n.o.s.
Self-heating solid, toxic, inorganic, n.o.s.
Self-heating solid, toxic, organic, n.o.s.
Self-reactive liquid type B
Self-reactive liquid type B, temperature controlled
Self-reactive liquid type C
Self-reactive liquid type C, temperature controlled
Self-reactive liquid type D
Self-reactive liquid type D, temperature controlled
Self-reactive liquid type E
Self-reactive liquid type E, temperature controlled
Self-reactive liquid type F
Self-reactive liquid type F, temperature controlled
Self-reactive solid type B
Self-reactive solid type B, temperature controlled
Self-reactive solid type C
Self-reactive solid type C, temperature controlled
Self-reactive solid type D
Self-reactive solid type D, temperature controlled
Self-reactive solid type E
Self-reactive solid type E, temperature controlled
Self-reactive solid type F
Self-reactive solid type F, temperature controlled
Solids containing corrosive liquid, n.o.s.
Solids containing flammable liquid, n.o.s.
Solids containing toxic liquid, n.o.s.
Substances, explosive, n.o.s. (all 13 entries)
Substances, explosive, very insensitive, n.o.s., *or* Substances, EVI, n.o.s.
Tear gas substances, liquid, n.o.s.
Tear gas substances, solid, n.o.s.
Toxic liquid, corrosive, inorganic, n.o.s. (all three entries)
Toxic liquid, inorganic, n.o.s. (all three entries)
Toxic liquids, corrosive, organic, n.o.s. (all three entries)
Toxic liquids, flammable, organic n.o.s. (all three entries)
Toxic liquids, organic, n.o.s. (all three entries)
Toxic liquids, oxidizing, n.o.s. (all three entries)
Toxic liquids, water-reactive, n.o.s. (all three entries)
Toxic solid, corrosive, inorganic, n.o.s.
Toxic solid, inorganic, n.o.s.
Toxic solids, corrosive, organic, n.o.s.
Toxic solids, flammable, organic, n.o.s.
Toxic solids, organic, n.o.s.
Toxic solids, oxidizing, n.o.s.
Toxic solids, self-heating, n.o.s.
Toxic solids, water-reactive, n.o.s.
Water-reactive, liquid, corrosive, n.o.s.
Water-reactive, liquid, n.o.s.
Water-reactive, liquid, toxic, n.o.s.
Water-reactive, solid, corrosive, n.o.s.
Water-reactive, solid, flammable, n.o.s.
Water-reactive, solid, n.o.s.
Water-reactive, solid, oxidizing, n.o.s.
Water-reactive, solid, self-heating, n.o.s.
Water-reactive, solid, toxic, n.o.s.

14–4. In Column 2, the following hazardous materials descriptions and proper shipping names would be revised as follows:

Current column 2 entry	Revise to read:
Air bag inflators *or Air bag modules or Seat-belt pretensioners*	Air bag inflators pyrotechnic *or* Air bag modules pyrotechnic *or* Seat-belt pretensioners pyrotechnic.
Acetic acid solution, *with more than 10 percent but not more than 80 percent acid, by mass.* (UN2790) (PG II).	Acetic acid solution, *not less than 50 percent but not more than 80 percent acid, by mass.* (PG II entry)
Automobile, motorcycle, tractor, or other self-propelled vehicle, engine, or other mechanical apparatus, see Engines or Battery *etc.*	*Automobile, motorcycle, tractor, other self-propelled vehicle, engine, or other mechanical apparatus, see* Vehicles or Battery etc.
Charges, shaped, commercial, *without detonator.* (UN0059)	Charges, shaped, *without detonator.* (UN0059)
Charges, shaped, commercial, *without detonator.* (UN0439)	Charges, shaped, *without detonator.* (UN0439)
Charges, shaped, commercial, *without detonator.* (UN0440)	Charges, shaped, *without detonator.* (UN0440)
Charges, shaped, commercial, *without detonator.* (UN0441)	Charges, shaped, *without detonator.* (UN0441)
Dithiocarbamate pesticides, liquid, flammable, toxic. (UN2772 both entries).	Thiocarbamate pesticide, liquid, flammable, toxic.
Dithiocarbamate pesticides, liquid, toxic. (UN3006, all 3 entries)	Thiocarbamate pesticide, liquid, toxic.
Dithiocarbamate pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C.* (UN3005, all 3 entries).	Thiocarbamate pesticide, liquid, toxic, flammable, *flashpoint not less than 23 degrees C.*
Dithiocarbamate pesticides, solid, toxic. (UN2771, all 3 entries)	Thiocarbamate pesticide, solid, toxic.
Elevated temperature liquid, n.o.s., *at or above 100 C and below its flash point.* (UN3257).	Elevated temperature liquid, n.o.s., *at or above 100 C and below its flash point (including molten metals, molten salts, etc.).*

Current column 2 entry	Revise to read:
Octyl aldehydes, *flammable*	Octyl aldehydes.

14–5. For the following entries, Column (6) would be revised as follows:

Column (2) entry	Column (6) entry	Revise to read:
Aluminum alkyl halides	4.2	4.2, 4.3.
Aluminum alkyl hydrides	4.2	4.2, 4.3.
Aluminum alkyls	4.2	4.2, 4.3.
Diethylzinc	4.2	4.2, 4.3.
Dimethylzinc	4.2	4.2, 4.3.
Magnesium alkyls	4.2	4.2, 4.3.
Nitric Acid *other than red fuming, with more than 70 percent nitric acid.* (UN2031, PG I only)	8	8, 5.1.
Sodium nitrite	5.1	6.1.

14–6. For the following entries, Column (7) would be revised as follows:

Column (2) entry	Column (7) entry	Revise to read:
Ammonium nitrate fertilizers: *uniform non-segregating mixtures of nitrogen/phosphate or nitrogen/potash types or complete fertilizers of nitrogen/phosphate/potash type, with not more than 70 percent ammonium nitrate and not more than 0.4 percent total* (UN2071).		132.
Battery, dry, *not subject to the requirements of this subchapter*		130.
Battery-powered vehicle *or* Battery-powered equipment		134.
Chlorosilanes, corrosive, n.o.s	B2, T8, T26	B2, T14, T26.
Chlorosilanes, flammable, corrosive, n.o.s	B100, T18, T26	B100, T17, T26.
Chlorosilanes, water-reactive, flammable, corrosive, n.o.s	A2, T24, T26	A2, T18, T26.
Corrosive liquids, toxic, n.o.s. (PG I) (UN2922)	A7, B10, T18, T27	A7, B10, T12, T18, T27.
Corrosive liquids, toxic, n.o.s. (PG II) (UN2922)	B3, T18, T26	B3, T12, T18, T26.
Cotton (NA1365)	W41	137, W41.
Cotton waste, oily	N9	
Detonator assemblies, non-electric *for blasting* (UN0500)	104	
Detonators, electric *for blasting* (UN0456)	104	
Detonators for ammunition (UN0366)	104	
Detonators, non-electric *for blasting* (UN0455)	104	
Environmentally hazardous substances, solid, n.o.s	8, B54	8, B54, N20.
Fibers *or* Fabrics, animal *or*vegetable *or* synthetic n.o.s. *with animal or vegetable oil.*		137.
Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary).* (UN2984).	17, A1, B104, T8, T37	A1, B104, T8, T37.
Lead, compounds, soluble n.o.s		138.
Organic pigments, self-heating (PG III)	B101	
Organometallic compound *or* Compound solution *or* Compound dispersion, water-reactive, flammable, n.o.s. (PG1).		T28.
Organometallic compound *or* Compound solution *or* Compound dispersion, water-reactive, flammable, n.o.s. (PG II).		T28.
Organometallic compound *or* Compound solution *or* Compound dispersion, water-reactive, flammable, n.o.s. (PG III).	B101, B106	T28.
Polyester resin kit	121	40.
Sodium azide	B28	

14–7. In Column (8B), for the entry, ''Chloropicrin'', the reference ''227'' would be removed and ''193'' would be added in its place.

14–8. For the entry, ''Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor.*'' (UN3314), the following changes would be made:

a. In Column (8B), the reference ''213'' would be removed and ''221'' would be added in its place.

b. In Column (8C), the reference ''None'' would be removed and ''221'' would be added in its place.

14–9. In Column (8C), for the entry, ''Polymeric beads, *expandable, evolving flammable vapor.*'', the reference ''240'' would be removed and ''221'' would be added in its place.

14–10. In Column (9A), the following changes would be made:

a. For the entry, ''Acetonitrile'', the quantity limit ''1L'' would be removed and ''5 L'' would be added in its place.

b. For the entry ''Alkaline earth metal alcoholates, n.o.s.'', for Packing Group III, the quantity limit ''15 kg'' would be removed and ''25 kg'' would be added in its place.

c. For the entries ''Batteries, wet, filled with acid, *electric storage.*'' and ''Batteries, wet, filled with alkali, *electric storage.*'', the quantity limit ''25 kg gross'' would be removed and ''30 kg gross'' would be added each place it appears.

d. For the entry ''Refrigerating machines, *containing non-flammable, non-toxic, liquefied gas or ammonia solutions (UN2672)*'', UN2857, the word ''Forbidden'' would be removed and ''450 kg gross'' would be added in its place.

14–11. For the entries ''Sulfur'', NA1350 and ''Sulfur'', UN1350, the following changes would be made:

a. In Column (9A), the quantity limit ''25 kg'' would be removed and ''No limit'' would be added each place it appears.

b. In Column (9B), the quantity limit ''100 kg'' would be removed and ''No limit'' would be added each place it appears.

14–12. In Column 9(a), the following changes would be made:

a. For the entry, ''Isobutyl isocyanate'', the quantity limit ''1 L'' would be removed and ''Forbidden'' would be added in its place.

b. For the entry ''Refrigerating machines *containing non-flammable, non-toxic, liquefied gas or ammonia solutions (UN2073).*'' (UN2857), in Column 9(A), the word ''Forbidden'' would be removed and ''450 kg gross'' would be added in its place.

14–13. In Column (9B), the following changes would be made:

a. For the entry, ''Aerosols, flammable, n.o.s.'' *(engine starting fluid) (each not exceeding 1 L capacity).*, the word ''Forbidden'' would be removed and ''150 kg'' would be added in its place.

b. For the entries, ''Articles, explosive, n.o.s.'', UN0351; ''Articles, explosive, n.o.s.'', UN0352; and ''Articles, explosive, n.o.s.'', UN0353, the word ''Forbidden'' would be removed and ''75 kg'' would be added each place it appears.

c. For the entry, ''Bromine *or* Bromine solutions'', the quantity limit ''2.5 L would be removed and ''Forbidden'' would be added in its place.

d. For the entry, ''Oxygen generator, chemical'', the quantity limit ''25 kg'' would be removed and ''25 kg gross'' would be added in its place.

14–14. In Column (10A), the following changes would be made:

a. For the entry, ''Dichlorophenyl isocyanates'', the stowage requirement ''A'' would be removed and ''B'' would be added in its place.

b. For the entry, ''Hexamethylene diisocyanate'', the stowage requirement ''B'' would be removed and ''C'' would be added in its place.

c. For the entry, ''Isocyanates, toxic, flammable, n.o.s. *or* Isocyanate solutions, toxic, flammable, n.o.s. *flash point not less than 23 degrees C but not more than 61 degrees C and boiling point less than 300 degrees C.*'', the stowage requirement ''D'' would be removed and ''B'' would be added in its place.

d. For the entry, ''Isocyanatobenzotrifluorides'', the stowage requirement ''B'' would be removed and ''D'' would be added in its place.

e. For the entry, ''Water-reactive solid, flammable, n.o.s., for Packing Group I,, the stowage requirement ''E'' would be removed and ''D'' would be added in its place.

f. For the entry, ''Isocyanates, toxic, n.o.s. or Isocyanate, solutions, toxic, n.o.s., *flash point more than 61 degrees C and boiling point less than 300 degrees C.*'', the stowage requirement ''D'' would be removed and ''E'' would be added in its place.

15. In Appendix B to § 172.101, the List of Marine Pollutants would be amended by removing eleven entries and adding sixteen entries in appropriate alphabetical order to read as follows:

Appendix B to § 172.101—List of Marine Pollutants

* * * * *

S.M.P (1)	Marine pollutant (2)
[REMOVE:]	
	Alkyl (C10–C21) sulphonic acid ester of phenol.
	ortho-Anisidines.
	Barium compounds, soluble, n.o.s.
	Di-*normal*-butyl ketone.
	Diphenyl oxide.
	Isopropenyl chloride.
	Isopropyl chloride.
	3-Methylpyradine.
	Sym-Dichloroethyl ether.
	Tetrachlorovinphos.
[ADD:]	
*	* * * * * *
	Alkylbenzenesulphonates, branched and straight chain.
*	* * * * * *
PP	Chlorinated paraffins (C14–C17), with more than 1% shorter chain length.
*	* * * * * *
	1-Chloro-2,3-Epoxypropane.
*	* * * * * *
PP	Copper sulphate, anhydrous, hydrates.
*	* * * * * *
	Dichlorodimethyl ether, symmetrical.
*	* * * * * *
	Isobutyl aldehyde.
*	* * * * * *
	Isobutyraldehyde.
*	* * * * * *
	Maneb.

S.M.P (1)	Marine pollutant (2)
* * * * * * *	
	Maneb preparation, stabilized against self-heating.
* * * * * * *	
PP	N,N-Dimethyldodecylamine.
* * * * * * *	
	Nitrotoluenes (ortho-; meta-; para-), solid.
* * * * * * *	
	Normal-heptaldehyde.
* * * * * * *	
	Potassium cyanide, solution.
* * * * * * *	
	Sodium cyanide, solution.
* * * * * * *	
	Triphenyl phosphate/tert-butylated triphenyl phosphates mixtures containing 5% to 10% triphenyl phosphates.
PP	Triphenyl phosphate/tert-butylated triphenyl phosphates mixtures containing 10% to 48% triphenyl phosphates.
* * * * * * *	

§ 172.101, Appendix B [Amended]

16. In addition, in Appendix B to § 172.101, the List of Marine Pollutants, the following changes would be made:

a. In column (1), the designation ''PP'' would be added for the following entries:

''Azinphos-methyl.''
''Cupric chloride.''
''Cuprous chloride.''
''Furathiocarb (ISO).''
''Osmium tetroxide.''
''Triphenylphosphate.''

b. In column (1), the designation ''PP'' would be removed for the entry ''Silver orthoarsenite''.

c. In column (2), the following entries would be revised to read as follows in appropriate alphabetical order:

''Alcohol C–12—C–15 poly(1–3) ethoxylate'' would be revised to read ''Alcohol C–12—C–16 poly(1–6) ethoxylate''.

''Alkylphenols, liquid, n.o.s. (*including C2–C8 homologues*)'' would be revised to read ''Alkylphenols, liquid, n.o.s. (*including C2–C12 homologues*)''.

''Alkylphenols, solid, n.o.s. (*including C2–C8 homologues*)'' would be revised to read ''Alkylphenols, solid, n.o.s. (*including C–2—C–12 homologues*)''.

''2-Butenal, inhibited'' would be revised to read ''2-Butenal, stabilized''.

''Chlorodinitrobenzenes'' would be revised to read ''Chlorodinitrobenzenes, liquid or solid''.

''Chlorophenates, liquid'' would be revised to read ''Chlorophenolates, liquid''.

''Chlorophenates, solid'' would be revised to read ''Chlorophenolates, solid''.

''Chlorotoluenes'' would be revised to read ''Chlorotoluenes (ortho-,meta-,para-)''.

''Crotonaldehyde, inhibited'' would be revised to read ''Crotonaldehyde, stabilized''.

''Crotonic aldehyde'' would be revised to read ''Crotonic aldehyde, stabilized''.

''Decyloxytetrahydrothiophene dioxide'' would be revised to read ''Decycloxytetrahydrothiophene dioxide''.

''Dichloroethyl ether'' would be revised to read ''Di-(2-chloroethyl) ether''.

''Dodecylamine'' would be revised to read ''1-Dodecylamine''.

''Hydrocyanic acid, anhydrous, stabilized'' would be revised to read ''Hydrocyanic acid, anhydrous, stabilized, containing less than 3% water''.

''Hydrocyanic acid, anhydrous, stabilized, absorbed in a porous material'' would be revised to read ''Hydrocyanic acid, anhydrous, stabilized, containing less than 3% water and absorbed in a porous material''.

''Isobutybenzene'' would be revised to read ''Isobutylbenzene''.

''Maneb or Maneb preparations *with not less than 60 per cent maneb*'' would be revised to read ''Maneb preparations *with not less than 60% maneb*''.

''Mercarbam'' would be revised to read ''Mecarbam''.

''Mercurous bisuphate'' would be revised to read ''Mercurous bisulphate''.

''Mercury based pesticides, liquid, flammable, toxic, n.o.s.'' would be revised to read ''Mercury based pesticide, liquid, flammable, toxic''.

''Mercury based pesticides, liquid, toxic, flammable, n.o.s.'' would be revised to read ''Mercury based pesticide, liquid, toxic, flammable''.

''Mercury based pesticides, liquid, toxic, n.o.s.'' would be revised to read ''Mercury based pesticide, liquid, toxic''.

''Mercury based pesticides, solid, toxic, n.o.s.'' would be revised to read ''Mercury based pesticide, solid, toxic''.

''3-Methylacroleine, inhibited'' would be revised to read ''3-Methylacrolein, stabilized''.

''Nitrobenzotrifluorides'' would be revised to read ''Nitrobenzotrifluorides, liquid or solid''.

''Nitrotolueuenes (o-;m:-p-) would be revised to read ''Nitrotoluenes (ortho-;meta-;para-), liquid''.

''Nitroxyluenes (o-;m-;p-)'' would be revised to read ''Nitroxylenes, liquid or solid''.

''Potassium cyanide'' would be revised to read ''Potassium cyanide, solid''.

''Potassium cyanocuprate I'' would be revised to read ''Potassium cyanocuprate (I)''.

''Sodium cyanide'' would be revised to read ''Sodium cyanide, solid''.

''Tetrachloroethane'' would be revised to read ''1,1,2,2-Tetrachloroethane''.

''Tetramethylbenzenes'' would be revised to read ''n-Tetramethylbenzenes''.

''Tricresyl phosphate (*not less than 1% ortho-isomer*)'' would be revised to read ''Tricresyl phosphate, not less than 1% ortho-isomer but not more than 3% orthoisomer''.

''White phosphorus, molten'' would be revised to read ''Phosphorus, white, molten''.

''Yellow phosphorus, molten'' would be revised to read ''Phosphorus, yellow, molten''.

17. In § 172.102, in paragraph (c)(1), Special Provision 43 would be amended by adding a sentence at the end, Special Provisions 129, 130, 131, 132, 133, 134, 135, 136, 137 and 138 would be added; in paragraph (c)(2), Special Provision A35 would be added; and in paragraph (c)(3), Special Provision B101 would be revised to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

43. * * * Nitrocellulose membrane filters covered by this entry, each with a mass not exceeding 0.5 g, are not subject to the requirements of this subchapter when contained individually in an article or a sealed packet.

* * * * *

129. These materials must not be classified and transported unless authorized by the Associate Administrator for Hazardous Materials Safety on the basis of results from Series 2 Test and a Series 6(c) Test from the UN Manual of Tests and Criteria on packages as prepared for transport. The packing group assignment and packaging must be approved by the Associate Administrator for Hazardous Materials Safety on the basis of the criteria in § 173.21 of this subchapter and the package type used for the Series 6(c) test .

130. Batteries, dry are not subject to the requirements of this subchapter only when they are offered for transportation in a manner that prevents short-circuits (for example, by the effective insulation of exposed terminals) or the dangerous evolution of heat.

131. This material may not be offered for transportation unless approved by the Associate Administrator for Hazardous Materials Safety.

132. Ammonium nitrate fertilizers of this composition are not subject to the requirements of this subchapter if shown by a trough test (see United Nations Recommendations on the Transport of Dangerous Goods, Manual Tests and Criteria, Part III, sub-section 38.2) not to be liable to self-sustaining decomposition and provided that they do not contain an excess of nitrate greater than 10% by mass (calculated as potassium nitrate).

133. This description applies to articles which are used as life-saving vehicle air bag inflators or air bag modules or seat-belt pretensioners, containing a gas or a mixture of compressed gases classified under Division 2.1 or Division 2.2, and with or without small quantities of pyrotechnic material. For units with pyrotechnic material, initiated explosive effects shall be contained within the pressure vessel such that the unit may be excluded from Class 1 in accordance with paragraph 1.11(b), in conjunction with paragraph 16.6.1.4.7(a)(ii) of the UN Manual of tests and Criteria, Part 1. In addition, units must be designed or packaged for transport so that when engulfed in a fire there will be no fragmentation of the pressure vessel or projection hazard. This may be determined by analysis or test. The pressure vessel must be in compliance with the requirements for the gas(es) contained in the pressure vessel.

134. This entry only applies to vehicles, machinery and equipment which are powered by wet batteries or sodium batteries and which are transported with these batteries installed. Examples of such items are electrically-powered cars, lawn mowers, wheelchairs and other mobility aids. Self-propelled vehicles which also contain an internal combustion engine must be consigned under the entry ''Vehicle, flammable gas powered'' or ''Vehicle, flammable liquid powered'', as appropriate.

135. The entries ''Vehicle, flammable gas powered'' or ''Vehicle, flammable liquid powered'', as appropriate, must be used when internal combustion engines are installed in a vehicle.

136. This entry only applies to machinery and apparatus containing hazardous materials as an integral element of the machinery or apparatus. It may not be used to describe machinery or apparatus for which a proper shipping name exists in the § 172.101 Table. Machinery or apparatus may only contain hazardous materials for which exceptions are referenced in Column 8 of the § 172.101 Table and are provided in Part 173, Subpart D, of this subchapter. When transported by aircraft, the machinery or apparatus must be labeled according to each of the hazardous materials contained in the machinery or apparatus. This includes the primary hazard label and any applicable subsidiary risk labels, except that a subsidiary risk label is not required for any subsidiary hazard already indicated by the primary or subsidiary hazard label applied for another substance in the machinery or apparatus. Hazardous materials shipped under this entry are excepted from the labeling requirements of this subchapter unless offered for transportation or transported by air. Orientation markings as prescribed in § 172.312, are required only when necessary to ensure that liquid hazardous materials remain in their intended orientation. The machinery or apparatus or the packagings in which they are contained shall be marked ''Dangerous goods in machinery'' or ''Dangerous goods in apparatus'', as appropriate, and with the appropriate identification number. For transportation by aircraft, machinery or apparatus may not contain any material forbidden for transportation by passenger aircraft. Hazardous materials in machinery or apparatus are not subject to the placarding requirements of subpart F of this part. The Associate Administrator for Hazardous Materials Safety may except from the requirements of this subchapter equipment, machinery and apparatus provided:

a. It is shown that it does not pose a significant risk in transportation;

b. The quantities of hazardous materials do not exceed those specified in § 173.4 of this subchapter for the applicable class(es) of hazardous materials contained; and

c. The equipment, machinery or apparatus conforms with § 173.221 of this subchapter.

137. Cotton, dry is not subject to the requirements of this subchapter when it is baled in accordance with ISO 8115, ''Cotton Bales—Dimensions and Density'' to a density of at least 360 kg/m^3 (22.4lb/ft^3) and it is transported in a freight container or closed transport vehicle.

138. Lead compounds which, when mixed in a ratio of 1:1000 with 0.07 hydrochloric acid and stirred for one hour at a temperature of 23°C ±2°C, exhibit a solubility of 5% or less are considered insoluble.

(2) * * *

Code/Special Provisions

* * * * *

A35. This includes any material which is not covered by any of the other classes but which has an anesthetic, narcotic, noxious or other similar properties such that, in the event of spillage or leakage on an aircraft, extreme annoyance or discomfort could be caused to crew members so as to prevent the correct performance of assigned duties.

* * * * *

(3) * * *

Code/Special Provisions

* * * * *

B101. When intermediate bulk containers are used, only those constructed of metal are authorized.

* * * * *

§ 172.102 [Amended]

18. In addition, in § 172.102, the following changes would be made:

a. In paragraph (c)(1), Special Provision 17 would be removed.

b. In paragraph (c)(1), Special Provision 20 would be removed.

c. In paragraph (c)(1), Special Provision 104 would be removed.

d. In paragraph (c)(1), under Special Provision 125, in the fourth sentence, the wording ''at least 90%'' would be removed and ''at least 98%'' would be added in its place; and in the last sentence, the wording ''less than 98%'' would be removed and ''less than 90%'' would be added in its place.

e. In paragraph (c)(5), Special Provision N9 would be removed.

§ 172.203 [Amended]

19. In § 172.203, the following changes are made:

a. In paragraph (k) introductory text, in the first sentence, the words ''listed in paragraph (k)(3) of this section''

would be removed and ''identified by an asterisk (*) in Column (1) of the § 172.101 Table'' would be added in its place.

b. In addition, paragraph (k)(3) would be removed and paragraph (k) (4) would be redesignated as paragraph (k)(3).

§ 172.400 [Amended]

20. In § 172.400, in the table in paragraph (b), as amended at 62 FR 39405, effective October 1, 1998, the following changes would be made:

a. The entry ''6.1 (PG I or II, other than Zone A or B inhalation hazard)'' would be removed and ''6.1 (PG I or II, other than Zone A or B inhalation hazard, or PG III)'' would be added in its place.

b. The entry ''6.1 (PG III)'' would be removed.

§ 172.400a [Amended]

21. In § 172.400a, paragraph (d) would be removed.

22. In § 172.405, a new paragraph (c) would be added to read as follows:

§ 172.405 Authorized label modifications.

* * * * *

(c) For a package containing a Division 6.1 Packing Group III material, the POISON label specified in § 172.430 may be modified to display the text ''PG III'' below the mid-line of the label, instead of ''TOXIC'' (''POISON'').

23. In § 172.407, paragraph (c)(4) would be revised to read as follows:

§ 172.407 Label specifications.

* * * * *

(c) * * *

(4) When text indicating a hazard is displayed on a label, the label name must be shown in letters measuring at least 7.6 mm (0.3 inches) in height. For SPONTANEOUSLY COMBUSTIBLE or DANGEROUS WHEN WET labels, the words ''Spontaneously'' and ''When Wet'' must be shown in letters measuring at least 5.1 mm (0.2 inches) in height.

* * * * *

§ 172.431 [Removed and reserved]

24. Section 172.431 would be removed and reserved.

25. In § 172.504, paragraph (f)(10) would be revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(f) * * *

(10) For Division 6.1, PG III materials, a POISON placard may be modified to display the text ''PG III'' below the mid-line of the placard.

* * * * *

§ 172.504 [Amended]

26. In § 172.504, as amended at 62 FR 39407, effective October 1, 1998, the following changes would be made:

a. In paragraph (e), in Table 2, the entry ''6.1 (PG I or II, other than Zone A or B inhalation hazard)'' would be removed and ''6.1 (PG I or II, other than Zone A or B inhalation hazard, or PG III)'' would be added in its place.

b. In paragraph (e), the entry ''6.1 (PG III) would be removed.

§ 172.553 [Removed and reserved]

27. Section 172.553 would be removed and reserved.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

28. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

§ 173.1 [Amended]

29. In § 173.1, in paragraph (d), in the first sentence, the wording ''Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods'' would be removed and ''UN Recommendations'' would be added in its place.

§ 173.2a [Amended]

30. In the § 173.2a, paragraph (b), Precedence of Hazard Table, in column 13, under the column heading ''8, II liquid'', the following changes would be made:

a. For the entry, ''4.3 II'', the numeral ''8'' would be removed and ''4.3'' would be added in its place.

b. For the entry, ''5.1 II'', the numeral ''8'' would be removed and ''5.1'' would be added in its place.

31. In § 173.25, paragraph (b) would be revised to read as follows:

§ 173.25 Authorized packagings and overpacks.

* * * * *

(b) Shrink-wrapped or stretch-wrapped trays may be used as outer packagings for inner packagings prepared in accordance with the limited quantity provisions or consumer commodity provisions of this subchapter, provided that—

(1) Inner packagings are not fragile, liable to break or be easily punctured, such as those made of glass, porcelain, stoneware or certain plastics; and

(2) Each complete package does not exceed 20 kg (44 lbs) gross weight.

* * * * *

32. In § 173.28, paragraph (c)(2) would be revised and a new paragraph (c)(5) would be added to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(c) * * *

(2) For the purpose of this subchapter, reconditioning of a non-bulk packaging other than a metal drum includes:

(i) Removing all former contents, coatings and labels so that only the original materials of construction remain;

(ii) Replacing all non-integral packaging components including gaskets, closure devices and cushioning and cushioning material;

(iii) Inspecting after cleaning and rejecting packagings with visible damage such as tears, creases or cracks, or damaged threads or closures, or other significant defects; and

(iv) Ensuring that the packagings are restored to a condition that conforms in all respects with the prescribed requirements of this subchapter.

* * * * *

(5) Packagings which have significant defects which cannot be repaired may not be reused.

* * * * *

33. In § 173.29, paragraph (b)(2)(iv)(B), would be revised to read as follows:

§ 173.29 Empty packagings.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(B) A Division 2.2 non-flammable gas, other than ammonia, anhydrous, and with no subsidary hazard, at an absolute pressure less than 280 kPa (40.6 psia); at 20 °C (68 °F); and

* * * * *

34. In § 173.32b, in paragraph (b)(1), a new sentence would be added at the end of the paragraph to read as follows:

§ 173.32b Periodic testing and inspection of Specification IM portable tanks.

* * * * *

(b) * * *

(1) * * * The two and one-half year internal inspection may be waived for portable tanks dedicated to the transportation of a single hazardous material if it is leak tested prior to each filling.

* * * * *

§ 173.32b [Amended]

35. In addition, in paragraph (b)(1) and (b)(2), the semicolon at the end of the first sentence would be removed and a period added in its place.

36. In § 173.32c, paragraph (j) would be revised to read as follows:

§ 173.32c Use of Specification IM portable tanks.

* * * * *

(j) An IM portable tank may not be loaded with a liquid having a viscosity less than 2,680mm $^2/_s$ at 20° C or a non-monolithic solid to a filling density of more than 20%, but less than 80%. If a portable tank is divided by partitions or surge plates into compartments of not more than 7,500 liters (1,980 gallons) capacity, this filling restriction does not apply.

* * * * *

37. In § 173.35, the section heading and paragraph (b) would be revised to read as follows:

§ 173.35 Hazardous materials in intermediate bulk containers (IBCs).

* * * * *

(b) Initial use and reuse of IBCs. An IBC other than a multiwall paper IBC (13M1 and 13M2) may be reused. If an inner liner is required, the inner liner must be replaced before each reuse. Before an IBC is filled and offered for transportation, the IBC and its service equipment must be given an external visual inspection, by the person filling the IBC, to ensure that:

(1) The IBC is free from corrosion, contamination, cracks, cuts, or other damage which would render it unable to pass the prescribed design type test to which it is certified and marked; and

(2) The IBC is marked in accordance with requirements in § 178.703 of this subchapter. Additional marking allowed for each design type may be present. Required markings that are missing, damaged or difficult to read must be restored or returned to original condition.

* * * * *

§ 173.56 [Amended]

38. In § 173.56, in paragraphs (b)(2)(i) and (b)(3)(i), the wording ''(TB 700–2, dated December 1989)'' would be removed and ''(TB 700–2)'' would be added in its place.

§ 173.59 [Amended]

39. In § 173.59, for the definitions ''*Charges, explosive, commercial without detonator.*'' and ''*Charges, shaped commercial, without detonator.*'', the word ''commercial'' would be removed each place it appears.

40. In § 173.121, paragraph (b)(1)(ii) would be revised to read as follows:

§ 173.121 Class 3—Assignment of packing group.

* * * * *

(b) * * *

(1) * * *

(ii) The mixture does not contain any substances with a primary or a subsidiary risk of Division 6.1 or Class 8.

* * * * *

§ 173.121 [Amended]

41. In addition, in § 173.121, in paragraph (b)(1)(i), the semicolon at the end of the paragraph would be removed and a period added in its place; and in paragraph (b)(1)(iii), the wording ''; and'' at the end of the paragraph would be removed and a period added in its place.

§ 173.159 [Amended]

42. In § 173.159, in paragraph (g)(2), in the first sentence, immediately following the wording ''may be packed in strong'', the words ''plywood or wooden boxes'' would be removed and the words ''outer packagings'' would be added in their place.

43. Section 173.162 would be revised to read as follows:

§ 173.162 Gallium.

(a) Except when packaged in cylinders or steel flasks, gallium must be packaged in packagings which meet the requirements of part 178 of this subchapter at the Packing Group I performance level for transport by aircraft and the Packing Group III performance level for transport by highway, rail and vessel.

(1) Packagings intended to contain liquids consisting of glass, earthenware or rigid plastics with a maximum net mass of 10 kg (22 pounds) each. The inner packagings must be packed in wooden boxes (4C1, 4C2, 4D, 4F), fiberboard boxes (4G), plastics boxes (4H1, 4H2), fiber drums (1G) or removable head steel and plastic drums or jerricans (1A2, 1H2, 3A2 or 3H2) with sufficient cushioning material to prevent breakage. Either the inner packagings or the outer packagings must have inner liners or bags of strong leakproof and puncture-resistant material impervious to the contents and completely surrounding the contents to prevent it from escaping from the package, irrespective of its position.

(2) In packagings intended to contain liquids consisting of semi-rigid plastic inner packagings of not more than 2.5 kg (5.5 pounds) net capacity each, individually enclosed in a sealed, leak-tight bag of strong puncture-resistant material. The sealed bags must be packed in wooden (4C1, 4C2), plywood (4D), reconstituted wood (4F), fiberboard (4G) or plastic (4H1, 4H2) boxes or in fiber (1G) or steel (1A2) drums, which are lined with leak-tight, puncture-resistant material. Bags and liner material must be chemically resistant to gallium.

(3) Cylinders and steel flasks with vaulted bottoms are also authorized.

(b) When it is necessary to transport gallium at low temperatures in order to maintain it in a completely solid state, the above packagings may be overpacked in a strong, water-resistant outer packaging which contains dry ice or other means of refrigeration. If a refrigerant is used, all of the above materials used in the packaging of gallium must be chemically and physically resistant to the refrigerant and must have impact resistance at the low temperatures of the refrigerant employed. If dry ice is used, the outer packaging must permit the release of carbon dioxide gas.

(c) Manufactured articles or apparatuses, each containing not more than 100 mg (0.0035 ounce) of gallium and packaged so that the quantity of gallium per package does not exceed 1 g (0.35 ounce) are not subject to the requirements of this subchapter.

44. In § 173.164, paragraphs (a)(1) through (a)(3) would be revised and paragraph (a)(4) would be added to read as follows:

§ 173.164 Mercury (metallic and articles containing mercury).

(a) * * *

(1) In inner packagings of earthenware, glass or plastic containing not more than 3.5 kg (7.7 pounds) of mercury, or inner packagings which are glass ampoules containing not more than 0.5 kg (1.1 pounds) of mercury, or iron or steel quicksilver flasks containing not more than 35 kg (77 pounds) of mercury. The inner packagings or flasks must be packed in steel drums (1A2), steel jerricans (3A2), wooden boxes (4C1, (4C2), plywood boxes (4D), reconstituted wood boxes (4F), fiberboard boxes (4G), plastic boxes (4H2), plywood drums (1D) or fibre drums (1G).

(2) Packagings must meet the requirements of part 178 of this subchapter at the Packing Group I performance level.

(3) When inner packagings of earthenware, glass or plastic are used, they must be packed in the outer packaging with sufficient cushioning material to prevent breakage.

(4) Either the inner packagings or the outer packagings must have inner linings or bags of strong leakproof and puncture-resistant material impervious to mercury, completely surrounding the contents, so that the escape of mercury

will be prevented irrespective of the position of the package.

* * * * *

§ 173.164 [Amended]

45. In addition, in § 173.164, in paragraph (c) introductory text, the wording ''not more than 100 mg (0.0035 ounce)'' would be removed.

§ 173.196 [Amended]

46. In § 173.196, paragraph (a)(1)(iii), in the first sentence, the wording ''An absorbent material'' would be removed and ''When the primary receptacle contains liquids, an absorbent material'' would be added in its place.

47. Section 173.220 would be revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, and mechanical equipment containing internal combustion engines or wet batteries.

(a) *Applicability.* An internal combustion engine, self-propelled vehicle, or mechanized equipment is subject to the requirements of this subchapter when transported as cargo on a transport vehicle, vessel or aircraft, if —

(1) The engine or fuel tank contains a flammable liquid or gaseous fuel;

(2) It is equipped with a wet electric storage battery; or

(3) It contains other hazardous materials subject to the requirements of this subchapter.

(b) *Flammable liquid fuel.* Engines and flammable liquid fuel tanks are subject to the requirements of this subchapter as follows:

(1) If an engine or flammable liquid fuel tank is not completely drained or has more than 500 ml (17 ounces) of fuel in engine components and fuel lines, it is subject to all applicable requirements of this subchapter.

(2) If an engine or flammable liquid fuel tank is drained and has no more than 500 ml (17 ounces) of fuel in engine components and fuel lines, it is subject to this subchapter with certain exceptions listed in paragraph (g)(2) of this section. For transportation by aircraft, these exceptions are limited to marking, labeling and an emergency response telephone number. The shipment is still subject to all other applicable requirements of this subchapter, such as shipping papers, emergency response information, notification of pilot-in-command, general packaging requirements and the requirements specified in § 173.27.

(3) If an engine or flammable liquid fuel tank (including engine components and fuel lines) is completely drained and sufficiently cleaned of residue and purged of vapors to remove any potential hazard, it is not subject to any other requirements of this subchapter.

(4) Fuel may remain in engine and tanks installed in self-propelled vehicles and mechanical equipment only under the following conditions:

(i) For transportation by motor vehicle or rail car, the fuel tanks must be securely closed.

(ii) For transportation by vessel the shipment must conform to § 176.905 of this subchapter.

(iii) For transportation by aircraft designed or modified for vehicle ferry operations, the shipment must comply with § 175.305 of this subchapter.

(c) *Flammable gas fuel.* Automobiles, motorcycles, tractors, or other self-propelled vehicles equipped with liquefied petroleum gas or other compressed gas fuel tanks, provided such tanks are securely closed, are not subject to any other requirements of this subchapter for transportation by rail or highway. For transportation by water, see §§ 176.905 and 176.78(k) of this subchapter. For transportation by air, the fuel tank must be removed or emptied and securely closed.

(d) *Wet battery powered or installed.* Wet batteries must either be installed, securely fastened in an upright position, and protected against short circuits and leakage or be removed and packaged separately under § 173.159. Battery powered vehicles, machinery or equipment including battery powered wheel chairs are excepted from the requirements of this subchapter except when transported by air, unless specifically excepted in § 175.10 of this subchapter, or when they contain other hazardous materials not excepted in this section.

(e) *Truck bodies or trailers on flat cars*—(1) *Flammable liquid powered.* Truck bodies or trailers with automatic heating or refrigerating equipment of the flammable liquid type may be shipped with fuel tanks filled and equipment operating or inoperative, when used for the transportation of other freight and loaded on flat cars as part of a joint rail and highway movement, provided the equipment and fuel supply conform to the requirements of § 177.834(l) of this subchapter and are of a type which has been examined by a person approved by the Associate Administrator for Hazardous Materials Safety.

(2) *Flammable gas powered.* Except as specified in § 173.21, truck bodies or trailers with automatic heating or refrigerating equipment of the gas burning type may be shipped with tanks containing fuel and equipment operating or not operating, when used for the transportation of other freight and loaded on flat cars as part of a joint rail-highway movement. The heating or refrigerating equipment is considered to be a part of the truck body or trailer and is not subject to any other requirements of this subchapter.

(f) *Other hazardous materials.* The provisions of this subchapter do not apply to items of equipment such as fire extinguishers, airbag inflators or modules, seat-belt pretensioners, other life saving appliances or safety devices and the like which are securely installed in the motor vehicle or mechanical equipment if they are necessary for the operation of the vehicle or equipment, or for the safety of its operator or passengers. All other hazardous materials not excepted in this section must be packaged and transported in accordance with this subchapter.

(g) *Exceptions.* Except as provided in paragraph (f) of this section, shipments made under the provisions of this section—

(1) Are not subject to any other requirements of this subchapter, for transportation by motor vehicle or rail car; and

(2) Are not subject to the requirements of subparts D, E and F (marking, label and placarding, respectively) of part 172 of this subchapter or § 172.604 of this subchapter (emergency response telephone number) of this subchapter for transportation by vessel or aircraft.

48. Section 173.221 would be revised to read as follows:

§ 173.221 Polymeric beads, expandable and Plastic molding compound.

(a) Non-bulk shipments of polymeric beads or granules, expandable, impregnated with flammable gas or liquid as a blowing agent and plastic molding compound in dough, sheet or extruded rope form must be packed in: wooden (4C1 or 4C2), plywood (4D), fiberboard (4G), reconstituted wood (4F) boxes, plywood drums (1D) or fiber drums (1G) with sealed inner plastic liners; or, in vapor tight metal or plastic drums (1A1, 1A2, 1B1, 1B2, 1H1 or 1H2). The packagings need not conform to the requirements for package testing in part 178 of this subchapter, but must be capable of containing any evolving gases from the contents during normal conditions of transportation.

(b) Bulk shipments of polymeric beads or granules, expandable or plastic molding compounds may be packed in plastic film or bags which are placed in steel racks, metal or plastic crates or shrink-wrapped on wood pallets when transported in dedicated vehicles or freight containers. Polymeric beads or granules or plastic molding compounds may also be packed in plastic film or

bags which are then packed in metal, plastic, wood, reconstituted wood or fiberboard boxes. Non-specification portable tanks are also authorized. Bulk packagings must be capable of containing any gases evolving from the contents during normal conditions of transport.

49. Section 173.222 would be revised to read as follows:

§ 173.222 Dangerous goods in equipment, machinery or apparatus.

Hazardous materials in machinery or apparatus are excepted from the specification packaging requirements of this subchapter when packaged according to this section. Hazardous materials in machinery or apparatus must be packaged in strong outer packagings unless the receptacles containing the hazardous materials are afforded adequate protection by the construction of the machinery or apparatus. Each package must conform to the packaging requirements of subpart B of this part, except for the requirements in § 173.24(a)(1) and § 173.27(e), and the following requirements:

(a) If the equipment, machinery or apparatus contains more than one hazardous material, the materials must not be capable of reacting dangerously together.

(b) The nature of the containment must be as follows:

(1) Damage to the receptacles containing the hazardous materials during transport is unlikely; and

(2) In the event of damage to the receptacles containing the hazardous materials, no leakage of the hazardous materials from the equipment, machinery or apparatus is possible. A leakproof liner may be used to satisfy this requirement.

(c) Receptacles containing hazardous materials must be secured and cushioned so as to prevent their breakage or leakage and so as to control their movement within the equipment, machinery or apparatus during normal conditions of transportation. Cushioning material must not react dangerously with the content of the receptacles. Any leakage of the contents must not substantially impair the protective properties of the cushioning material.

(d) Receptacles for gases, their contents and filling densities must conform to the applicable requirements of this subchapter, unless otherwise approved by the Associate Administrator for Hazardous Materials Safety.

(e) Quantity limitations. For air transport, the total net quantity of hazardous materials contained in one item of equipment, machinery or apparatus must not exceed the following:

(1) 1 kg (2.2 pounds) in the case of solids;

(2) 0.5 L (0.3 gallons) in the case of liquids;

(3) 0.5 kg (1.1 pounds) in the case of Division 2.2 gases; and

(4) A total quantity of not more than the aggregate of that permitted in paragraphs (e)(1) through (e)(3) of this section, for each of the categories material in the package, when a package contains hazardous materials in two or more of the categories in paragraphs (e)(1) through (e)(3) of this section and is offered for air transport.

(f) When a package contains hazardous materials in two or more of the categories listed in paragraphs (e)(1), (e)(2) and (e)(3) of this section, the total quantity required by § 172.202(c) of this subchapter to be entered on the shipping paper must be the aggregate quantity of all hazardous materials, expressed as net mass.

§ 173.224 [Amended]

50. in § 173.224, in the introductory text of paragraph (c)(3), the word ''product'' would be added immediately before the word ''evaluation''.

51. In § 173.225, in paragraph (b), in the Organic Peroxides Table, remove or add, in the appropriate alphabetical order, the following entries to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

Organic Peroxide Table

Technical name	ID number	Concentration (mass%)	Diluent mass (%)			Water (mass%)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
*	*	*	*	*		*	*			
[REMOVE:]										
Dibenzoyl peroxide [as a paste]	Exempt	≤50		≥14			≥18	Exempt		
[ADD:]										
*	*	*	*	*		*	*			
Isopropyl sec-butyl peroxydicarbonate *and* Di-sec-butyl peroxydicarbonate *and* Di-isopropyl peroxydicarbonate.	UN3115	≤32+≤15 – 18+≤ – 12 – 15		≥38			OP7	– 20	– 10	
*	*	*	*	*		*	*			

* * * * *

§ 173.225 [Amended]

52. In addition, in § 173.225, in paragraph (b), in the Organic Peroxides Table, the following changes would be made:

a. For the entry, ''tert-Butyl cumyl peroxide'' (UN3106), in Column (4b), the reference ''≥58'' would be removed and in Column (4c), ''≥58'' would be added.

b. For the entry, ''tert-Butyl hydroperoxide'' (UN3105), in Column (7b), the references ''4, 13'' would be removed and in Column (8), ''4, 13'' would be added.

c. For the entry, ''tert-Butyl monoperoxymaleate [as a paste]'' (UN3108), in Column (3), the mass percent ''≥52'' would be revised to read ''≤52''.

d. For the entry, ''tert-Butyl monoperoxymaleate [as a paste]'' (UN3110), in Column (3), the mass percent ''≥42'' would be revised to read ''≤42''.

e. For the entry, ''tert-Butyl peroxyacetate'' (UN3109), in Column (3), the mass percent ''≥32'' would be revised to read ''≤32''.

f. For the entry, ''tert-Butyl peroxyacetate'' (UN3119), in Column (3), the mass percent ''≥32'' would be revised to read ''≤32''.

g. For the entry, ''tert-Butyl peroxyacetate'' (UN3109), in Column (3), the mass percent ''≥22'' would be revised to read ''≤22''.

h. For the entry, ''tert-Butyl peroxybenzoate'' (UN3103), in Column (4a), the diluent type ''≥23'' would be revised to read ''≤23''.

i. For the entry, ''tert-Butyl peroxybenzoate'' (UN3105), in Column (3), the mass percent ''<52–77'' would be revised to read ''>52–77''.

j. For the entry, ''tert-Butyl peroxy-2-ethylhexanoate'' (UN3117), in Column (3), the mass percent ''≤52'' would be revised to read ''>32–52''.

k. For the entry, ''tert-Butyl peroxy-2-ethylhexanoate'' (UN3119), in Column (6), the packing method ''1BC'' would be revised to read ''IBC''.

l. For the entry, ''Cumyl hydroperoxide'' (UN3109), in Column (3), the mass percent ''≥90'' would be revised to read ''≤90''.

m. For the entry, ''1,1-Di-(tert-butylperoxy)cyclohexane'' (UN3103), in Column (4a), the diluent type ''≤20'' would be revised to read ''≥20''.

n. For the entry, ''Di-n-butyl peroxydicarbonate'' (UN3115), in Column (7b), the emergency temperature ''5'' would be revised to read ''−5''.

o. For the entry, ''Diethyl peroxydicarbonate'' (UN3115), in Column (7a), the control temperature ''>10'' would be revised to read ''−10''.

p. For the entry, ''2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3'' (UN3103), in Column (4a), the diluent type ''≥14'' would be added.

q. For the entry, ''2,5-Dimethyl-2,5-dihydroperoxyhexane'' (UN3104), Column (7a), the reference ''OP6'' would be removed and in Column (6), ''OP7'' would be added.

r. For the entry, ''1,1-Dimethyl-3-hydroxybutylperoxyneoheptanoate'' (UN3117), in Column (4b), the diluent type ''≥48'' would be removed and in Column (4a), ''≥48'' would be added.

s. For the entry, ''3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane'' (UN3106), in Column (4b), the diluent ''≥48'' would be removed; in Column (4c), ''≥48'' would be added; in Column (5), the reference ''OP7'' would be removed; and, in Column (6) ''OP7'' would be added.

t. For the entry, ''Peroxyacetic acid, type F, stabilized'' (UN3109), in Column (8), the reference ''13, 20'' would be removed and ''7, 13, 20'' would be added in its place

u. For the entry, ''Pinanyl hydroperoxide'' (UN3105), in Column (3), the mass percent ''≥56–100'' would be revised to read ''56–100''.

53. In § 173.225, in paragraph (c)(2), the word ''product'' would be added immediately before the word ''evaluation''.

53a. In § 173.243, in paragraph (e)(2), the period at the end of the sentence would be revised to read ''; or'' and a new paragraph (e)(3) would be added to read as follows:

§ 173.243 Bulk packaging for certain high hazard liquids and dual hazard materials which pose a moderate hazard.

* * * * *

(e) * * *

(3) The subsidiary hazard is Class 8, Packaging Group, III.

§ 173.301 [Amended]

54. In § 173.301, in paragraph (i), the wording ''and § 171.12(c) of this subchapter'' would be added immediately after the words ''in paragraph (j) of this section''.

55. In § 173.306, new paragraphs (f)(4) and (f)(5) would be added to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(f) * * *

(4) Accumulators intended to function as shock absorbers, struts, gas springs, pneumatic springs or other impact or energy-absorbing devices are not subject to the requirements of this subchapter provided each:

(i) Has a gas space capacity not exceeding 1.6 liters and a charge pressure not exceeding 280 bar, where the product of the capacity expressed in liters and charge pressure expressed in bars does not exceed 80 (i.e., 0.5 liter gas space and 160 bar charge pressure, 1 liter gas space and 80 bar charge pressure, 1.6 liter gas space and 50 bar charge pressure, 0.28 liter gas space and 280 bar charge pressure);

(ii) Has a minimum burst pressure of 4 times the charge pressure at 20°C for products not exceeding 0.5 liter gas space capacity and 5 times the charge pressure for products greater than 0.5 liter gas space capacity;

(iii) Is manufactured from material which will not fragment upon rupture;

(iv) Design type has been subjected to a fire test demonstrating that the article relieves its pressure by means of a fire degradable seal or other pressure relief device, such that the article will not fragment and that the article does not rocket; and

(v) Accumulators must be manufactured under a written quality assurance program which monitors parameters controlling burst strength, burst mode and performance in a fire situation as specified in paragraphs (f)(4)(i) through (f)(4)(iv) of this section. A copy of the quality assurance program must be maintained at each facility at which each accumulator is manufactured.

(5) Accumulators which do not conform to the provisions of paragraphs (f)(1), (2), (3) or (4) of this section, may be transported subject to the approval of the Associate Administrator for Hazardous Materials Safety.

* * * * *

§ 173.306 [Amended]

56. In addition, in § 173.306, paragraph (d) would be removed and reserved.

PART 174—CARRIAGE BY RAIL

57. The authority citation for part 174 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

58. In § 174.81, a new paragraph (g)(3)(vi) would be added to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(g) * * *

(3) * * *

(vi) ''6'' means explosive articles in compatibility group G, other than

fireworks and those requiring special stowage, may be stowed with articles of compatibility groups C, D and E, provided no explosive substances are carried in the same vehicle

* * * * *

§ 174.81 [Amended]

59. In addition, in § 174.81, in the paragraph (f) Compatibility Table for Class 1 (Explosive) Materials, the following changes would be made:

a. For the entry, ''C'', under the Column (1) heading, ''Compatibility Group'', in Column G, the letter ''X'' would be revised to read ''6''.

b. For the entry ''D'', under the Column (1) heading, ''Compatibility Group'', in Column G, the letter ''X'' would be revised to read ''6''.

c. For the entry ''E'', under the Column (1) heading, ''Compatibility Group'', in Column G, the letter ''X'' would be revised to read ''6''.

d. For the entry ''G'', under the Column (1) heading, ''Compatibility Group'', in Columns ''C'', ''D'', and ''E'', the letter ''X'' would be revised to read ''6'' each place it appears.

§ 174.680 [Amended]

60. In § 174.680, the following changes would be made:

a. In paragraph (a), as revised at 62 FR 1236, effective October 1, 1998, at the beginning of the paragraph, the wording ''A carrier may not transport'' would be removed and ''Except as provided in paragraph (b) of this section, a carrier may not transport'' would be added in its place.

b. In paragraph (b), the wording ''bearing a KEEP AWAY FROM FOOD label'' would be removed and ''bearing a POISON label displaying the text 'PG III' would be added in its place.

PART 175—CARRIAGE BY AIRCRAFT

61. The authority citation for part 175 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.630 [Amended]

62. In § 175.630, in paragraph (a), the wording ''KEEP AWAY FROM FOOD,'' would be removed.

PART 176—CARRIAGE BY VESSEL

63. The authority citation for part 176 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

64. In § 176.76, a new paragraph (i) would be added to read as follows:

§ 176.76 Transport vehicles, freight containers, and portable tanks containing hazardous materials.

* * * * *

(i) Containers packed or loaded with flammable gases or liquids having a flashpoint of 23 °C or less and carried on deck must be stowed ''away from'' possible sources of ignition.

65. In § 176.83, paragraphs (a)(1), (a)(3) and (a)(8) would be revised and a new paragraph (a)(10) would be added to read as follows:

§ 176.83 Segregation.

(a) *General.* (1) The requirements of this section should apply to all cargo spaces on deck or under deck of all types of vessels and to all cargo transport units.

* * * * *

(3) The general requirements for segregation between the various classes of dangerous goods are shown in the segregation table. In addition to these general requirements, there may be a need to segregate a particular material from other materials which would contribute to its hazard. Such segregation requirements are indicated by code numbers in Column 10B of the § 172.101 Table.

* * * * *

(8) Notwithstanding paragraphs (a)(6) and (a)(7) of this section, hazardous materials of the same class may be stowed together without regard to segregation required by secondary hazards (subsidiary risk label(s)), provided the substances do not react dangerously with each other and cause:

(i) Combustion and/or evolution of considerable heat;

(ii) Evolution of flammable, toxic or asphyxiant gases;

(iii) The formation of corrosive substances; or

(iv) The formation of unstable substances.

* * * * *

(10) Where the code in column (10B) of the § 172.101 Hazardous Materials Table (HMT) specifies that ''Segregation as for * * *'' applies, the segregation requirements applicable to that class in Table § 176.83(b) must be applied. However, for the purposes of interpreting the requirements of paragraph (a)(8) of this section which permits substances of the same class to be stowed together provided they do not react dangerously with each other, the segregation requirements of the class as represented by the primary hazard class in the HMT entry must be applied.

§ 176.83 [Amended]

66. In addition, in § 176.83, in the paragraph (g)(3) Table, for the segregation requirement ''1. Away From'', for the entries ''Fore and aft.'' and ''Athwartships.'', under the Column heading ''Open versus open'', under Column ''On deck'', the wording ''No restriction'' would be revised to read ''At least 3 meters.'' in both places it appears.

§ 176.600 [Amended]

67. In § 176.600, the following changes would be made:

a. In paragraph (a), as revised at 62 FR 1236, effective October 1, 1998, the wording ''or POISON label thereon'' would be removed and ''or POISON label (unless displaying the text 'PG III')'' would be added in its place.

b. In paragraph (c), the wording ''required to have a KEEP AWAY FROM FOOD label'' would be removed and ''bearing a POISON label displaying the text 'PG III' '' would be added in its place.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

68. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

69. In § 177.841, paragraph (e)(3) would be revised to read as follows:

§ 177.841 Division 6.1 (poisonous) and Division 2.3 (poisonous gas) materials.

* * * * *

(e) * * *

(3) Bearing a POISON label displaying the text ''PG III'' with materials marked as or known to be foodstuffs, feed, or any other edible material intended for consumption by humans or animals, unless the package containing the Division 6.1 Packing Group III material is separated in a manner that, in the event of leakage from packages under conditions normally incident to transportation, commingling of hazardous materials with foodstuffs, feed, or any other edible material would not occur.

§ 177.841 [Amended]

70. In addition, in § 177.841, in the introductory text to paragraph (e)(1), as revised at 62 FR 1236, effective October 1, 1998, the words ''Bearing or required to bear a POISON'' would be removed and ''Except as provided in paragraph (e)(3) of this section, bearing or required to bear a POISON'' would be added in its place.

71. In § 177.848, a new paragraph (g)(vi) would be added to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(g) * * *

(vi) ''6'' means explosive articles in compatibility group G, other than fireworks and those requiring special stowage, may be stowed with articles of compatibility groups C, D and E, provided no explosive substances are carried in the same vehicle.

* * * * *

§ 177.848 [Amended]

72. In addition, in § 177.848, in the paragraph (f) Compatibility Table for Class 1 (Explosive) Materials, the following changes would be made:

a. For the entry ''C'', under the Column (1) heading, ''Compatibility Group'', in Column G, the letter ''X'' would be revised to read ''6''.

b. For the entry ''D'', under the Column (1) heading, ''Compatibility Group'', in Column G, the letter ''X'' would be revised to read ''6''.

c. For entry ''E'', under the Column (1) heading, ''Compatibility Group'', in Column G, the letter ''X'' would be revised to read ''6''.

d. For the entry ''G'', under the Column (1) heading, ''Compatibility Group'', in Columns ''C'', ''D'' and ''E'', the letter ''X'' would be revised to read ''6'' each place it appears.

PART 178—SPECIFICATIONS FOR PACKAGINGS

73. The authority citation for part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.270–3 [Amended]

74. In § 178.270–3, in paragraph (e), in the second sentence, the reference ''ISO 82–1974(e)'' would be removed and ''ISO 82–1974(E)'' would be added in its place.

§ 178.509 [Amended]

75. In § 178.509, in paragraph (b)(1), in the second sentence, the wording ''when approved by the Associate Administrator for Hazardous Materials Safety'' would be added immediately following the words ''may be used''.

76. In § 178.703, the section heading and paragraph (b)(6)(ii) would be revised to read as follows:

§ 178.703 General intermediate bulk container (IBC) standards.

* * * * *

(b) * * *

(6) * * *

(ii) When a composite IBC is designed in such a manner that the outer casing is intended to be dismantled for transport when empty (such as for the return of the IBC for reuse to the original consignor), each of the parts intended to be detached when so dismantled must be marked with the month and year of manufacture and the name or symbol of the manufacturer.

77. In § 178.813, in paragraph (b), a sentence would be added to the end of the paragraph to read as follows:

§ 178.813 Leakproofness test.

* * * * *

(b) * * * The inner receptacle of a composite IBC may be tested without the outer packaging provided the test results are not affected.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

78. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

79. In § 180.352, the section heading, paragraphs (b)(1), (b)(2), (b)(3) introductory text and (c) would be revised to read as follows:

§ 180.352 Requirements for retest and inspection of intermediate bulk containers (IBCs).

* * * * *

(b) * * *

(1) The leakproofness test prescribed in § 178.813 of this subchapter must be conducted every 2.5 years starting from the date of manufacture or the date of a repair conforming to paragraph (c)(1) of this section marked on each IBC intended to contain liquids or solids that are loaded or discharged under pressure.

(2) An external visual inspection must be conducted initially after production and every 2.5 years starting from the date of manufacture or the date of a repair conforming to paragraph (c)(1) of this section marked on each IBC to ensure that:

(i) The IBC is marked in accordance with requirements in § 178.703 of this subchapter. Missing or damaged markings, or markings difficult to read must be restored or returned to original condition.

(ii) Service equipment is fully functional and free from damage which may cause failure. Missing, broken, or damaged parts must be repaired or replaced.

(iii) The IBC, including the outer packaging if applicable, is free from damage which reduces its structural integrity. The IBC must be externally inspected for cracks, warpage, corrosion or any other damage which might render the IBC unsafe for transportation. An IBC found with such defects must be removed from service. The inner receptacle of a composite IBC must be removed from the outer IBC body for inspection unless the inner receptacle is bonded to the outer body or unless the outer body is constructed in such a way (e.g., a welded or riveted cage) that removal of the inner receptacle is not possible without impairing the integrity of the outer body. Defective inner receptacles must be replaced with a receptacle meeting the design type of the IBC or the entire IBC must be replaced. For metal IBCs, thermal insulation must be removed to the extent necessary for proper examination of the IBC body.

(iv) Each flexible IBC must be inspected to ensure that:

(A) Lifting straps if used, are securely fastened to the IBC in accordance with the design type.

(B) Seams are free from defects in stitching, heat sealing or gluing which would render the IBC unsafe for transportation of hazardous materials. All stitched seam-ends must be secure.

(C) Fabric used to construct the IBC is free from cuts, tears and punctures. Additionally, fabric must be free from scoring which may render the IBC unsafe for transport.

(v) Each fiberboard IBC must be inspected to ensure that:

(A) Fluting or corrugated fiberboard is firmly glued to facings.

(B) Seams are creased and free from scoring, cuts, and scratches.

(C) Joints are appropriately overlapped and glued, stitched, taped or stapled as prescribed by the design. Where staples are used, the joints must be inspected for protruding staple-ends which could puncture or abrade the inner liner. All such ends must be protected before the IBC is authorized for hazardous materials service.

(vi) Each wooden IBC must be inspected to ensure that:

(A) End joints are secured in the manner prescribed by the design.

(B) The IBC walls are free from defects in wood. Inner protrusions which could puncture or abrade the liner must be covered.

(3) Each metal, rigid plastic and composite IBC must be internally inspected at least every five years to ensure that the IBC is free from damage which might reduce its integrity.

* * * * *

(c) *Requirements applicable to repair of intermediate bulk containers.* (1) Except for flexible and fiberboard IBCs and the bodies of rigid plastic and

composite IBCs, damaged IBCs may be repaired and the inner receptacles of composite packagings may be replaced and returned to service provided:

(i) The repaired IBC conforms to the original design type;

(ii) An IBC intended to contain liquids or solids that are loaded or discharged under pressure is subjected to a leakproofness test as specified in § 178.813 of this subchapter and is marked; and

(iii) The IBC is subjected to the internal and external inspection requirements as specified in paragraph (b) of this section.

(2) Except for flexible and fiberboard IBCs, the structural equipment of an IBC may be repaired and returned to service provided:

(i) The repaired IBC conforms to the original design type; and

(ii) The IBC is subjected to the internal and external inspection requirements as specified in paragraph (b) of this section.

(3) Service equipment may be replaced provided:

(i) The repaired IBC conforms to the original design type;

(ii) The IBC is subjected to the external visual inspection requirements as specified in paragraph (b) of this section; and

(iii) The proper functioning and leak tightness of the service equipment, if applicable, is verified.

* * * * *

Issued in Washington, DC on July 31, 1998, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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Tuesday
August 18, 1998

Part III

Department of Transportation

Coast Guard

49 CFR Part 8

Streamlined Inspection Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 8

[CGD 96–055]

RIN 2115–AF37

Streamlined Inspection Program

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing an optional Streamlined Inspection Program (SIP) to provide owners and operators of U.S. documented or registered vessels an alternative method of complying with Coast Guard inspection requirements. Vessel owners and operators opting to participate in the program will maintain a vessel in compliance with a Vessel Action Plan (VAP) and have their own personnel periodically perform many of the tests and examinations conducted by Coast Guard marine inspectors. Coast Guard inspectors will conduct inspections in accordance with the approved VAP. The Coast Guard expects that participating vessels will continuously meet a higher level of safety and inspection readiness throughout the inspection cycle.

DATES: This final rule is effective September 17, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: LT Paul Arnett, Vessel Compliance Division (G–MOC–2), telephone 202–267–0498, fax 202–267–4394.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 8, 1997, the Coast Guard published a notice of proposed rulemaking entitled, ''Streamlined Inspection Program'' in the **Federal Register** (62 FR 17008). The Coast Guard received 27 letters commenting on the proposed rulemaking. No public meeting was requested, and none was held.

Background and Purpose

Section 3306 of title 46 U.S. Code authorizes the Coast Guard to prescribe regulations necessary to carry out the inspection of vessels required to be inspected under 46 U.S.C. 3301. The inspection of vessels identified in 46 U.S.C. 3301 is required by statute; however, the specific procedures for conducting inspections are set out in Coast Guard regulations.

In 1992, as part of its Maritime Regulatory Reform initiative, the Coast Guard considered a number of alternatives for inspection of U.S. documented or registered vessels. Two of these alternatives are the Alternate Compliance Program (ACP)(46 CFR part 8) and the Streamlined Inspection Program (SIP).

The SIP is an optional, alternative inspection program for owners and operators of U.S. documented or registered vessels. The objective of the SIP is to have vessels participate in a constant state of regulatory compliance rather than the traditional cyclical readiness associated with vessels that must undergo Coast Guard periodic inspections. Under this alternative, the vessel owner or operator works with a Coast Guard representative to develop a Company Action Plan (CAP) and a Vessel Action Plan (VAP). A CAP describes the company's organization and its commitment to the SIP. The CAP also details how the company will train its employees on their specific SIP responsibilities. The VAP describes the Coast Guard regulations that apply to the vessel and the company's detailed procedures for its employees to maintain and examine vessel systems to ensure these systems operate safely. To simplify the CAP and the VAP and to provide consistency throughout the country, the Coast Guard will provide specific guidance for prospective SIP participants and Coast Guard personnel for each regulatory subchapter applicable to particular types of vessels (e.g., 46 CFR chapter I, subchapters D, H, I, K, L, O, R, T, and U).

Vessel owners or operators who do not elect to participate in the SIP will continue to have their vessels inspected by the Coast Guard under traditional procedures or, if eligible, may choose to be inspected by a recognized classification society under the ACP.

Discussion of Comments and Changes

The Coast Guard received 27 letters commenting on the notice of proposed rulemaking (NPRM). Fifteen comments generally supported the proposed SIP. The following paragraphs contain a discussion of comments received and an explanation of changes, if any, made to the proposed regulations. General comments on the rulemaking project are discussed first, followed by comments on specific sections of the regulation. Other changes to the proposed rule, not based on comments, are discussed last.

General Comments

- Several comments noted that vessels enrolled in the SIP should have their user fees reduced as an incentive to encourage vessel operators to enroll.

As stated in the preamble to the NPRM, the Coast Guard will consider a regulatory project to revise user fees for enrolled vessels when sufficient cost data is available. Prototype programs have had varying degrees of Coast Guard involvement and therefore cannot be a basis for determining the overall costs or savings of the SIP.

- A number of comments discussed the relationship between the SIP and the ACP. The comments suggested combining the provisions of the two programs and allowing vessels enrolled in the ACP to also enroll in the SIP.

The SIP and the ACP are two separate inspection programs available to vessel owners. The SIP and the ACP are mutually exclusive programs. The SIP is an alternative method for meeting Coast Guard inspection requirements, but all inspections are still done by Coast Guard marine inspectors. The ACP provides for vessel inspections using inspectors employed by a recognized classification society. The ACP is available only to vessels operating on international voyages and classed through a recognized classification society. The SIP alternative is available to any U.S. inspected vessel meeting the eligibility requirements.

- Some comments discussed personnel, staffing, and consistency concerns. The comments suggested using retired Coast Guard marine inspectors as SIP Advisors; expressed concerns that the SIP may cause the Coast Guard to reduce staffing at MSOs; and stated that there should be consistency of SIP determinations among the Officers in Charge, Marine Inspection (OCMI).

Marine safety office (MSO) staffing and allocation of personnel and resources are internal Coast Guard matters that are not part of this rulemaking. The SIP should, in the long run, allow a more effective use of Coast Guard resources in MSO activities. The Office of Compliance, Vessel Compliance Division, is the Coast Guard-wide program manager for the SIP, and the Office of Quality Assurance/Traveling Inspectors will be providing the field oversight of the SIP to ensure national consistency in plan development and inspections.

- One comment from an individual who reviews Port State Information Exchange (PSIX) information to evaluate

vessels for carrying cargo stated that one concern is, ''there will be a notable drop off in 835s [CG–835, the widely used Merchant Marine Inspection Requirement form] issued—indeed in USCG presence generally.''

Under the SIP, the Coast Guard still conducts required inspections, and CG–835s issued as a result of these inspections will still be available in the PSIX. However, repairs made by the company as a result of routine maintenance while complying with its VAP would be corrected in accordance with the VAP and documented in VAP records by the vessel owner. Coast Guard inspectors consider these items during required inspections, but they would not be entered as a CG–835 requirement in PSIX.

• Another comment noted certain portions of the NPRM mentioned vessel classes such as subchapters T and D, but neglected to include subchapter O. The comment asked if the applicability section of this regulation includes vessels inspected under subchapter O.

This regulation does apply to vessels inspected under subchapter O. As previously noted in this preamble under Background and Purpose, the SIP is an alternative for vessels inspected under 46 CFR subchapters D, H, I, K, L, O, R, T, and U.

• A comment disagreed with the philosophy of self-inspection because no other mode of transportation is self-inspected (e.g., airlines and railways).

The SIP is not a self-inspection program. Under the SIP, company personnel will be responsible for conducting regular tests and examinations of various vessel systems and recording their findings and initiating appropriate actions as specified in their OCMI-approved CAP and VAP. The Coast Guard is still required to verify compliance with applicable regulations and the conditions of the company's approved plans. The local OCMI approves the establishment of the company and vessel plans and Coast Guard marine inspectors provide all periodic and follow-on inspections.

• Some comments were concerned with the effects the SIP will have on small passenger vessels. One comment suggested requiring fewer procedures for small passenger vessels because they have fewer staff to do the work. Another comment suggested providing free training and guidance to small passenger vessels to encourage them to enroll in the SIP. The comment also noted that the proposed SIP did not sufficiently target small companies.

Each VAP will be based on the requirements in the inspection subchapter applicable to a particular vessel. The Office of Compliance (G–MOC) and the Director of Field Activities, Quality Assurance Staff (G–MO–1) will provide Coast Guard oversight for the implementation of the SIP throughout the country. As resources are available, local OCMIs will provide training on the SIP to interested vessel owners and operators.

• One comment stated that participation in the program should not mean that the vessel owner would be subject to increased liability.

The Coast Guard will continue to conduct inspections and issue the certificate of inspection (COI), and the vessel owner's compliance with an approved VAP will constitute compliance with applicable vessel inspection laws and regulations. Owner liability is not changed by participation in this program.

• One comment recommended the Coast Guard add language to ensure that this program remains voluntary because many operators do not have the resources, time, or incentive to participate in this program.

The SIP is a voluntary program. If a company does not wish to, or is not eligible to, participate in this alternative inspection program, they will continue to be inspected under the traditional Coast Guard inspection program for compliance with vessel inspection laws and regulations. For clarity, the Coast Guard has placed the word ''voluntary'' in front of the word ''alternative'' in § 8.500(a).

• Some comments discussed the development of the SIP guidance documents. One comment recommended that the Towing Safety Advisory Committee (TSAC) help the Coast Guard to develop the SIP guidance for owners of vessels inspected under subchapter D. The comment also requested separate guidance for owners of tank vessels and tank barges. Another comment asked that the Coast Guard not treat oil spill recovery vessels (OSRV) like tank vessels when the Coast Guard develops the SIP guidance documents.

The Coast Guard is already in contact with TSAC and other advisory committees and organizations concerning development of implementation guidance.

Comments on Specific Sections of the Rule

Scope and applicability (§ 8.505). Three comments suggested dry-dock exams be included in the SIP because the benefits of the SIP can only be fully realized when all vessel inspections are included in the SIP.

As stated in the NPRM, the Coast Guard must evaluate SIP performance data before adding dry-dock examinations to this program.

One comment stated that § 8.505(c) is very specific regarding the inspections that are excluded from the program. The comment asked if the SIP will apply to inspections done under the Critical Area Inspection Program (CAIP).

The CAIP is not a regulatory program. Currently, the Coast Guard is invited to attend CAIP surveys, but we are not required to witness the inspection. The CAIP surveys can be included as part of a CAP or VAP just like any other preventative maintenance program, if approved by the OCMI as part of the plan.

Definitions (§ 8.510). One comment suggested including form CG–835 in the definition of ''documented deficiency.'' A documented deficiency is broader than just a CG–835, and can also include a work list item issued by a marine inspector which was identified during the course of an inspection, re-inspection, or examination, but corrected prior to the issuance of a CG–835. The Coast Guard agrees that both CG–835s and work list items are forms of documented deficiencies. The definition is meant to encompass all forms of Coast Guard-maintained documentation on a vessel's condition, including CG–835s. Therefore, we have not changed the wording in the definition.

One comment recommended the Coast Guard permit the continued use of prototype program nomenclature for definitions in this part and, as an alternative, permit the use of a reference sheet or glossary that would define the nomenclature used in the prototype program in terms of the nomenclature used in the SIP regulation.

Approved plans must be in compliance with the SIP final rule. Companies enrolled in locally-endorsed prototype programs have 3 years to bring their plans into compliance with the national standards. The OCMI has the flexibility and authority to accept revisions to prototype plans. A prototype program already in place that is also in compliance with the final rule with the exception of nomenclature, may include a cross reference glossary or index, as long as the glossary or index allows confirmation of a plan's compliance with the requirements of the national program.

Eligibility (§ 8.515). Several comments expressed the position that newly-constructed vessels and recently-acquired, existing (i.e., new-to-company) vessels should be allowed to enroll in the SIP without regard for the

3-year eligibility requirement. The comment stated that newly-constructed vessels are in the best condition they will ever be in and that is the best time to establish the vessel's base-line for enrollment. For recently-acquired existing vessels, if a company enrolled in the SIP takes the time to bring the vessel into full compliance, then a vessel's performance under the previous operator during the past 3 years should not be determinative of the vessel's eligibility for SIP enrollment with the new owner. The Coast Guard agrees that in many instances these vessels would be suitable for the SIP and companies with one or more vessels already enrolled in the SIP need not meet the 3-year requirement in § 8.515(b)(1) for a newly-constructed or recently-acquired vessel.

One comment recommended that vessels older than 20 years be ineligible for the SIP.

The Coast Guard's experience indicates that the age of a vessel is not the most reliable indicator of its condition or suitability for continued safe operation. Age alone is not, therefore, a singularly disqualifying factor for SIP eligibility. In considering a vessel for enrollment, the OCMI will review all aspects of a vessel's condition, its history, and the operational and management practices relative to the vessel's service.

Two comments recommended that the SIP permit newly-formed companies to participate from the onset of vessel construction to give operating companies greater ownership of the program and better inspection results.

Another comment suggested revising § 8.515 to indicate that a vessel is eligible, if there are no outstanding deficiencies issued within the last 6 months. The eligibility section should recognize that civil penalties vary in degrees of severity, from those that affect the seaworthiness and safety of the vessel to those that involve relatively minor regulatory infractions. The OCMI should have more discretion in determining eligibility and in evaluating civil penalties.

As stated previously, the 3-year history requirements provide the OCMI with a record of a company's commitment to the safe operation of its vessels. Also, in most cases, a 6-month period would not include a re-inspection cycle or an inspection for certification. However, under the waiver provision in the final rule, the OCMI may consider enrolling a company or vessel that does not meet all the eligibility requirements. The OCMI evaluation of the company's eligibility will take into consideration all factors, including the severity of any civil penalties noted by the Coast Guard in the last 3 years.

OCMI review and action (§ 8.525). One comment suggested adding a paragraph that states, if the vessel operates in more than one OCMI zone, all OCMIs must accept the SIP. Another comment suggested that all OCMIs in the area where a vessel operates should agree to an SIP inspection conducted in another OCMI zone.

For companies with vessels in more than one OCMI inspection zone, the CAP will be approved by the cognizant OCMI in the zone where the initial application for the SIP enrollment is made. The same requirements that regulate the operation and inspection of any vessel in more than one OCMI zone apply to the SIP vessels. The Coast Guard's internal implementation guidance will ensure consistent implementation of the SIP.

Plan development and approval (§ 8.530). Four comments suggested allowing the use of a highly experienced surveyor (including the American Bureau of Shipping) to inspect and certify inspected equipment and correct any deficiencies.

The intent of the SIP is to have company personnel conduct examinations to provide a sense of ownership and improve safety awareness. Using a third party surveyor, hired by the Company SIP Agent as a ''designated SIP support person'' is subject to approval by the OCMI. Maintenance or examination of certain shipboard systems may be beyond the expertise of a company's vessel or shoreside personnel. In that case, outside expertise may be appropriate and could be included in the VAP. Section 8.530(a)(4) requires that the CAP identify the responsibilities of those individuals who examine and maintain equipment and how their satisfactory performance will be verified and recorded.

One comment wanted the Coast Guard to incorporate a process into the final rule, allowing companies with vessels that are sufficiently alike in multiple ports to undergo the procedure of developing CAPs and VAPs with a single OCMI. Companies can then use the original CAP and VAP as a model for vessels in other OCMI zones. The comment stated that incorporating this procedure would provide the consistency and standardization required in maintaining and inspecting a large fleet of similar vessels. The comment also stated that developing the CAP and VAP would be simple for a company with a single vessel or multiple vessels that are similar within the same OCMI zone. However, the procedure becomes more complex for companies with similar vessels in multiple OCMI zones.

The Coast Guard agrees that a single OCMI will be able to approve an owner's CAP, however, the VAP is vessel- and area-specific. Companies with multiple vessels in more than one OCMI zone should start their enrollment process with a single vessel, or series of vessels and a single OCMI. Once the CAP has been developed and approved for the first vessel, it can be used as part of the application to the next OCMI zone. Subsequent OCMI review should focus on the revision of the CAP as it pertains to their zone. Section 8.530(a)(3) requires that the CAP contain information on designated SIP support personnel responsible for implementation and oversight of the program. Adding new ports and vessels to a CAP will require revisions to the CAP only as it pertains to operations under the SIP in the new location.

Three comments stated that developing a separate plan for each vessel poses a significant administrative burden for a large barge fleet. The comments suggested that companies develop a VAP for each barge series where the construction, piping, and configuration are consistent. The comment also stated that the Coast Guard should not require VAPs to be maintained on board unmanned barges. Rather, VAPs should be available to the Coast Guard upon request.

The Coast Guard agrees that a single VAP for each barge series may be accepted by the OCMI. However, a VAP needs to be on board an unmanned barge. Inspection certificates and company documents are routinely maintained on board unmanned vessels. Coast Guard inspection documents are required to be on board. The VAP is an inspection document that the company and the Coast Guard may need to access at any time. Having the VAP maintained on board the vessel ensures availability.

One comment questioned if documents and plans created for the Responsible Carrier Program (RCP) could be used as ''credit'' for the CAP since the elements of the CAP are similar to the charter of the RCP and to approved vessel response plans. Another comment suggested allowing vessel owners to use documents developed for the International Safety Management (ISM) Code as CAP and VAP documents.

The Coast Guard agrees that there may be some documentation redundancy between a CAP and other required or voluntary documents and plans. For example, companies with vessels that

are ISM Code compliant should have the necessary documentation developed to apply for the SIP. If ISM Code documents are sufficiently detailed, then they may also be suitable for use in a CAP or VAP. The use of ISM documentation or other documents as part of a CAP or VAP must be approved by the OCMI. In such cases, companies should submit copies of what they already have in place to the OCMI for review and possible use in development of its CAP and VAPs.

One comment stated that the Coast Guard should consider waiving the extensive training requirements for a company that has implemented a recognized quality management program such as an ISM or American Waterways Operators (AWO) RCP.

The OCMI may accept evidence that the training conducted pursuant to an approved quality management program is the same as the training required under the SIP. The Coast Guard doesn't intend to impose a redundant burden on companies that have already implemented a quality management system. For those companies that have such a system in place, the OCMI may consider accepting in the CAP and VAP those quality management components that meet the specific requirements for a CAP and VAP.

One comment asked, to what extent will outside vendors who repair and service certain equipment be able to serve as SIP examiners and under whose training program will they be accredited.

The use of outside vendors is common. The approved VAP should answer these questions on the use of vendors, but the company's SIP Agent will still be responsible for verifying that the work is completed by approved facilities and qualified personnel where required, that the equipment is installed and functioning properly, and the work has been properly documented.

One comment requested that the Coast Guard reword § 8.530(b) to state, ''* * * Each VAP shall include at least the following *or its functional equivalent:*''. The comment noted that the regulations must allow flexibility in the method of documentation. If specific written forms are required by these regulations, companies who develop effective computer-based inspection scheduling systems will then have to maintain a duplicate manual driven system.

The Coast Guard agrees in principle with the comment; however, we made no regulatory changes. The OCMI has the discretion to approve any appropriate recordkeeping system, including computer-based systems, as part of a vessel's VAP. As stated previously in discussing comments to § 8.510, the Coast Guard must be able to verify compliance with the requirements in the final rule and measure the effectiveness of the program.

One comment wanted the Coast Guard to delete the organizational commitment statement in paragraph (a)(2) of § 8.530 in light of the requirements in paragraphs (a)(3) through (a)(5) of this section.

The Coast Guard disagrees with this comment. The need for an organizational commitment statement is not satisfied by the inclusion of the items specified in paragraphs (a)(3) through (a)(5). Instead, it is complemented by those requirements. The commitment statement defines the company's philosophical position and goals. The items in § 8.530, paragraphs (a)(3) through (a)(5), specifically identify how that philosophical commitment will be put into effect.

One comment stated that there is no guidance in § 8.530 for the handling of inspection criteria discrepancies. The comment recommended that in § 8.530, paragraphs (a)(4) and (a)(5) be revised to incorporate the mechanism used in the offshore prototype programs for handling vessel deficiencies. Prototype programs classified deficiencies as ''urgent'' and ''routine,'' and assigned a time for correction of the deficiency.

In § 8.530, paragraph (a)(5) allows for flexibility when determining corrective action. It is up to the company and the OCMI to determine the time frame associated with corrective action. In addition, the implementation guidance provided by the Coast Guard in the inspection criteria references (ICR) includes information on corrective action. The Coast Guard did not make the suggested change to paragraphs (a)(4) and (a)(5).

Another comment stated that paragraph (a)(10) of § 8.530 implies that a CAP must have appendices that contain each approved VAP. For a company with numerous vessels enrolled, this could become a very unwieldy document. The comment recommended this section be revised to require an appendix that lists each VAP approved under the CAP.

The CAP and VAPs are interdependent documents. It is necessary that each VAP be accessible to the company SIP Agent, as well as having a vessel-specific copy maintained on the vessel. Paragraph (a)(10) is not revised in the final rule.

One comment suggested deleting paragraph (b)(2) of § 8.530 because it appears to repeat the requirements of paragraph (a)(5).

The Coast Guard disagrees. The VAP and CAP are separate documents and are not redundant in their function. Paragraph (b)(2) will remain unchanged in the final rule.

Training and operational evaluation (§ 8.535). One comment requested further clarification on what constitutes an SIP training program. Many hours of training and apprenticeship are required for designation as a Coast Guard ''barge inspector.'' There is concern that training expectations may exceed training resource capabilities.

Vessel owners, through their SIP Agent, and the OCMI's SIP Advisor must work closely to develop the SIP training requirements, based on vessel type and operating requirements. Vessel-specific ICRs should be used extensively as training aids to develop and maintain consistent and efficient procedures under the VAP.

One comment discussed manning and crew fatigue. The comment stated that the crew would be required to conduct additional tests and examinations as a result of the SIP. The comment wanted to know how the increase in work would be reflected in the manning scale on the vessel's COI since there are work-hour restrictions and required rest-hour periods mandated by law and international convention.

The regulations governing maximum work hours in a 24-hour period and required rest intervals are not affected by this regulation; they remain unchanged. Part of the CAP and VAP development process will be incorporating the periodic system examinations contained in the VAP into regular vessel routines.

Enrollment in SIP (§ 8.540). One comment suggested that the OCMI enrollment letter be a mandatory requirement.

The Coast Guard agrees and has revised § 8.540 to indicate that once the company and its vessel(s) have successfully completed the training and evaluation phase, and the OCMI concurs with the Coast Guard SIP Advisor's recommendation, the OCMI will issue an enrollment letter and endorse the COI.

Scope of Inspection for Enrolled Vessels (§ 8.545). Four comments discussed an alternative to annual inspections. They recommended that rather than annual inspections, vessels—especially unmanned tank barges—should only be subject to periodic random inspections like the current MARPOL checks.

The SIP is an alternative to traditional Coast Guard inspections. A particular vessel inspection interval is determined by the regulations contained in the applicable subchapter. It is beyond the scope of the SIP rulemaking to adjust inspection intervals. To clarify the inspection interval requirement and allow for any future changes within the inspection subchapters, we have changed the word ''annual'' to ''periodic'' in paragraph (a) of § 8.545.

One comment asked why an approved VAP is needed if the marine inspector might conduct additional tests or examinations of a vessel.

The OCMI remains responsible for ensuring the safe operation of vessels within that inspection zone. Marine inspectors under the SIP will conduct their examinations in accordance with the VAP. The marine inspector will only expand the examination parameters if discrepancies are discovered or there is otherwise cause for concern. These would be instances where the marine inspector believes the vessel is not being operated in complete compliance with the approved VAP. This, if found to be the case, is cause for disenrollment. There is nothing in the SIP that diminishes the OCMI's authority or responsibility to ensure the safety of life, property, the environment, and facilitation of maritime commerce within that zone.

One comment expressed concerns that an audit or a spot check boarding may not focus on compliance with the approved VAP. Once a VAP is approved, that document becomes the primary guide for the owner or operator to follow in determining inspection compliance issues. Coast Guard inspections will focus on the condition of the vessel and maintenance of the vessel in accordance with the VAP.

One comment suggested revising paragraph (b) of § 8.545 to indicate ''A Coast Guard inspector from the OCMI staff'' will conduct the inspection. It should be made clear that the local inspection staff conducts the inspections.

The SIP is designed so that any Coast Guard marine inspector should be able to verify compliance with a VAP, regardless of whether the vessel was enrolled in that particular OCMI zone or not. This regulation establishes a uniform, nationwide program, in which marine inspectors for the OCMI zone where the SIP inspection is scheduled will conduct the examination. Only marine inspectors from ''the OCMI staff'' will be conducting inspections. Therefore, no changes to the regulation have been made.

One comment recommended that § 8.545 be revised to provide guidance regarding the scope of an SIP audit, and that a sample audit be included.

The scope of an SIP inspection is covered in § 8.545, paragraphs (b)(1) through (b)(4). Additional detailed guidance may be provided by the OCMI. The intent of an SIP inspection is for the marine inspector to verify compliance with the VAP.

One comment recommended that the VAP list specific inspections that will be conducted by the qualified crewmember, operators, or Coast Guard inspectors and stated that there are too many critical inspections that require the presence of a marine inspector.

The ICR sheets provide information on the level of inspection required. Since the VAP will contain ICRs, no further clarification is required in the regulation.

Plan review and revisions (§ 8.550). One comment recommended a change from a 2-year to a 5-year review cycle, unless the owner or operator's performance record indicates needed oversight. Annual review is time consuming and costly.

There is no required annual review of SIP documentation by the company unless the company itself has established such an interval. The requirement to review the CAP every 2 years is a quality control measure that ensures that the plan contents are up to date. Properly maintained plans will normally be revised as the need arises. There may, in fact, be no changes necessary at the time of the review—it is simply a company check for accuracy.

Three comments suggested eliminating the mandatory review and revision for ISM compliant companies. The ISM process calls for the continual review and revision of manuals and procedures when non-conformities are identified. The internal and external audit programs required by the ISM system also provide assurance that manuals will not become obsolete.

The Coast Guard agrees that ISM compliant companies will probably be able to prove to the OCMI that their review processes are meeting the regulations. However, this method of continuous compliance needs to be submitted to the cognizant OCMI for approval and incorporation into the VAP during the application and VAP approval process.

One comment stated that requiring a company to submit a revised plan to the OCMI each time that a revision is made could place an unnecessary administrative burden on the local MSOs. The comment also recommended periodic review or audit for operations that are ISM compliant.

The Coast Guard must be kept informed of changes that affect a company's CAP or VAP. The company SIP Agent and OCMI's SIP Advisor should coordinate the manner in which this process is to be accomplished, and the Coast Guard has not changed this requirement in the final rule.

Disenrollment (§ 8.555). In § 8.555(a), one comment suggested adding the words ''that issued the Certificate of Inspection'' after the words ''cognizant OCMI''. The OCMI that issued the COI should be the one that voluntarily disenrolls the vessel.

The Coast Guard does not find this change necessary. As SIP is a nationwide program, disenrollment requests through any cognizant OCMI (defined as the OCMI responsible for the zone in which the vessel is currently operating) will satisfactorily disenroll the vessel.

One comment asked the Coast Guard to clarify the parameters for re-enrollment once a vessel has been disenrolled.

Once a vessel or company has been disenrolled either voluntarily or involuntarily, the company must reapply for enrollment in accordance with subpart E.

Waiver (§ 8.560). One comment had several questions concerning waivers. The comment asked when a waiver can be requested; who can request the waiver, the OCMI or the vessel operator; and is the waiver the equivalent of an appeal for a marine inspection requirement.

A company may request a waiver at any time. The company will request the waiver through its SIP Agent for any procedural requirement in subpart E, such as eligibility. Waiver of substantive inspection requirements should be submitted in accordance with procedures in the subchapter containing the requirement.

One comment recommended that § 8.560 be revised to provide guidance on the discretionary authority of the District Commander to grant waivers. The comment noted that this is necessary because the preamble, which provides an explanation of the regulation will disappear once the regulations are final. Two comments noted the waiver section is a key provision and should be kept as is.

The Coast Guard agrees with these latter comments that no revisions are needed.

Interim approval of prototype company vessel plans (§ 8.570). One comment noted that prototype programs were based on ISM and International

Organization for Standardization (ISO) standards. The comment stated that the SIP regulations must permit companies participating in the SIP some degree of flexibility with respect to the format of the CAP and VAP to allow companies to structure the program for their individual needs. This is consistent with the general provisions of the ISM Code and ISO 9000 standards. The comment also noted that companies with approved prototype programs should not have to revise their CAP and VAP.

For the SIP to be uniformly applied there must be consistency nationwide in its implementation. A prototype program vessel examined in an OCMI zone that did not endorse that prototype program might encounter needless difficulty during the SIP inspection. The extra effort necessary to bring Coast Guard inspectors up to speed with all possible prototype programs would nullify some of the benefits of the SIP. In addition, some prototype programs lack disenrollment and other important criteria. Therefore, companies and vessels in a prototype SIP program will have 3 years from the effective date of the final rule to bring their existing program into full compliance. As discussed previously, the Coast Guard will consider equivalents and appropriate cross-referencing to required documentation. This should provide the needed flexibility for prototype programs to make a smooth transition.

One comment suggested that vessels of unique design only be considered for this program after the 3-year period.

That determination is up to the OCMI. Therefore, the Coast Guard made no changes based on this comment.

Other Changes to the Proposed Regulations

In addition to the changes made to the regulations as a result of the comments, the Coast Guard has revised the definition of Exam Checklists to accommodate a variety of documents. In the revised definition, Exam Checklists may be any document or form approved in the VAP to record the periodic examinations of vessel systems by vessel personnel. For example, copies of the Inspection Schedule and Verification (ISV) sheets could be used as Examination Checklists.

The Coast Guard has also revised the definition of ''prototype vessel plan'' by removing the word ''vessel'' and adding the word ''SIP'' in its place. In addition, the heading and the first sentence in paragraph (a) of § 8.570 has been revised to include prototype SIP company or vessel plans. This will provide consistency and account for prototype SIP company or vessel plans.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard expects this rule to provide an economic benefit to the owners and operators of U.S. documented or registered vessels.

Currently, 11,800 U.S. documented or registered vessels may be eligible to participate in this optional SIP. Entrance into the SIP is voluntary. Because the program is new, it is difficult to estimate how many vessel owners will choose to develop a VAP and seek enrollment. Some Coast Guard offices have been working with company owners on prototype programs that are similar to the SIP.

Over the next 3 years, the Coast Guard estimates that the following number of vessels will voluntarily enroll in the SIP:

- 274 small passenger vessels (subchapter T).
- 78 small passenger vessels (subchapter K).
- 48 large passenger vessels (subchapter H).
- 131 offshore supply vessels (subchapter L).
- 29 cargo vessels (subchapter I).
- 4 tank ships (subchapter D).
- 942 tank barges or OSRVs (subchapter D or O).

These estimates of vessel enrollment reflect both the number of vessels presently in prototype programs similar to the SIP and the number of vessels that could enroll for the first time in the SIP within the next 3 years.

Industry Cost

The Coast Guard based the cost estimates for the SIP on the incremental costs company owners and operators have incurred participating in prototype programs similar to the SIP. Company owners and operators will have different economic impacts from this program depending on the number, class, and size of the vessels that they enroll in the program. The time and resources an owner or operator may spend developing the VAP will vary depending on the vessel's system complexity (simple tank barge systems or multi-faceted large passenger vessel systems), the current company management infrastructure (availability of support staff, system expertise, and strength of organizational policies), and the number of crewmembers or employees involved with the plan's implementation.

For a company to submit the application required to enroll its vessels in the SIP, the Coast Guard estimates that—

- Preparation of the application will take a senior staff official 1 hour at $60 per hour; and
- 401 companies will apply for the program during the first 3 years at an industry cost of $8,040 annually over the first 3 years.

For a company to develop a CAP, the Coast Guard estimates that—

- It will require 80 hours of senior staff time at a cost of $60 per hour; and
- 401 companies will develop CAPs during the first 3 years at an industry cost of $641,580 annually over the first 3 years.

For a company to develop a VAP, the Coast Guard estimates that—

- It will require 40 hours of senior staff time at a cost of $60 per hour; and
- VAPs will be prepared for 1,506 vessels during the first 3 years at an industry cost of $1,204,800 annually over the first 3 years.

For a company to make the required updates to the plans, the Coast Guard estimates that each company will devote 10 hours annually at $60 per hour for an industry cost of $80,220.

Additional costs associated with these plans include $25,100 in printing and copying costs. We estimate the total industry cost associated with plan development and approval to be $1,959,740.

Under this rule, vessel owners and operators will incur some SIP implementation training costs. These costs reflect a slight increase in existing crew or employee training costs to ensure responsible personnel have the skills needed to conduct maintenance and examinations of vessel equipment and systems required by the VAP.

One small passenger vessel owner (regulated under subchapter K) currently in a prototype program estimated that VAP training took approximately 35 hours to train each of four employees to properly conduct and record the tests and examinations under the VAP. Based on an hourly salary of $16 for the trainer and an average hourly salary of $13 for each of the four

employees, we estimate a one-time training cost of $2,380 for a similar passenger vessel.

A tank barge owner currently in a prototype program estimated that VAP training took approximately 40 days to train 16 employees to conduct and record examinations under the VAP for a 200-barge fleet. Based on an 8-hour training day, an hourly salary of $33.65 for the trainer, and an average hourly salary of $25 for each of the employees, we estimate a training cost of $138,770 for a similar size barge fleet.

The Coast Guard estimates that the one-time training costs for personnel on vessels in the SIP will range from $700 ($138,770 divided by a 200-simple-system fleet) to $3,000 (for one large multi-system vessel) per vessel. The Coast Guard assumes that once the VAP is approved and the vessel is enrolled in the SIP, any further training will be incorporated into established company training and vessel maintenance programs at little or no additional cost. Therefore, we did not include recurring training costs in the cost estimates for this rule.

Some owners and operators participating in prototype programs purchased computers and other administrative items to help with collation of plan information. A computer could reduce the administrative time spent developing the VAP; however, this rule does not require a company to have a computer. Because a company could meet all of the SIP criteria without a computer, the Coast Guard did not include equipment costs in the cost estimates for this rule.

Industry Benefits

Benefits from the SIP are expected to vary and are not currently quantifiable. Participants in prototype programs stated that the cost to participate and maintain this type of voluntary program has been partially offset by an increased availability of their vessels for profit-making ventures. Some Coast Guard marine inspectors have noted as much as a 50 percent reduction in their onboard inspection time on vessels participating in a prototype program. Prototype program participants have also reported other benefits. These participants reported that they have experienced the following benefits:

- The vessel's material condition was kept at a consistently high level and there were fewer major repairs.
- The company's cost of maintaining the vessel in regulatory compliance was reduced and expenses were more evenly distributed over time.
- The licensed mariners recognized their role in regulatory compliance and welcomed the empowerment to conduct the procedures specified in the VAP.
- The unlicensed crew experienced more rapid professional growth as they were trained and became familiar with conducting the step-by-step verification procedures.
- The communication between the company and the Coast Guard was open and problem-solving.
- The vessel's working environment was better than it had been under the traditional inspection program.
- There were fewer insurance claims and personnel injuries.
- The vessel's maintenance records provide more information and are better than the records the company required on its own.

There were no monetary estimates for the value of these benefits.

User Fees

The Coast Guard expects that once implemented, the SIP will result in fewer onboard Coast Guard inspection hours required to inspect and certify participating vessels. This rule, however, will not change existing vessel inspection user fees. When sufficient data exists regarding the Coast Guard costs required to administer the new program, the Coast Guard plans to review the existing user fee structure to determine if a reduction in fees is warranted.

Government Costs

This rule has short-term costs to the Coast Guard but, in the long-term, will save resources. In the initial implementation of the SIP, Coast Guard inspectors will need to review company applications, assist companies in plan development, and oversee the operational implementation of the plan. The time required by this program varies depending on the type of vessel and the current company management infrastructure. It may take the Coast Guard as little as 3 hours to verify a tank barge company's eligibility, 18 hours to assist in developing and reviewing its plan, and 8 hours to oversee its operation prior to a favorable assessment of the VAP by the Coast Guard marine inspector. However, the Coast Guard may take significantly more time to assist in developing, reviewing, and overseeing the plans and operation of a large passenger vessel because of its complex onboard systems and the large number of company personnel involved in managing the CAP and VAP. After the initial investment of Coast Guard resources (time and training) to assist vessel personnel with their plans, the Coast Guard expects to reduce the amount of time taken to inspect and certify vessels enrolled in the SIP.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects this rule to have a positive economic impact for owners and operators who choose to participate in the SIP. Of the 1,506 vessels which owners may submit for SIP enrollment, we estimate that small entities will own 334 small passenger vessels, 52 offshore supply vessels, and 94 tank barges or OSRVs. Under Section 601 of the Regulatory Flexibility Act, the Coast Guard has provided a flexible approach that meets the needs of each company and its vessels and will benefit any small businesses choosing to enter the program. This rule will have no impact on vessel owners who do not choose to participate in the program.

This rule provides an optional way of complying with existing inspection regulations and will only have an economic impact if the vessel owner enrolls in the SIP instead of the existing Coast Guard scheduled inspection program. For a small entity, plan development may be too large an initial investment recoverable after too long a time for them to see the benefits. To assist small entities in plan development, the Coast Guard will provide detailed guidance tailored to the small passenger vessel operator and to other small entities that operate other vessel types. This rule also provides for one-on-one time with Coast Guard inspectors to assist in plan development. Benefits from the SIP are expected to be especially positive to those small entities with more than one vessel in the program because after developing the first CAP and VAP, costs will be minimal for developing VAP(s) for the remaining vessels.

The SIP is a voluntary program; it provides benefits to small entities willing to invest the time and training needed for enrollment. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact LT Paul Arnett at the numbers listed under **FOR FURTHER INFORMATION CONTACT**.

Collection of Information

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

The information collections associated with this rule concern the application for enrollment, development of the VAP, development of the CAP, and updates to the CAP and VAP. The costs and hour-burdens associated with these procedures are outlined in the Industry Costs *section*. A total information collection hour-burden of 32,244 is estimated for this program.

One comment noted that the collection of information section of the NPRM states ''* * * reports must be submitted whenever a company representative performs activities required by the VAP.'' The comment was concerned that this requirement could create a paperwork burden for industry and the Coast Guard. For example, a company may require a deckhand to check void spaces several times a day and record those checks.

Under the frequency of response section of the NPRM, the Coast Guard did not state that all documentation should be sent to the Coast Guard. It is true that if the VAP requires certain activities to be documented, then company personnel will do that documenting. The documentation will be kept by the company or on the vessel and will be made available to the Coast Guard. But these recordkeeping requirements should not be confused with reporting requirements. This rule does not require the documentation to be submitted to the Coast Guard.

As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. Originally, the Coast Guard submitted to OMB requests for additions to four existing collection-of-information requests—OMB Approval Numbers 2115–0025, 2115–0071, 2115–0578, and 2115–0592. These requests added SIP collection hours to existing programs and all but 2115–0071 were approved by OMB. The Office of Management and Budget did not approve 2115–0071, titled Official Logbook, because a public comment expressed confusion over the inclusion of SIP collection hours in that particular request. To eliminate confusion, the Coast Guard submitted a consolidated, SIP-exclusive, collection-of-information request to OMB. This consolidated request presents the numbers in a form that is easier to understand and makes it easier for the Coast Guard to renew when it expires.

The Office of Management and Budget has approved the consolidated collection. The section numbers are §§ 8.520, 8.530, 8.535, and 8.550, and the corresponding approval number from OMB is OMB Control Number 2115–0633, which expires on July 31, 2001.

Federalism

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

The authority to regulate safety requirements of U.S. vessels is delegated to the Coast Guard by statute. Furthermore, because these vessels tend to move from port to port in the national market place, these safety requirements need to be national in scope to avoid numerous, unreasonable and burdensome variances. Therefore, this action preempts State action addressing the same matter. One comment stated disagreement with the Coast Guard's determination that the regulations would preempt state or local regulations involving inspection of vessels, citing the decisions of the Supreme Court in *Ray* v. *ARCO* and of the District Court for the Western District of Washington in *INTERTANKO* v. *Lowery*, as affirmed in part by the Ninth Circuit Court of Appeals for the premise that Federal preemption is limited to regulations relating solely to the design, equipment, and construction of vessels. The Coast Guard disagrees with this limited interpretation of the Supreme Court precedent in the *Ray* case and the ruling of the Ninth Circuit Court of Appeal in the *INTERTANKO* case that adopts this limited interpretation. The Coast Guard has historically inspected vessels for their compliance with Federal regulations that address the safety of vessels and protection of the marine environment. The certificate of inspection issued to vessels as a result of these inspections indicates that the vessels are safe for the service in which they are engaged. It is the Coast Guard's opinion that the Supremacy Clause preempts state and local regulations that seek to impose different or higher standards governing the inspection of U.S. vessels.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(d) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule is excluded based on its inspection and equipment aspects. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 8

Administrative practice and procedures, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 8 as follows:

PART 8—VESSEL INSPECTION ALTERNATIVES

1. The authority citation for part 8 is revised to read as follows:

Authority: 46 U.S.C. 3103, 3306, 3316, 3703; 49 CFR 1.46.

2. Subpart E, consisting of §§ 8.500 through 8.570, is added to read as follows:

Subpart E—Streamlined Inspection Program

Sec.

8.500 Purpose.
8.505 Scope and applicability.
8.510 Definitions.
8.515 Eligibility.
8.520 Application.
8.525 OCMI review and action.
8.530 Plan development and approval.
8.535 Training and operational evaluation.
8.540 Enrollment in SIP.
8.545 Scope of inspection for enrolled vessels.
8.550 Plan review and revisions.
8.555 Disenrollment.
8.560 Waiver.
8.565 Appeal.
8.570 Interim approval of prototype SIP company or vessel plans.

Subpart E—Streamlined Inspection Program

§ 8.500 Purpose.

(a) This subpart establishes the Streamlined Inspection Program (SIP) which is a voluntary alternative

inspection program for U.S. documented or registered vessels required to maintain a valid certificate of inspection (COI).

(b) This subpart sets out the eligibility and application requirements and the plan development and approval procedures for enrollment of companies and their vessels in the SIP.

§ 8.505 Scope and applicability.

(a) This subpart applies to U.S. documented or registered vessels that have a valid COI.

(b) A vessel enrolled in the SIP will be inspected in accordance with its approved Vessel Action Plan (VAP).

(c) The SIP includes all inspections required to renew and maintain a valid COI. The SIP does not include dry-dock examinations, unscheduled inspections related to vessel casualties, equipment repair or replacement, or vessel modifications. Those inspections will be conducted in accordance with the subparts applicable to the vessel.

§ 8.510 Definitions.

The following definitions apply to this subpart:

Civil penalty means a final assessment under the provisions of 33 CFR part 1, subpart 1.07 or part 20 of this chapter.

Coast Guard SIP Advisor means the Coast Guard marine inspector assigned by the Officer in Charge, Marine Inspection (OCMI), to assist in the development of an action plan.

Company means the owner of the vessel or any other organization or person, such as the manager or the bareboat charterer, who operates a vessel under the SIP.

Company Action Plan (CAP) means the document describing a company's organization, policies, and responsibilities required for participation in the SIP.

Company SIP Agent means the individual who is responsible for the Company Action Plan and the Vessel Action Plan development and implementation and who has the authority to bind the company to the terms of these plans.

Correction Report means a document which sets out specific vessel deficiencies and is used to record their correction by the company.

Documented deficiency means an incident documented in a Coast Guard record in which the condition of a vessel, its equipment, or its operation was not in compliance with Coast Guard regulations.

Examination Checklist means any document or form approved in the VAP, that may be used by company employees to record the periodic examinations required by the VAP.

Inspection Criteria References (ICR) means the individual pages in the VAP that list each item on the vessel required by regulation to be periodically inspected.

Inspection Schedule and Verification (ISV) means the document that lists the items to be inspected and the intervals for their inspection, and on which is recorded the completion of required examinations and tests conducted by designated company employees.

Prototype SIP plan means the SIP plans developed for a company or vessel participating in a Coast Guard District- or OCMI-endorsed SIP before August 18, 1998.

Reportable casualty means a marine casualty or accident required to be reported under 46 CFR part 4, subpart 4.05 of this chapter.

Streamlined Inspection Program (SIP) means the alternative inspection program set out in this subpart.

Vessel Action Plan (VAP) means the document that prescribes procedures for maintenance, examination, and inspection of a vessel enrolled in the SIP.

§ 8.515 Eligibility.

(a) The company must—

(1) Have owned or operated at least one U.S. documented or registered vessel for a minimum of 3 consecutive years before the SIP application date; and

(2) Have paid all civil penalties and user fees.

(b) Except as allowed by paragraph (c) of this section, each vessel must—

(1) Have been in operation with an eligible owner or operator for at least 3 consecutive years before the SIP application date;

(2) Have had no revocation of its COI during the 3 years before the SIP application date; and

(3) Have no documented deficiency for any of the following in the 3 years before the SIP application date:

(i) Any vessel operation inconsistent with the operating details specified on its COI.

(ii) Operating without the required amount of lifesaving appliances on board the vessel or with inoperable survival craft.

(iii) Operating without the required firefighting equipment on board the vessel or with an inoperable fire pump(s).

(iv) Unauthorized modifications to the vessel's approved systems or structure, such as fixed firefighting systems, pollution prevention arrangements, overcurrent protection devices, or watertight boundary arrangements.

(v) Operating without the required navigation equipment on board the vessel or with inoperable navigation equipment.

(c) A vessel constructed for, or acquired by, a company with one or more vessels enrolled in the SIP need not meet the requirement in paragraph (b)(1) of this section for enrollment in the SIP, provided that the vessel holds a valid COI issued by the OCMI where the vessel will principally operate.

§ 8.520 Application.

To apply for SIP enrollment, a company will submit an application, in writing, to the cognizant OCMI. The application must contain the following:

(a) A statement that the company and prospective vessel(s) meet the requirements of § 8.515.

(b) A summation of the company's current status in relation to § 8.530(a).

(c) The name and official number of the vessel(s) the company intends to enroll in the SIP.

(d) The name and contact information for the Company SIP Agent.

§ 8.525 OCMI review and action.

(a) The cognizant OCMI will review Coast Guard records for the 3 years before the SIP application date to verify the eligibility of the company and each vessel listed in the SIP application.

(b) If the company and one or more of its vessels meets the eligibility requirements contained in § 8.515, the cognizant OCMI will notify the company of its eligibility and assign a Coast Guard SIP Advisor.

(c) If, according to Coast Guard records, a company or vessel does not meet the eligibility requirements contained in § 8.515, the cognizant OCMI will notify the company in writing of its ineligibility stating each reason for not accepting the company or a vessel.

§ 8.530 Plan development and approval.

The Company SIP Agent will develop the CAP and VAP with guidance from the Coast Guard SIP Advisor for OCMI approval.

(a) *Company Action Plan.* The CAP shall include at least the following:

(1) A copy of the OCMI CAP approval letter (once the CAP is approved).

(2) An organization commitment statement.

(3) A company organization chart that includes the name(s) of the designated SIP support personnel who will be responsible for implementation and oversight of the approved CAP and VAP(s).

(4) A statement describing the responsibilities and authorities of personnel involved in the examination and maintenance of the vessel(s) for the company.

(5) A description of the method the company will use to integrate the applicable subpart regulations into its SIP and the method or system used to initiate corrective action.

(6) A description of the company's safety program.

(7) A description of the company's environmental protection program.

(8) A description of the company's training infrastructure, the method used to track and record training for individual employees, and the training required for the designated SIP support personnel to implement the CAP and the VAP.

(9) A master list of all SIP documents and ICRs that the company intends to use in its VAP(s).

(10) Appendices for each approved VAP.

(b) *Vessel Action Plan.* Each VAP shall include at least the following:

(1) A copy of the OCMI VAP approval letter (once the VAP is approved).

(2) A description of the method that will be used to integrate the VAP into the vessel's regular operations.

(3) Vessel-specific ICRs.

(4) Vessel-specific ISV forms.

(5) Vessel-specific examination checklists.

(6) Correction reports.

(c) *Plan Approval.* The Company SIP Agent will submit the CAP and each VAP to the cognizant OCMI for approval. Once approved, a copy of the VAP shall be kept on board the vessel.

§ 8.535 Training and operational evaluation.

When the CAP and VAP(s) have been approved by the cognizant OCMI, the company may begin training and operating under the plans. This evaluation phase includes the following:

(a) The company shall provide the designated SIP support personnel with training as required by the CAP.

(b) The vessel must operate and be examined under the VAP for a period of at least 3 months.

(c) During the operational periods, the Coast Guard SIP Advisor will conduct an ongoing evaluation of the vessel's operation, the training records, and the ability of all designated persons to perform their assigned functions under the VAP. The Coast Guard SIP Advisor will report periodically to the cognizant OCMI and the Company SIP Agent on the vessel's performance, and make recommendations, if needed.

(d) Revisions recommended under paragraph (c) of this section, or any additional operational periods under a revised CAP or VAP as may be required by the cognizant OCMI must be completed prior to enrollment.

§ 8.540 Enrollment in SIP.

Upon successful completion of the training and evaluation phase, the Coast Guard SIP Advisor will recommend to the OCMI that the company or vessel be enrolled in the SIP. If the OCMI concurs with the recommendation, he or she will issue an enrollment letter and endorse the vessel's COI. Subsequent inspections covered under this subpart will be conducted in accordance with the approved VAP.

§ 8.545 Scope of inspection for enrolled vessels.

(a) A Coast Guard marine inspector will conduct required periodic and follow-on inspections necessary to ensure compliance with Coast Guard regulations.

(b) A Coast Guard marine inspector will conduct the inspections in paragraph (a) of this section in accordance with the procedures set out in the VAP. These inspections will normally include the following:

(1) *Administrative review.* This portion of the inspection consists of a review of prior Coast Guard SIP inspection forms, the contents of the VAP, and other certifications of equipment and vessel systems.

(2) *SIP performance review.* This portion of the inspection consists of a review of vessel SIP documentation and records, review of the SIP procedures, and a company evaluation of their SIP.

(3) *Materiel review.* This portion of the inspection consists of a general examination of the vessel, witnessing the examination of selected items under the VAP by company designated SIP support personnel, inspection of selected items, and witnessing crew performance in drills.

(4) *Conclusion and recommendations.* This portion of the inspection contains the Coast Guard marine inspector's evaluation of regulatory compliance of the vessel under its VAP.

(c) A Coast Guard marine inspector may conduct any additional tests or examinations of vessel equipment or systems necessary to ensure compliance with Coast Guard regulations during an inspection covered in paragraph (a) of this section.

§ 8.550 Plan review and revisions.

(a) Mandatory reviews and revisions. The CAP and VAP(s) must be reviewed and revised as follows:

(1) Every 2 years after the plan approval date, the company shall review the CAP and update all information required by § 8.530.

(2) Every 5 years after the plan approval date, the Coast Guard SIP Advisor and the Company SIP Agent will review the VAP.

(3) If a reportable casualty occurs, the cognizant OCMI will review the portions of the VAP related to equipment, training, personnel, and systems involved in the casualty and determine whether revisions to the VAP are appropriate.

(4) When statutes or regulations change, the appropriate sections of the CAP and VAP(s) will be revised.

(b) *Discretionary reviews and revisions.* The CAP and VAP(s) may be reviewed and revised by the company at any time. The revisions must be submitted to the cognizant OCMI for approval.

§ 8.555 Disenrollment.

(a) *Voluntary disenrollment.* A company may request SIP disenrollment (which includes all of its vessels) or may request disenrollment of a specific vessel from the SIP by writing to the cognizant OCMI. The OCMI will then issue a letter disenrolling the vessel or company. Disenrolled vessels will be inspected in accordance with the requirements of 46 CFR part 2, subpart 2.01 of this chapter.

(b) *Company disenrollment.* The OCMI may issue a letter disenrolling the company if the company no longer has at least one enrolled vessel or if the company fails to continue to meet the eligibility requirements in § 8.515.

(c) *Vessel disenrollment.* The OCMI may issue a letter disenrolling a vessel if any one or more of the following occurs:

(1) The sale of the vessel.

(2) A finalized letter of warning or assessment of a civil penalty for—

(i) Operating outside the scope of the vessel's COI or Stability Letter;

(ii) Not reporting a personnel or material casualty required to be reported under 46 CFR part 4; or

(iii) A material deficiency listed in § 8.515(b)(3).

§ 8.560 Waiver.

(a) A Coast Guard District Commander may waive any requirement of this subpart—

(1) If good cause exists for granting a waiver; and

(2) If the safety of the vessel and those on board will not be adversely affected.

(b) Requests for waiver of any requirement of this subpart must be submitted in writing to the cognizant OCMI for review before forwarding to the Coast Guard District Commander for action.

(c) A copy of each waiver granted under this section shall be maintained at all times in the VAP.

§ 8.565 Appeal.

A company may appeal any decision or action taken under this subpart in accordance with 46 CFR part 1, subpart 1.03 of this chapter.

§ 8.570 Interim approval of prototype SIP company or vessel plans.

(a) A company operating under an approved prototype SIP company or vessel plan must apply in writing by November 1, 1998, to the cognizant OCMI for approval to continue operating under the plans while revisions are developed to bring the prototype SIP company or vessel plan into conformance with this subpart. The OCMI may approve the request for a period of up to 3 years.

(b) A company that does not request approval as required by paragraph (a) of this section or does not obtain approval to continue operating under a prototype SIP company or vessel plan by February 1, 1999, may no longer operate under the plans and will be inspected in accordance with the requirements of 46 CFR part 2, subpart 2.01 of this chapter.

Dated: August 5, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–21549 Filed 8–17–98; 8:45 am]

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federal register

Tuesday
August 18, 1998

Part IV

Department of Transportation

Federal Transit Administration

FTA Transit Program Technical Amendments Changes Under the Transportation Equity Act for the 21st Century; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Transit Program Technical Amendments Changes Under the ransportation Equity Act for the 21st Century

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21) made certain changes to the FTA transit program by amending 49 U.S.C. chapter 53. On June 24, 1998, the FTA published a **Federal Register** Notice summarizing TEA–21 provisions as they impacted the FTA grant program. The Internal Revenue Restructuring and Reform Act of 1997, signed into law by President Clinton on July 22, 1998, contained technical amendments to TEA–21 that corrected some of the TEA–21 provisions. As a result, the FTA is now publishing this Notice providing information on the technical corrections. This Notice updates the June 24, 1998, **Federal Register** entitled ''FTA Transit Program Changes and Final Funding Levels for Fiscal Year 1998 Under the Transportation Equity Act for the 21st Century.''

FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific information and issues; Patricia Levine, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program, the Capital New Start Program, and the Clean Fuels Formula Program, (202) 366–2053.

SUPPLEMENTARY INFORMATION: 49 U.S.C. chapter 53, amended by TEA–21, made certain changes to the FTA transit program. By technical corrections, some of those changes have been amended. FTA is publishing in this Notice the following provisions, as amended, pertaining to the FTA transit programs:

Section 5307 Urbanized Area Formula Program Operating Assistance

Section 5307(c)(1)(B), as amended, specifies that: ''The Secretary may make grants under this section from funds made available for fiscal year 1998 to finance the operating costs of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000.'' Therefore, the operating assistance limitations, as published in the **Federal Register** on December 5, 1997, still apply for areas 200,000 and above.

Section 5308 Clean Fuels Formula Program

Section 5308(e)(2) is amended to read: ''Clean diesel buses.—Not more than 35 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section may be made available to fund clean diesel buses.''

Section 5309 New Start Authorizations under TEA–21

Table 6 of the June 24, 1998, **Federal Register** contained a list of TEA–21 New Start Project Authorizations under Section 5309(m)(1)(B). Some of the project authorizations specified whether the project was authorized for final design and construction or for alternatives analysis and preliminary engineering. The following areas are now also authorized for final design and construction: NM/Albuquerque—Greater Albuquerque Mass Transit Project; CT/Hartford—Hartford City Light Rail Connection to Central Business District; RI/MA—Providence-Boston Commuter Rail; NY/New York—St. George's Ferry Intermodal Terminal; NY/New York—Midtown West Ferry Terminal; FL/St. Petersburg—Pinellas County-Mobility Initiative Project; GA/Atlanta—MARTA Extension (S. DeKalb-Lindbergh). The following areas are now authorized for alternatives analysis and preliminary engineering under Section 5309(m)(l)(B): CA/Riverside County—San Jacinto-Branch Line; IA/Sioux City—Light Rail; NM/Albuquerque—High Capacity Corridor; NM/Santa Fe—Santa Fe-El Dorado Rail Link; IL/Chicago—Northwest Rail Transit Corridor; and VT/Burlington—Burlington-Essex Commuter Rail.

In addition, the following New Start projects authorizations have been amended to modify either the project name or the dollar amount or both: Dallas—North Central Extension, $188,000,000; Dallas-Fort Worth RAILTRAN (Phase II), $12,000,000; San Diego Mission Valley East and Mid-Coast Corridor, $325,000,000; Hartford City Light Rail Connection to Central Business District, $33,000,000; Kansas City—I–35 Commuter Rail, $30,000,000; New York—Staten Island Ferry-Whitehall Intermodal Terminal, $40,000,000; New York-Midtown West Ferry Terminal, $16,300,000; Washington, D.C., Dulles Corridor Extension, $86,000,000; Pittsburgh Stage II Light Rail, $100,200,000; Northeast Indianapolis Corridor, $10,000,000; Greater Albuquerque Mass Transit Project, $90,000,000; Providence-Boston Commuter Rail, $10,000,000; and San Joaquin Intermodal Corridor, $14,000,000.

Over-the-Road Bus Accessibility Program

The authorized funding level for other over-the-road bus service under Section 5338(a)(2) totals $6,800,000 for fiscal years 2000 through 2003. In addition, the amendment specifies that the amounts shall be available for operators of over-the-road buses used substantially or exclusively in intercity, fixed-route over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses.

This Notice is included on the FTA Home Page and may be accessed at www.fta.dot.gov.

Issued on: August 13, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–22208 Filed 8–17–98; 8:45 am]

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federal register

Tuesday
August 18, 1998

Part V

Department of Housing and Urban Development

24 CFR Parts 201, 202, and 203

Termination of an Approved Mortgagee's Origination Approval Agreement; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 201, 202 and 203

[Docket No. FR–4239–F–02]

RIN 2502–AG99

Termination of an Approved Mortgagee's Origination Approval Agreement

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: On December 10, 1997 (62 FR 65180), the Department issued an interim rule to clarify and make minor changes to 24 CFR parts 202 and 203. The rule improved the provisions regarding termination of a single family mortgagee's origination approval agreement with FHA, and corrected errors in 24 CFR parts 201 and 202. The Department is now issuing a final rule without change from the interim rule. The Department is also making a correction to a previous amendment of part 202.

EFFECTIVE DATE: September 17, 1998.

FOR FURTHER INFORMATION CONTACT: Phillip Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Room B–133–P3214, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–1515 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Part 202 of title 24 contains the Department's requirements for approval of lenders and mortgagees for FHA insurance programs. An interim rule issued on December 10, 1997 (62 FR 65180) amended part 202 to state more clearly the provisions regarding termination of an FHA-approved single family mortgagee's origination approval agreement (OAA). The following matters were clarified or changed in § 202.3(c):

- When a mortgagee has a default and claim rate sufficient to support termination of the OAA under the standards of part 202, termination is at the discretion of the Secretary even if the Department in a previous time period could have, but did not, place the mortgagee on credit watch. This was a clarification of the Department's existing interpretation.
- A mortgagee will not be permitted to apply for a new OAA for 6 months after termination of an OAA. Previously, there was no delay required for an application for a new OAA.
- Claims and defaults will be measured for 24 months after a mortgage is insured, instead of the current 18 months for claims and 1 year for defaults.

Language was added to 24 CFR 203.3 and 203.4 that clarified HUD's existing position that a mortgagee with a terminated OAA also has its approval under the Direct Endorsement and Lender Insurance programs terminated without further procedures. The interim rule also corrected certain errors in parts 201 and 202.

Discussion of Public Comments

The Department received one comment from the public. The commenter disagreed with the aspect of part 202 that allows HUD to terminate an OAA based on certain default and claims levels. The commenter argued that there was an underlying fallacy in the assumption that high default and claims ratios are evidence of defective lending or servicing practices by the lender. In addition, the commenter disagreed with HUD's finding under the Regulatory Flexibility Act that the interim rule will not have a significant economic impact on a substantial number of small entities. HUD had invited small servicers to comment on whether the rule will significantly affect them but no such comments were received (the commenter is a large bank.)

These comments are not directed to the clarifications and technical changes to part 202 made by the interim rule, but to provisions added to part 202 in 1991 after proposed rulemaking. Furthermore, the commenter wrongly concludes that HUD will terminate an OAA on the basis of servicing obligations. As part of that proposed rulemaking, the Department thoroughly considered the basic concept of termination based on particularly high default and claims rates for originating lenders, and finds no arguments or information that cause the Department to reconsider at this time the policy reflected in part 202.

Technical Correction

On April 24, 1997, 62 FR 20080, HUD issued a final rule that streamlined 24 CFR part 202 and made related changes to other parts of title 24. As published, the final rule that streamlined 24 CFR part 202 contained some technical errors. These errors were discussed in the Supplementary Information section of a corrective rule published on February 26, 1998. However, HUD inadvertently failed to correct one of the errors discussed in that section, by failing to include the words ''loans or'' in the corrected third sentence of 24 CFR 202.7(a). HUD is now making that correction.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule merely clarifies and makes minor changes and corrections to the existing regulations. The final rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This final rulemaking is exempt from the environmental review procedures under 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) because of the exemption under § 50.19(c)(1). This final rulemaking simply adopts without change an interim rule that itself amended existing regulations regarding termination of a mortgagee's approval to originate insured mortgages and did not alter the environmental effect of the regulations being amended.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this final rule that would affect the relationship between the Federal Government and State and local governments.

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 on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk on children.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this final rule are 14.117 and 14.142.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, the interim rule published at 62 FR 65180, December 10, 1997, amending 24 CFR parts 201, 202 and 203 is adopted as final without change, and part 202 is further amended to read as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

1. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(b).

2. Section 202.7 is amended by revising the final sentence of paragraph (a) to read as follows:

§ 202.7 Nonsupervised lenders and mortgagees.

(a) * * * A nonsupervised lender or mortgagee may originate, purchase, hold, service or sell insured loans or mortgages, respectively.

* * * * *

Dated: July 29, 1998.

Ira Peppercorn,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 98–22158 Filed 8–17–98; 8:45 am]

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